

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1007 of 2016
IN
Civil Writ Jurisdiction Case No. 4438 of 2013**

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Rajeev Kumar Pandey S/o Ram Chandra Pandey resident of village Ruphari, P.O.
and P.S. Kapoor Pakri, District East Champaran.

.... Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Human Resources Development Department, Govt. of Bihar, New Secretariat, Patna.
2. Secretary (Secondary Education), Human Resources Development Department, Govt. of Bihar, New Secretariat, Patna.
3. Director (Secondary Education) Human Resources Development Department, Govt. of Bihar, New Secretariat, Patna.
4. Regional Deputy Director of Education Tirhut Division, Muzaffarpur.
5. District Education Officer, East Champaran.

.... Respondent/s

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Appearance:

For the Appellant/s : Mr. Chakrapani,
Mr. Dipak Kumar,
Mr. Madhuresh Singh and
Mr. Sanjay Kumar Singh, Advocates.

For the Respondent/s : Mr. Manoj K Ambastha, SC 26.

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**CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 08-11-2017

Heard learned counsel for the appellant and learned
counsel for the respondents-State.

2. The Appeal has been preferred against the order of a
learned Single Judge dated 06.04.2015 passed in CWJC No.
4438/2013. Prayer of the present appellant/petitioner was for a direction
upon the respondent authorities to make payment of his salary which



rejected. The decision of the Regional Deputy Director of Education, Tirhut Division, Muzaffarpur held that the appointment of the appellant was illegal and, therefore, no benefit of salary etc. could be made available to him has not been interfered with by the learned single Judge.

3. The facts are that the appellant claimed himself to be validly appointed on the post of Clerk in a Nationalized School by the erstwhile Regional Deputy Director of Education, Muzaffarpur. On the basis of so-called valid appointment he continued but never got salary etc. for a long period of time. He approached the High Court earlier by filing CWJC No. 13969/2012 but the same was withdrawn but without any liberty to move the Court afresh. A plea was also taken before the learned single Judge that the writ was not maintainable second time again.

4. The learned Single Judge without being bogged down by the technicality or maintainability decided to take up the case on merit and has gone in quiet a detail in the manner the appointment of the appellant was made, the rule which was in existence which covered such appointment on the post of a Clerk in a Nationalized School and the factum that the Regional Deputy Director of Education had no powers to make appointments beyond the administrative office under him. The appointment in a Nationalized School on the post of



Clerk on the basis of so-called names invited from the Employment Exchange was found to be all beyond the powers and in contravention of the necessary rules and guidelines in vogue. The rules have been quoted and dealt with extensively. The status of such appointment and the legal position has been decided by the various courts including the Hon'ble Apex Court has also been taken note of and extracted. The learned Single Judge came to an opinion in the following words while concluding the status of the appellant and his right to beget salary. The relevant paragraphs are paragraphs 27, 28 and 29 which are reproduced hereunder:-

“27. As a matter of fact this Court also does not find any error in the impugned order passed by the R.D.D.E., Muzaffarpur that the appointment of the petitioner was illegal on account of non-observance of Circular No. 16440 dated 3.12.1980. Let it be kept in mind that the petitioner was/is claiming appointment on the post of Clerk in a Nationalized High School and Rule 8 of the Seva Sarta Niyamawali, itself recognizes that circular by laying down that the procedure for appointment on the post of Clerk in a Nationalized High School has to be as per procedure laid down in the Government circular No. 16440 dated 3.12.1980. Thus, that circular of the Government dated 3.12.1980 also in view of Rule 8 of the Seva Sarta Niyamawali has acquired statutory status.

28. It has to be kept in mind that under circular of the State Government issued by the Administrative and Personnel Department I its letter no. 16440 dated 3.12.1980 a complete mechanism has been given as to how appointment against Class III post has to be made. As per that circular the District Magistrate has to act as a Nodal Officer and all the offices at the district level had to report their vacancies to the District Magistrate. Thereafter the District Magistrate had to issue an



advertisement calling for application from all the applicants and after undergoing the process of selection and preparation of panel he is the Nodal Officer who had to allot Clerks for appointment to respective head of the department at the district level. This has been done only to eliminate arbitrariness and restraining all the District level officer in bestowing favour to their favourates in making appointment on Class III post.

29. Thus, when the R.D.D.E., Muzaffarpur in the impugned order has gone to hold that the appointment of the petitioner was not made as per the Government circular No. 16440 dated 3.12.1980 he has only said the obvious that the appointment of the petitioner is out and out an illegal appointment. This Court in fact also has not been provided by any material by the learned counsel for the petitioner to take a contrary view, inasmuch as it becomes admitted fact from perusal of the writ application that the appointment of the petitioner was made even without publishing of an advertisement in the newspaper much less undergoing process of selection in the manner prescribed in the Government circular No. 16440 dated 3.12.1980.”

5. The Court, therefore, held that the appointment being *void ab initio* in clear infringement of Articles 14 and 16 of the Constitution of India does not make the appellant eligible to claim any benefit much less benefit of salary, as was prayed for in the Writ Application.

6. Learned counsel for the appellant submits that similarly appointed persons have managed to continue. In fact, the efforts made by the respondents to oust them from service did not succeed because the Courts have intervened and their status restored. In this regard, he has produced some orders.



7. The orders have been passed in relation to the facts and the pleadings of those cases. Unfortunately, the facts and pleadings in this case are not the facts and pleadings which were there before the Court when those cases came to be decided. There are unambiguous findings with regard to the manner of selection, a complete go-bye to the rules and, in fact, overstepping of the powers by the Regional Deputy Director of Education in making such appointments and the status of the appellant as such has been dealt with keeping in mind various judicial pronouncements.

8. Facts being what they are, since the present decision of the learned Single Judge does not suffer from any kind of infirmity either on facts or law, this Court has difficulty in interfering with the decision of the learned Single Judge merely on the submission that similarly situated persons have got relief from the Court.

9. The infirmity has to emerge from the impugned order and the same not having been discovered or pointed out, the Appeal has no merit and it is dismissed.

(Ajay Kumar Tripathi, J)

(Rajeev Ranjan Prasad, J)

Dilip, AR

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