

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Letters Patent Appeal No.510 of 2019**

**In**  
**Civil Writ Jurisdiction Case No.17154 of 2017**

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Ram Kishore Singh Son of Late Bhubneshwar Singh Resident of Village-  
Govind Pitaughia, P.O.- Bhadaï, P.S.- Runnisaidpur, District- Sitamarhi.

... .. Appellant

Versus

1. The State of Bihar through its Chief Secretary, Government of Bihar, Old Secretariat, Patna.
2. The Chief Secretary, Government of Bihar, Old Secretariat, Patna.
3. The Principal Secretary, Primary and Secondary Education, New Secretariat, Patna.
4. The Regional Deputy Director, Tirhut Division, Muzaffarpur.
5. The District Magistrate, Sitamarhi.
6. The District Education Officer, Sitamarhi, District- Sitamarhi.

... .. Respondents

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**Appearance :**

|                   |   |                                                            |
|-------------------|---|------------------------------------------------------------|
| For the Appellant | : | Mr. Kumod Kr. Srivastava, Adv.<br>Mr. Devendra Kumar, Adv. |
| For the State     | : | Mr. Shashi Shekhar Tiwary, AC to AAG-15                    |

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**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA**

**and**

**HONOURABLE MR. JUSTICE PARTHA SARTHY**

**CAV JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)**

**Date : 19-03-2020**

1. This Letters Patent Appeal has been filed against the impugned judgment dated 25.03.2019 passed by learned Single Judge in CWJC No. 17154 of 2017 by which and whereunder he dismissed the above stated writ petition filed on behalf of appellant-writ petitioner.



2. Briefly stated fact of the case is that appellant-writ petitioner filed above stated CWJC No. 17154 of 2017 for setting aside the order bearing Memo No. 1022 dated 12.06.2002 as contained in Annexure-6 to the writ petition by which the appellant-writ petitioner was terminated from the service with effect from 12.06.2002 and also for setting aside the order dated 20.09.2006 as contained in Annexure-8 to the writ petition by which the representation of the appellant-writ petitioner was rejected and furthermore, for issuance of direction to respondents to reinstate the appellant-writ petitioner in service with full back wages and other benefits from the date of his termination with interest and cost.

3. The case of the appellant-writ petitioner is that he was appointed as a clerk in full scale of pay by the then Regional Deputy Director of Education, Tirhut Division, Muzaffarpur on temporary basis from 01.02.1988 to 15.03.1988 (perhaps wrongly written in writ petition as 01.02.1968) in the office of District Superintendent of Education, Sitamarhi. However, later on from time to time his service was extended up to 30.06.1988 and after 30.06.1988, his service was not extended. However, the appellant-writ petitioner was re-appointed on provisional basis by the District Education Officer, Sitamarhi on 13.02.1989 on a



sanctioned post as a measure of stop gap arrangement in full scale of pay. The appellant-writ petitioner took accounts training and passed Hindi Noting and Drafting examination. His transfer was also made but subsequently, Regional Deputy Director, Education, Tirhut Division, Muzaffarpur enquired the appointment process of the appellant-writ petitioner and issued show cause to him regarding his appointment and continuation in service and having heard the appellant-writ petitioner passed the order of his termination from service stating that his initial appointment was illegal and also directed for recovery of entire salary paid to appellant-writ petitioner vide order dated 12.06.2002. However, the appellant-writ petitioner challenged the order of his termination and recovery of salary by filing CWJC No. 9256 of 2002 before this court and a learned Single Judge of this court vide order dated 22.06.2006 quashed the order of recovery of salary but did not interfere into the order of termination and remanded the matter to Regional Deputy Director of Education, Tirhut Division, Muzaffarpur to reconsider the matter in the light of decisions rendered by this court as well as Hon'ble Apex Court on the points involved in the writ petition. The appellant-writ petitioner filed representation before the Regional Deputy Director of Education, Tirhut Division, Muzaffarpur which was rejected by Regional



Deputy Director of Education, Tirhut Division, Muzaffarpur vide order dated 20.09.2006. Thereafter, the appellant-writ petitioner preferred CWJC No. 17154 of 2017 on 21.11.2017 for setting aside his termination order as well as for setting aside the order dated 20.09.2006 passed by competent authority on his representation and also for issuance of direction to reinstate him in service with full back wages and other benefits from the date of his termination with interest and cost.

4. The appellant-writ petitioner filed supplementary affidavit during pendency of this appeal pleading therein that in the year 1989, he was appointed by the District Education Officer, Sitamarhi on a sanctioned post with condition/agreement that when any permanent appointment will be made, he shall be liable to be removed. He further pleaded in his supplementary affidavit that up till now, no permanent appointment has been made and the appellant-writ petitioner has been terminated violating the above stated agreement.

