

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1168 of 2015

In

Civil Writ Jurisdiction Case No. 5297 of 2015

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Binod Prasad, Son of Janaka Mahto, resident of village + P.O. - Naghra,
P.S. - Deep Nagar, District - Nalanda (Biharsharif). Appellant/s

Versus

1. The State of Bihar through its Principal Secretary, Education Department, Bihar, Patna.
 2. The Director, Secondary Education, Education Department, Patna.
 3. The Secretary, Bihar School examination Board, Bihar, Patna.
 4. The Secretary Body of the K.S.T. College, Salempur, Sohsarai Nalanda, District - Nalanda (Biharsharif).
 5. The Principal, K.S.T. College, Salempur, Sohsarai, Nalanda, District - Nalanda (Biharsharif). Respondent/s
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Appearance :

For the Appellant/s : Mr. Rajendra Narayan, Sr. Advocate
Mr. Abhya Kumar, Advocate
For the Respondent/s : Mr. Y. V. Giri, Sr. Advocate
Mr. Sanjeet Kumar, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

**HONOURABLE MR. JUSTICE ANIL KUMAR
UPADHYAY**

ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

10 15-01-2018 Seeking exception to an order passed by the learned

Writ Court on 22.04.2015 in C.W.J.C. No. 5297 of 2015, this
appeal has been filed under Clause 10 of the Letters Patent.

2. The learned Writ Court had refused to exercise its
jurisdiction on account of fact that the dispute should be agitated
by the petitioner by filing a suit before the competent civil court.
However, we find that earlier the matter came to this Court in
C.W.J.C. No. 19787 of 2010 and various other cases, which were
decided analogously by a common order passed on 02.02.2012
read with order dated 05.07.2012 passed in C.W.J.C. No. 11254 of



2012 and in the said round of litigation the petitioner was one of the aggrieved persons. The learned Writ Court in the said case found that the dispute cannot be examined and decided by this Court in exercise of jurisdiction under Article 226 of the Constitution of India and was of the opinion that it would be appropriate that some authority of the Government who is responsible to release the aid to these colleges should get the matter enquired into in respect of each of the College, identify the genuine employees for payments from the aid released by the Government in accordance with law and issue necessary orders. Accordingly, the writ petitions were disposed of and the Director, Secondary Education was directed to apply his mind to the problem in question, cause an enquiry and if required grant opportunity of hearing to the affected persons and then take a decision.

3. The petitioner came out with the grievance in the writ petition that without hearing him and without conducting any enquiry and based on a report submitted behind his back, his claim has been rejected and by bringing on record order dated 21.11.2014 (Annexure-12 in the writ petition), indicated that except for recording that the petitioner could not be contacted, no notice was issued to him, no opportunity of hearing was granted and, therefore, the learned Writ Court without taking note of all



these crucial aspect of the matter has dismissed the writ petition, which caused prejudice to the petitioner.

4. Even though, Mr. Giri, learned senior counsel appearing for respondent nos. 4 and 5 took us through the detailed enquiry report and tried to indicate that the petitioner has never worked in the institute and, therefore, he was not entitled to any benefit.

5. We find that in the enquiry report (Annexure-R4/8) it is only indicated that petitioner could not be contacted and, therefore, the enquiry report has been submitted purportedly without hearing him. The appellant before us refutes the finding recorded in the enquiry and submits that had he been given an opportunity, he would have established that he was entitled to the benefit claimed for in the writ petition.

6. Be that it may be, the fact remains that after orders were passed in the first round of litigation by the learned Writ Court on 02.02.2012 in the enquiry conducted, as is evident from the material available on record, except for recording a finding that the petitioner could not be contacted, there is nothing to indicate that the so-called enquiry conducted wherein the finding with regard to the petitioner's non-working was recorded is after notice to the petitioner and after hearing him.

7. That being so, it is a fit case where the appeal



should be allowed. The order passed by the learned Writ Court and the order (Annexure-12) should be quashed and the Director, Secondary Education is directed to cause an enquiry into the matter, pass a fresh order with regard to the present petitioner. Accordingly, we direct that the petitioner shall appear before the Director, Secondary Education along with the certified copy of this order, file his detailed claimed along with the relevant documents and the Director, Secondary Education after causing enquiry into the matter shall submit his report within a period of 60 days of appearance of the petitioner, pass final order in the matter. Needless to emphasize that if required, the Director, Secondary Education may call for the document and further material from the institute in question and grant liberty of hearing to the petitioner.

8. This order is confined only to appellant Binod Prasad.

9. With the aforesaid, this appeal stands disposed of.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

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