

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1674 of 2017

Arising out of

C.W.J.C. No. 116 of 2015

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Yagyanand Mishra, son of Traymbakeshwar Mishra, R/o- Village- Agrapur,
P.S.- Lalganj, District- Vaishali

... .. Appellant/s

Versus

1. The State of Bihar through Principal Secretary, Department of Education.
2. The Principal Secretary, Department of Education, Govt. of Bihar, Patna
3. Bihar Siksha Board through its Secretary, Patna
4. The Secretary, Bihar Sanskrit Siksha Board, Patna
5. The Special Director, Department of Education, Govt. of Bihar, Patna
6. The Managing Committee, through Secretary, Bihar Shukla Sanskrit Secondary School, Lalganj, Vaishali
7. District Education Officer, Vaishali
8. Ramendra Sah, the then Secretary Bihar Shukla Sanskrit School, Lalganj
9. Mini Kumari, Assistant Teacher, Bihar Shukla Sanskrit School, Lalganj

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Brij Bihari Tiwary, Advocate
For the Respondent/s : Mr. Amarendra Kumar, A.C. to AAG- 15

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 30-01-2018

Seeking exception to an order passed by the
learned Writ Court on 07.11.2017 in C.W.J.C. No. 116 of 2015
this appeal has been filed under Clause 10 of the Letters Patent.

Appellant claims to have been appointed by the
Managing Committee of the school and when salary from the
aid granted was not paid, the writ petition was filed. The Writ
Court examined the matter in the backdrop of the law laid down



in the case of **Secretary, State of Karnataka Vs. Umadevi- (2006) 4 SCC 1** and **State of Karnataka Vs. M.L. Kesari- (2010) 9 SCC 247** and found that the appellant was appointed in an illegal manner, he could not be granted the benefit and dismissed the writ petition.

During the course of hearing of this appeal, we made queries from the appellant as to how and in what manner he was appointed even on *ad hoc* basis by the Committee and we found that the appellant's appointment fell under the category of an illegal appointment and, therefore, no benefit could be granted to the appellant and the learned Writ Court considering this aspect found that in the matter of payment of salary or regularization, no mandamus can be issued to the Government and dismissed the writ petition granting liberty to the appellant to approach the Civil Court and seek payment of damages or salary from the private school management or the Managing Committee.

In doing so, in our considered view, the Writ Court has not committed any error. Once the appellant was illegally appointed by the Managing Committee, the State exchequer cannot be burdened by paying the salary with regard to such an appointment. If the appellant feels that the Managing



Committee is required to compensate the appellant for the work done, liberty has already been granted to the appellant to take recourse to the remedy of filing a suit.

According, finding no indulgence to be made, we dispose of the Letters Patent Appeal.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

P.K.P./-

AFR/NAFR	N.A.F.R.
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