

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.336 of 2014
Arising out of
Civil Writ Jurisdiction Case No. 7180 of 2007

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Fulena Paswan, Son of Sri Laddu Paswan, Resident of Village and P.O.- Dafarpur,
P.S.- Bakhari (Naohothi), Distt.- Begusarai

.... Petitioner/ Appellant/s

Versus

1. The State of Bihar Through The Commissioner-Cum-Secretary, Human Resources Development Department (Primary Education)
2. The Deputy Development Commissioner, Begusarai
3. The District Superintendent of Education, Begusarai
4. The Block Education Extension Officer, Khudawandpur, District- Begusarai

.... Respondents/ Respondent/s

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Appearance :

For the Appellant/s : Mr. Rajendra Prasad Singh, Sr. Advocate
Mr. Mukesh Kumar Singh, Mr. Rishi Raj

For the Respondent/s : Mr. Dhurjati Kumar Prasad, GP 14

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 11-08-2016

The order dated 21st September, 2011 passed by the learned Single Bench in CWJC No. 7180 of 2007 is the subject matter of challenge in the present Letters Patent Appeal. The learned Single Bench has dismissed the writ petition on the ground that the same suffers from gross delay and laches.

The appellant earlier filed CWJC No. 10097 of 1994 for issuance of a direction for acceptance of his joining after remaining absent for more than 20 years. In the writ petition, this Court passed an order on 6th July, 1995 directing the respondents to accept the



joining but holding that it is not a fit case for issuance of direction for payment of salary. After giving such categorical finding, liberty was given to the District Education Establishment Committee to take appropriate action against the petitioner including departmental proceeding for unauthorized absence.

It appears that the respondent authorities did not take any action consequent upon the aforesaid order passed and in the meantime the appellant filed MJC No. 543 of 2006. During the pendency of the said contempt petition, an order was passed by the District Education Establishment Committee on 25th November, 2006. It was the said order which was challenged by the appellant before the writ court. It may be stated that in the meantime the appellant attained the age of superannuation on 31.12.2008.

The claim of the appellant in the writ application before the learned Single Bench was to set aside the order dated 25th November, 2006 and also to give him the benefit of past service. The learned Single Judge found that the petitioner has worked only for two years and, therefore, conduct of a departmental proceeding would be in futility.

It is a classic case where the appellant remained absent for 20 years and then suddenly woke up to file a writ application before this Court. The writ court directed that the District Education

Establishment Committee to pass an order in respect of his unauthorized absence from duty but the District Establishment Committee passed an order only on 25th November, 2006 and that too after filing of the contempt petition. All these years the appellant abstained from duty. Thus, from the year 1974 till 2006, the appellant remained absent and had not served the state.

In view of the contumacious conduct of the appellant of remaining absent for more than 20 years, we do not find any indulgence is warranted to interfere with the order of the learned Single Judge in the present Letters Patent Appeal.

The appeal is accordingly dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

mrl

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