5. Learned counsel appearing for the appellant-writ petitioner challenged the impugned order arguing that the learned Single Judge failed to take note of this fact that the appellant-writ petitioner was in continuous service on a sanctioned post for near about 14 years but he was terminated from the service without



making any appointment on the aforesaid sanctioned post. He further submits that when the appellant-writ petitioner was appointed in the year 1989 on a sanctioned post, there was a condition in his appointment order that unless the sanctioned post is filled, he shall continue on the above stated sanctioned post but the concerned authorities did not take note of the aforesaid condition and service of the appellant was terminated without filling the concerned post. Learned counsel of the appellant-writ petitioner placed decision of **Ashok Kumar and others vs. State of Bihar and others** reported in 1994(2) BLJ 499 wherein a Division Bench of this court held that after long gap of time question of validity of appointment cannot be opened unless the appointment has been obtained by means of any fraud or misrepresentation. Relying on the aforesaid decision, learned counsel of the appellant-writ petitioner submits that in the present case, admittedly, the appellant-writ petitioner did not play any fraud or misrepresentation and remained in service for near about 14 years and, therefore, the concerned authorities were not empowered to raise question regarding validity of initial appointment after such a long period. Learned counsel of the appellant-writ petitioner further relied upon decision of **Raja Singh and another vs. State of Uttar Pradesh and another**



reported in 2019(3) PLJR (SC) 155. The appellants in above stated case were appointed for the post of District Minority Welfare Officer on deputation basis for a period of two years as per the circular and continued on the aforesaid post for more than two years. However, in the meantime, the State Government framed rules for making appointment on the post of District Minority Welfare Officer. The appellants in the aforesaid case filed representation seeking absorption on the said post cadre which was rejected holding that in the rule, there is no provision to fill the post from any other source except either by direct recruitment or by promotion. The Hon'ble Apex Court in the above stated case held that the appellants of the aforesaid case could not have been deprived of their rights of absorption in Minority Welfare Department on the ground that the rule framed for appointment of District Minority Welfare Officer is silent about the appointment prior to rules. Furthermore, the Hon'ble Apex Court in that case noticed that the appointment of appellants in that case was made on deputation basis after adopting proper selection process.

6. Learned counsel of the appellant-writ petitioner also relied on an unreported judgment of this court passed on 08.03.2003 in CWJC No. 4702 of 2003 and analogous cases.



7. On the other hand, learned counsel appearing for the State refuted the above stated submissions arguing that the initial appointment of appellant-writ petitioner was not in accordance with rules because the appointment of appellant-writ petitioner was not made by a competent authority and as per rules, the Divisional Establishment Committee was the only competent authority to make appointment on the post of clerk for the administrative offices under the jurisdiction of Regional Deputy Director of Education. He further submits that the mandatory rules were not followed in appointment of the appellant-writ petitioner. He also submits that when the Regional Deputy Director of Education, Tirhut Division, Muzaffarpur held enquiry, the appellant-writ petitioner failed to produce any appointment letter issued by Regional Deputy Director of Education, Tirhut Division, Muzaffarpur who was competent authority to appoint a clerk. He further submits that moreover, the prescribed procedure of appointment was not followed at the time of making appointment of the appellant-writ petitioner.

8. Having heard the contentions of the parties, we went through the record. It is admitted case of the appellant-writ petitioner that he was provisionally appointed by the District Education Officer, Sitamarhi by issuance of letter dated



13.02.1989 only as a measure of stop gap arrangement. The aforesaid letter was brought by the appellant-writ petitioner before the writ court as Annexure-4 and perusal of Annexure-4 goes to show that he was appointed by the District Education Officer, Sitamarhi absolutely on provisional basis till the date permanent arrangement is made on the said post for which the appointment of the appellant-writ petitioner was made. Admittedly, the procedures provided in the rules/regulations for appointment on the post of clerk, such as issuance of advertisement, call for the names of candidates from the employment exchange, holding the selection process for the purpose of evaluating comparative merit of the candidate etc. were not followed by the appointing authority. Therefore, there is no dispute that appointment of the appellant-writ petitioner was ab initio void and illegal.

9. No doubt, the appellant-writ petitioner remained on the aforesaid sanctioned post for near about 14 years without any break of service but admittedly, his service was never regularized. However, it is also an admitted position that appointment of the appellant-writ petitioner was a conditional appointment. By filing supplementary affidavit, the appellant-writ petitioner has pleaded that the post which was being held by the appellant-writ petitioner has not yet been filled but in our view, only on the aforesaid



ground the appellant-writ petitioner has no right to claim that he should be permitted to continue on the aforesaid post because his appointment is ab initio void and illegal.

10. The decisions cited on behalf of the appellant-writ petitioner are not applicable in the present case because in the case of **Ashok Kumar and others** (supra), the services of the petitioners in that case were regularized by the Government and in that scenario, the court held that State had no right to question the initial appointment of petitioners of that case after 12 years but in the present case, admittedly, service of the appellant-writ petitioner was not regularized and his appointment was made provisionally as a measure of stop gap arrangement.

11. Similarly, the case of **Raja Singh and another** (supra) is also not applicable in the facts of the present case because in that case, the appointment of appellants of that case was made on deputation after adopting selection process and in that case, the question of absorption of appellants of that case was involved. Similarly, the judgment delivered in CWJC No. 4702 of 2003 and analogous cases is also not applicable in the present case because services of petitioners of that case were regularized whereas in the present case, admittedly, the service of appellant-writ petitioner was never regularized and his appointment was



made only on provisional basis till the regular appointment is made on the post which was being held by the appellant-writ petitioner. Therefore, we do not find any ground to interfere into the impugned judgment and in our view, the learned Single Judge has passed a well discussed judgment.

12. On the basis of aforesaid discussions, this Letters Patent Appeal stands dismissed and the impugned judgment dated 25.03.2019 is, hereby, confirmed.

**(Hemant Kumar Srivastava, J)**

Partha Sarthy, J:- I agree.

**( Partha Sarthy, J)**

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