

(2002) 12 PAT CK 0043
In the Patna High Court
Case No : L.P.A. No. 68 of 1995

Shri Bishwanath Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 16-12-2002

Acts Referred:

Citation : (2003) 51 BLJR 101 : (2003) 1 PLJR 566

Hon'ble Judges : Ravi S. Dhavan, C.J.; R.N. Prasad, J

Bench : Division Bench

Advocate : Binod Kumar Singh, for the Appellant; K.P. Yadav, SC 5 and T.K. Sinha, JC to SC 5, for the Respondent

Final Decision : Dismissed

Judgement

Ravi S. Dhavan, C.J. and R.N. Prasad, J.—The appeal has been filed against the order dated 16-1-1995 passed in C.W.J.C. No. 10651 of 1993 whereby the claim of the appellant for regularisation as a "Peon" in the school has been rejected.

2. The claim of the appellant is that he was a Peon in the Ambika Middle School, Hilsar, Siwan. The school was taken over with effect from 1973 but his service was not taken over/regularised. The appellant earlier moved this Court for the said purpose in C.W. J.C. No. 7975 of 1992. The said writ petition was disposed of without granting any relief. Thereafter, the appellant again moved this Court in C.W, J.C. No. 10651 of 1993. The said writ petition was dismissed, which has been impugned in this Letters Patent Appeal.

3. Learned Counsel for the appellant pointed out that since the appellant was working in the school as a Peon and as such u/s 4 of the Bihar Non-Government Primary School (Taking Over of Control) Act, 1976, his service shall be deemed to have been taken over. Therefore, the appellant is entitled to salary for the post. In support of his submission he drew our attention to Annexure 4 to the writ petition which is a report of the Headmaster but the said report does not mention the name of the appellant. It is to be noticed that under the Act the

school and its employees are taken over provided they satisfy the legibility clause. Admittedly, the school was managed by the Managing Committee and when question of taking over came then the Managing Committee was required to give detail of the property of the school, the teachers and staff of the school. Nothing has been brought on the record to show that any such recommendation/report has been sent by the Managing Committee that the petitioner was working in the said school. Learned Counsel also drew our attention to a letter, Annexure 13, whereby the claim of the appellant has been rejected. In the said letter, Annexure 13, it has categorically been mentioned that there is no report on the record that the appellant was working as a Peon at the time of taking over of the school. Learned Judge considered all these aspects of the matter including that his services was never approved by the Government and as such dismissed the writ petition. In this regard it would not be out of place to mention herein that unless service of the employee is taken over, he cannot be entitled to salary of the post.

4. Thus, on consideration, we find nothing wrong in the order to interfere. Accordingly, the appeal is dismissed.