

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.493 of 2018
IN
Civil Writ Jurisdiction Case No. 22579 of 2013**

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1. Kailash Kumar Rai Son of late Jagdish Rai, Resident of At +P.O. +Police Station- Manihari, District- Katihar.

.... Appellant/s

Versus

1. The Zila Parishad, Katihar Through Its Chairman.
2. The D.D.C.-cum-Chief Executive Officer, Zila Parishad, Katihar.
3. The Director, Panchayati Raj, Bihar, Patna.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Surya Narayan Poddar, Adv.

For the Respondent/s : Mr. Subodh Chandra Jha

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 26-06-2018

Challenge in the present Letters Patent Appeal is to the order dated 21.03.2018 passed by the learned writ Court in Civil Writ Jurisdiction Case No.22579 of 2013.

2. Learned counsel for the writ petitioner-appellant submits that the learned writ Court has not been able to appreciate that the petitioner had been directed to work as a Class-III employee right from the date of his joining on 06.11.1988 and even though his appointment was made against Class-IV post the fact is that he had worked against Class-III post and, therefore, he would be entitled to get salary of Class-III post on which he worked in Zila Parishad



Katihar.

3. After hearing learned counsel for the parties and on perusal of the records, we find that the learned writ Court has gone into the contentions of the writ petitioner and the stand taken on behalf of the Zila Parishad, Katihar. The stand of the Zila Parishad was that the petitioner was appointed against Class-IV post and he was never promoted to Class-III post in the Zila Parishad. It is the stand of the Zila Parishad that the petitioner does not possess the academic qualification required for holding a Class-III post of Assistant. The minimum eligibility qualification of an Assistant is Matriculation. The writ Court has categorically held that the petitioner was asked to clarify about his passing of Matriculation Examination but despite having been asked to submit the original matriculation certificate the petitioner did not submit the same. It has also come in the pleadings that the post of Assistant was not vacant for the backward category class and the vacant posts are of Scheduled Caste, Scheduled Tribe and backward caste female. The learned writ Court has relied upon the judgment of the Hon'ble Apex Court in the case of **A. Francis vs. Management of Metropolitan Transport Corporation Limited, Tamil Nadu** reported in **2014 (13) SCC 283**.

4. The learned writ Court has, upon analysis of the materials available on record and relying upon the judgment of the Hon'ble



Apex Court held that an employee would be entitled for salary of higher post when they were discharging the duty of a higher post on which they were officiating or given ad hoc promotion and were eligible for regular promotion but in the present case the petitioner was not promoted on higher post on ad hoc basis or officiating basis because he could not have been promoted as he was not eligible for such promotion. Petitioner was asked to perform the duty of Class-III post with a condition that he would be paid salary of substantive post and, therefore, finding no reason to interfere the writ Court dismissed the application.

5. After hearing learned counsel for the parties and on perusal of the impugned order as discussed above, we do not find any error in the impugned order.

6. The Letters Patent appeal has no merit it is, accordingly, dismissed.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Arvind/R.R.Ojha

AFR/NAFR	
CAV DATE	
Uploading Date	05.07.2018
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