

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1553 of 2017

In
Civil Writ Jurisdiction Case No.12530 of 2013

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1. The State of Bihar.
 2. The Director General-Cum-Maha Samadesta, Bihar Home Guard Mukhayalaya, Bihar, Patna
 3. The Up Maha Samadesta, Bihar Home Guard Mukhayalaya, Bihar, Patna
 4. The Samadesta, Bihar Home Guard Mukhayalaya, Bihar, Patna
 5. The Samadesta, Bihar Home Guard , Central Training Institute, Bihar, Patna

... .. Appellant/s

Versus

Ram Pravesh Prasad Son Of Sri Karmu Mahto Resident Of Village -
Madhopur, Police Station - Maner, District - Patna

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Durgesh Nandan, AAG 14
		Mr. Jitendra Kumar, AC to AAG 14
For the Respondent/s	:	Mr. Mrityunjay Kumar Tiwary, Adv

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 07-12-2018

Heard Shri Durgesh Nandan, learned counsel for the
State of Bihar, and Shri Mrityunjay Kumar, learned counsel for
the respondent petitioner.

The appeal questions the correctness of the judgement
of the learned Single Judge dated 20th of December, 2016. The
contention is that the learned Single Judge has committed an
error in proceeding to allow the petition and ignoring the



calculation that has been made by the Department to hold that the respondent deserves to be superannuated keeping in view the date of his engagement and the recorded date of his birth inasmuch as he could not have been engaged if he was less than 19 years of age on the date of employment.

This argument would have been open to the State of Bihar had this aspect been taken up at the very inception of the service of the respondent/petitioner, but, in our opinion, to wreck this issue after 30 years, more so, when there is no other deficiency in the respondent/petitioner to discharge his duty, would not be a sound exercise of authority. The learned Single Judge, therefore, in our opinion, on the facts of the present case, was justified in issuing a writ on the ground that this exercise undertaken by the appellant State of Bihar at the fag end of the career of the respondent/petitioner was unjustified. We approve of the said conclusion drawn by the learned Single Judge and once the discretion has been exercised under Article 226 of the Constitution of India, which does not suffer from any manifest perversity, keeping in view the fact that there is no charge of fraud or misrepresentation on the part of the respondent/petitioner, it will not be appropriate for this Court to



invoke the appellate jurisdiction under Clause X of the Letters Patent.

Appeal stands rejected.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

K.C.Jha/Uma/-

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