

Devi Prasad Singh Vs. State of Bihar and ors.

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Court : Patna

Decided On : Nov-04-2003

Judge : Ravi S. Dhavan, C.J. and Shashank Kumar Singh, J.

Appeal No. : L.P.A. No. 678 of 1997

Appellant : Devi Prasad Singh

Respondent : State of Bihar and ors.

Advocate for Pet/Ap. : Rajendra Pd. Singh, Sr. Adv., Niranjana Kumar and Jay Shankar, Adv. B.P. Pandey, Sr. Adv. and Ashok Kumar Keshari, Adv. for the University

Disposition : Appeal allowed

Prior history : R.S. Dhavan, C.J. and S.K. Singh, J. 1. This appeal has been preferred against the order dated 30-4-1997 in C.W.J.C. No. 4981 of 1996, Devi Prasad Singh v. State of Bihar and Ors. 2. The contention of the learned Counsel for the appellant is to the effect that the observation of the Court that the appellant's appointment was made against a non-sanctioned post and in an irregular manner and further that the appellant claims to work against a post, which was non-sanctioned is an error apparent on the face of the record.

Judgement :

R.S. Dhavan, C.J. and S.K. Singh, J.

1. This appeal has been preferred against the order dated 30-4-1997 in C.W.J.C. No. 4981 of 1996, *Devi Prasad Singh v. State of Bihar and Ors.*

2. The contention of the learned Counsel for the appellant is to the effect that the observation of the Court that the appellant's appointment was made against a non-sanctioned post and in an irregular manner and further that the appellant claims to work against a post, which was non-sanctioned is an error apparent on the face of the record.

3. Learned Counsel for the appellant submits that the matter relating to non-sanctioned post is an aspect of staffing pattern. The reliance of the learned Judge on the order of the Secretary dated 18th September, 1995 was itself an error.

4. Learned Counsel for the appellant explaining his argument has placed reliance upon a decision of this Court in *Braj Kishore Singh v. State of Bihar and Ors.*, 1997 (1) PLJR 509 (FB), wherein it has been held that a literal interpretation or a steadfast insistence on prior approval of the State Government in the matter of creation of posts and appointment may lead to an absurd situation.

5. Learned Counsel further submits that the Secretary, Higher Education has nowhere discussed that the post was non-sanctioned. He has drawn the attention of the Court to paragraph 4 of the order dated 18-9-1995 of the Secretary, Higher Education to demonstrate that the post of Accountant was a part of the staffing pattern. Thus, he submits that it is not that the post was non-sanctioned.

6. The aspect then which remains to be considered is on who is the rightful incumbent. Whoever may be the incumbent he cannot be unsuited on the ground that the post was not sanctioned. This, learned Counsel for the appellant submits, is a manifest error on the face of the record because, firstly, the Secretary, Higher Education did not discuss this matter and, secondly, the learned Judge also erred in not noticing the staffing pattern of the College.

7. Clearly, this matter needs to be re-looked by the Secretary, Higher Education, Government of Bihar (Respondent No. 1). This be done within six weeks from today.

8. In the light of the observation made by this Court, the appeal succeeds and the order dated 30-4-1997 on the writ petition (C.W.J.C. No. 4981 of 1995) is set aside.

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