

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1610 of 2014
IN
Civil Writ Jurisdiction Case No. 19118 of 2012
With
Interlocutory Application No. 9118 of 2014
In
Letters Patent Appeal No.1610 of 2014

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Sangeeta Kumari, Wife of Ashok Kumar Nirala, Resident of Village - Murarchak,
P.O.- Paliganj Sehra, P.S.- Sigori, District –Patna.

.... Petitioner-Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Govt. of Bihar, Patna.
2. The District Teacher Employment Appellate Authority, Bihar through its Secretary, Computer Bhawan, Government Girls High School, Bankipur, Golghar, Patna.
3. The District Teacher Employment Appellate Authority, Patna
4. The Block Education Officer, Paliganj, Patna
5. The Panchayat Secretary, Gram Panchayat, Mahabalipur, Paliganj, Patna
6. The Headmaster, New Primary School, Mahabalipur, Bazar, Paliganj, Patna
7. Sangeeta Kumari, wife of Santosh Kumar, Resident of Village + P.S.- Sigori District - Patna.

.... Respondent/s

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Appearance :

For the Appellant	:	Mr. Sarva Deo Singh, Advocate
For the Respondent-State	:	Mr. Dhurjati K. Parasad, G.P.7
For the respondent no.7	:	Mr. Ajit Kumar, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 05-02-2015

In the year 2009, the Gram Panchayat Mahabalipur Bazar, Paliganj, Patna district, initiated steps for appointment of teachers in primary school. One such post was reserved in favour of Extremely Backward Woman.

The appellant and the 7th respondent, whose name is also Sangeeta Kumari, and several others submitted applications. The appellant was selected and appointed as teacher on 29.01.2009.

The 7th respondent challenged the appointment of the appellant before the District Teacher Employment Appellate Authority, Patna- 2nd respondent herein, in the year 2012. It was pleaded that she secured 70% marks in the Intermediate, whereas the appellant secured 63.33% and she is entitled to be appointed. After issuing notice to the appellant, the 2nd respondent passed order dated 10.04.2012 setting aside the appointment of the appellant and directing that the vacancy be filled with meritorious candidate after following the procedure.

The appellant filed CWJC No.19118 of 2012 challenging the order passed by the 2nd respondent. It was pleaded that the limitation for filing an appeal before the 2nd respondent was only thirty days, and though there is facility for filing an application for condonation of delay, no such application was filed, and straightway, an appeal was filed three years after the selection was entertained. Other grounds were also urged.

After hearing both the parties, the learned

Single Judge dismissed the writ petition through the order dated 21.06.2013. Hence, this Letters Patent Appeal.

Heard Sri Sarvadeo Singh, learned counsel for the appellant, Sri Dhurjati Kumar Prasad, learned Government Pleader for the respondent-State and Sri Ajit Kumar, learned counsel for the respondent no.7.

The appointment of the appellant as teacher was made way back in the year 2009. The relevant provisions provide for filing of an appeal by the aggrieved candidate before the appellate authority. However, such appeal must be filed within thirty days. The facility of condonation of delay exists. Obviously, an application for condonation of delay must be filed, if it is presented beyond thirty days. Admittedly, no such application was filed by the 7th respondent. In fact, the plea of the respondent before the learned Single Judge was that no period of limitation stipulates under the Rules. It is difficult to accept that contention.

Apart from the plea of limitation, there exist some other questions of fact, which need to be verified. For instance, in one of the communications between the Block Development Officer, Paliganj, Patna and the 2nd respondent, it was mentioned that the 7th respondent has received the

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intimation about the counselling and selection. These facts need to be verified, with reference to the record. The finding of the Tribunal was based only upon the genuinity of the stamp affixed to the certificate of posting.

We are of the view that the matter needs to be remanded to the Tribunal for fresh consideration and disposal.

In the result, the Letters Patent Appeal is allowed and the order dated 10.04.2012 passed by the 2nd set is set aside. The matter is remanded to the 2nd respondent for fresh consideration and disposal. Before it takes up the matter on merits, the 2nd respondent shall decide the question of limitation and shall take into account, the provisions of law and the facts pleaded by the parties.

Interlocutory application, if any, shall stand disposed of. There shall be no order as to costs.

(L. Narasimha Reddy, CJ)

(Vikash Jain, J)

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