

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1589 of 2013
IN
Civil Writ Jurisdiction Case No. 6408 of 1998**

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Naushad Ahmad Son Of Md. Yanus Resident Of Village - Chak Yusuf, P.O. Gogri
Jamalpur, P.S Gogri, District Khagaria

.... Appellant

Versus

1. The State Of Bihar
2. The Director, Panchayati Raj, Bihar, Patna
3. The Collector, Khagaria
4. The Deputy Development Commissioner cum Chief Executive Officer, Zila Parishad, Khagaria

.... Respondents

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Appearance :

For the Appellant : Mr. L.N.Das, Advocate
Mr. Subhdeep Das, Advocate
For the Respondents : Mr.

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**CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 03-03-2017

Since the writ application filed by the appellant was dismissed by the learned single Judge on 25.09.2013 refusing to set aside the order dated 1-.07.1998 passed by the Deputy Development Commissioner-cum-Chief Executive Officer, Zila Parishad, Khagaria, dismissing the appellant from service who was appointed on the post of Chowkidar on compassionate ground, the present appeal has been preferred.

In a detailed consideration of submission of law, the learned single Judge has concluded in the following words :

“Besides hearing learned counsel for the parties, I have also perused the materials available on record. Fact remains that on the date when the



petitioner was appointed he was not entitled to be appointed on compassionate ground being grand son of the deceased employee. The fact that father of the petitioner was in government service has also not been disputed by the petitioner. Even learned counsel for the petitioner at the time of argument has admitted that at the time of appointment of the petitioner grand son was not entitled to be appointed on compassionate ground but he has tried to develop his case on the ground of Gangia Devi case (supra). In Gangia Devi case (supra) this court had noticed that in the year 1995 grand son was made entitled to be appointed on compassionate ground. On aforesaid facts it is not in dispute that in the year 1983 when the petitioner was appointed on compassionate ground being grand son of the deceased employee he was not entitled to be appointed and as such the petitioner's appointment was itself illegal and void *ab initio*. In view of **2005(2) PLJR 448 (Ram Babu Kumar vs. The State of Bihar & Ors.)**, as has been noticed above, there was no requirement for even giving notice to the petitioner for cancelling his appointment. Moreover, as discussed above the petitioner was asked by the authority concerned to give explanation also. Secondly the petitioner himself had brought two contradictory certificates before the authority concerned relating to his date of birth. According to school leaving certificate / transfer



certificate on which reliance has been placed by learned counsel for the petitioner and pleaded that correct date of birth of the petitioner was 28.4.1964. As per said date of birth he was major at the time of appointment. However, while claiming promotion the petitioner produced his matriculation certificate in which date of birth of the petitioner was recorded as 1.1.1967. Time without number it has been held that the date of birth recorded in matriculation certificate shall be given preference to other certificates and documents in respect of date of birth. Of-course, a plea has been taken by learned counsel for the petitioner that petitioner wanted to get the date of birth corrected in the matriculation certificate but fact remains that the date of birth recorded in the matriculation certificate of the petitioner was noticed long back, however, the same was never got corrected. If the date of birth as per matriculation certificate, which is existing till date, is taken into account fact remains that even otherwise the petitioner was not entitled to be appointed in the year 1983, due to the reason that as per the date of birth recorded in the matriculation certificate the petitioner was about 16 years old at the time of his appointment. Further the plea of the petitioner that petitioner is still continuing on the post by virtue of order of stay passed by this court may not justify his illegal appointment. Since once it is held that the appointment order was itself illegal and void



ab initio, as per settled law there was no justification for conducting a regular departmental enquiry and by calling for explanation only the order of dismissal was required to be passed, which has been done in the present case. Judgments which have been referred to by learned counsel for the petitioner have got no direct relevance in the facts and circumstances of the present case. I do not find any ground for interference with the impugned order. The writ petition stands dismissed. However, in view of the facts and circumstances, no cost is being imposed.”

Nothing further is required to be said over and above what the learned single Judge has opined on the issue which is in conformity with the law.

The appeal has no merit. It is dismissed.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

Pawan/-

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