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IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1527 of 2015
Arising out of
Civil Writ Jurisdiction Case No. 4494 of 2015

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Shiv Nath Sharma, Son of Late Raj Nandan Sharma, resident of village Pali, P.S. Naubatpur, District - Patna at Present Head Master of Swami Basudevacharya Sanskrit High School, Taretpali, P.S. Naubatpur, District - Patna

.... Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Govt. of Bihar, Patna
2. The Special Director, Secondary Education,(Sanskrit), Education Department, Government of Bihar, Patna
3. Bihar Sanskrit Shiksha Board through its Secretary, Near Chitkohara Pool Flat No. 17, Bihar, Patna
4. The Chairman, Bihar Sanskrit Shiksha Board, Near Chitkohara Pool Flat No. 17, Bihar, Patna
5. The Secretary, Bihar Sanskrit Shiksha Board, Near Chitkohara Pool Flat No. 17, Bihar, Patna
6. The District Education Officer, Patna
7. The District Programme Officer, Patna

.... Respondent/s

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Appearance :
For the Appellant/s : Mr. K N Choubey, Sr. Advocate
Mr. Nand Bansh Nr. Singh, Advocate
For the State : Mr. Utsav Kumar, AC to GA 11
For Sanskrit Shiksha Board : Mr. S S Sundaram, Advocate

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA
and
HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)
Date: 07-04-2016

The order under challenge in the present Letters Patent Appeal was passed by the learned Single Judge on 18th May 2015, whereby the writ application filed by the petitioner challenging the order of retirement on the basis of date of birth of the appellant as

5.6.1952.

The grievance of the appellant is that the appellant was made to retire by an *ex parte* order without giving an opportunity of hearing, therefore the order of retirement is not sustainable.

Learned Senior Counsel representing the appellant could not deny the fact that the certificate pertaining to Matriculation examination bears the date of birth of the appellant as on 5.6.1952 and treating the date of birth which has been mentioned therein, the petitioner has been made to retire on attaining the age of superannuation vide order dated 15.12.2014.

The appellant has referred to the certificate of Madhyama wherein 5.6.1955 has been shown as his date of birth. The appellant has played smart giving two dates of birth – one in the Madhyama certificate which is more suitable date in case of employment and another in the records of the Matriculation examination. It is a clear case of fraud, which has been rightly noticed by the learned Single Judge under the order impugned herein. Even after the finding of the learned Single Judge, the learned counsel for the appellant was vehemently persistent in pursuing the present appeal to say that the order under challenge in the writ application was issued without giving an opportunity of hearing. On admitted facts, we do not find that any opportunity of hearing would have changed the ultimate

decision. The principal of natural justice does not follow any straight-jacket formula. When the facts are apparent, opportunity of hearing may not be required. Keeping in view the admitted fact that the Matriculation certificate of the appellant bears the date of birth as 5.6.1952, the result would be that the appellant would superannuate on the date from which, he has been made to retire.

Consequently, the appeal is dismissed with costs of Rs.10,000/- (ten thousand) to be paid by the appellant to the Bihar State Legal Services Authority within one month from today.

(Hemant Gupta, J)

mrl. **(Ahsanuddin Amanullah, J)**

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