

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.730 of 2012
IN
Civil Writ Jurisdiction Case No.8752 of 2010

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Jaylal Kumar, S/O Shri Naresh Prasad, R/O Village-Balwapar, P.S.- Rahui,
District- Nalanda, At Present Block Teacher Upgraded New School, Balwapar,
P.S.- Rahui, Distt.- Nalanda.

.... Petitioner-Appellant/s

Versus

1. The State of Bihar.
2. The District Teacher Employment Appellate Authority, Nalanda at Biharsharif through its Member.
3. The Director, Primary Education, Govt. of Bihar, Patna.
4. The District Superintendent of Education, Nalanda at Biharsharif.
5. The Block Education Extension Officer, Rahui, Distt.- Nalanda.
6. Gram Panchayat Raj Utternama, Rahui Nalanda at Biharsharif through its Panchayat Secretary.
7. The Mukhiya, Gram Panchayat Utternama, Rahui, Nalanda at Biharsharif.
8. Sahdeo Prasad, S/O Sri Sidheshwar Prasad, R/O Village- Balwapar, P.S.- Rahui, District- Nalanda.

.... Respondents -Respondent/s

With

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Letters Patent Appeal No. 732 of 2012
IN
Civil Writ Jurisdiction Case No.9231 of 2010

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Lalan Kumar Diwakar, S/O Shri Bishundeo Prasad, R/O Village- Nazambigha,
P.S.- Rahui, District- Nalanda, At present Panchayat Teacher, Primary School,
Nazambigha, Bishunpur, P.S.- Rahui, District- Nalanda

.... Petitioner- Appellant/s

Versus

1. The State of Bihar.
2. The District Teacher Employment Appellate Authority, Nalanda at Biharsharif through its Member.
3. The Director, Primary Education, Govt. of Bihar, Patna.
4. The District Superintendent of Education, Nalanda at Biharsharif.
5. The Block Education Extension Officer, Rahui, Distt.- Nalanda.
6. Gram Panchayat Raj Utternama, Rahui Nalanda at Biharsharif through its Panchayat Secretary.
7. The Mukhiya, Gram Panchayat Utternama, Rahui, Nalanda at Biharsharif.
8. Ram Lakhan Kumar S/O Shri Daroga Rai R/O Village- Nazambigha, P.S.- Rahui, District- Nalanda

.... Respondents-Respondent/s

With

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Letters Patent Appeal No. 736 of 2012
IN
Civil Writ Jurisdiction Case No. 9007 of 2010

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Kalpana Kusum, aged about 34 years, W/O Ravi Ranjan Kumar, resident of Villge- Utternawan, P.S.- Rahui, Distt.- Nalanda, At Present Panchayat Teacher, Primary School, Madachak, P.S.- Rahui, Distt.- Nalanda.

.... Petitioner-Appellant/s

Versus

1. The State of Bihar.
2. The District Teacher Employment Appellate Authority, Nalanda at Biharsharif through its Member.
3. The Director, Primary Education, Govt. of Bihar, Patna.
4. The District Superintendent of Education, Nalanda at Biharsharif.
5. The Block Education Extension Officer, Rahui, Distt.- Nalanda.
6. Gram Panchayat Raj Utternama, Rahui Nalanda at Biharsharif through its Panchayat Secretary.
7. The Mukhiya, Gram Panchayat Utternama, Rahui, Nalanda at Biharsharif.
8. Rubi Devi W/O Sri Motilal Prasad R/O Village- Madachak, P.S.- Rahui, District- Nalanda

.... Respondents-Respondent/s

Appearance :

(In all the appeals)

For the Appellant/s : Mr. Rajendra Prasad Singh, Senior Advocate
Mr. Navjot Yesu, Advocate

For the Respondent-State : Mr. Zaki Haider, A.C. to G.A.-6
Mr. Manoj Kumar Sinha, A.C. to S.C.-30
Mr. Mayank Rukhaiyar, A.C. to G.A.1

For the respondent No.6 &7 : Mrs. Pushpa Sinha, Advocate

For the respondent No.8 : Mr. Kumar Uday Bhanu Roy, Advocate
Mr. Binit Kumar, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 21-01-2015

Common questions of fact and law arise in these three Letters Patent Appeals. In fact they are filed against a common order dated 30th March, 2012 passed by the learned Single Judge in CWJC Nos.8752, 9231 and 9007 of 2010. Hence, they are disposed of by a common order.

The Gram Panchayat Utternama of Nalanda



District comprises of several villages and schools are established in various villages. The arrangement made for teaching in the Schools was such that no regular teachers, but persons known as 'Panchayat Shikhsa Mitras' (for short, 'PSMs') on a remuneration of Rs.1500/- per month, were being appointed for a period of 11 months at a time. In the month of February, 2003 as many as seven persons were appointed by the Panchayat as PSMs. Thereafter, the appellants herein were selected on 30th July, 2004 as PSMs. They are said to have been sent for training for a period of one month through proceedings dated 15.01.2005 and thereafter they were appointed as PSMs.

The State of Bihar brought into existence, a Scheme with effect from 01.07.2006 whereunder PSMs, who were working as on that date were, entitled to be treated as Panchayat Teachers and brought under the Government service. This, naturally evoked competitions, between various sets of persons.

Respondent no.8, in each of these appeals, namely Sahdeo Prasad, Ram Lakhan Kumar and Rubi Devi (hereinafter they will be referred as 'private respondents') were among the seven PSMs appointed in the year 2003. Their appointment is said to have been renewed for a period



of 11 months on 04.07.2004. Complaining that the appellants herein were appointed in their place, contrary to law, they submitted representations to the District Superintendent of Education, Nalanda-respondent no.4. Alleging that the representations were not considered, they filed CWJC No.11842 of 2006. The same was disposed of, on 16.09.2008 directing the 4th respondent, to pass orders, on the representations.

Stating to be in compliance of the order issued by this Court, the 4th respondent passed order dated 03.09.2009, taking the view that the appointment of the appellants herein as PSMs was contrary to law; and the private respondents continued to be the teachers as on the relevant date. He directed the Panchayat Secretary, Gram Panchayat Raj Utternama, Nalanda-6th respondent herein, to issue consequential orders. Accordingly, the 6th respondent issued order dated 09.10.2009 informing the appellants that their appointment is cancelled and that in their place, the private respondents shall be entitled to function.

The appellants approached the District Teacher Employment Appellate Authority, Nalanda- 2nd respondent herein, challenging the order dated 03.09.2009. The appeals

were dismissed on 28.04.2010. Hence, they filed the three writ petitions referred to above.

The writ petitions were opposed by the Government as well as the private respondents. The learned Single Judge dismissed the writ petitions, through a common order. Hence, these three Letters Patent Appeals.

Heard Sri Rajendra Prasad Singh, learned senior counsel for the appellants and Sri Kumar Uday Bhanu Roy, learned counsel for the private respondents.

The private respondents, i.e. respondent no.8 in each of the appeal, have been appointed as PSMs on 25.02.2003. Though there existed some doubt as to whether their appointment was proper or not, on the ground that the Village, and not the Panchayat, was taken as a unit, it is not clear, as to whether their appointments have been cancelled at any point of time. It is also a matter of record that the appellants had been selected as PSMs on 30.07.2004 and orders of appointments were issued to them on 17.02.2005 after they were imparted training of one month. They started functioning and their appointments were not challenged by any one.

The entire controversy arose after the Rules framed by the Government, providing for absorption of the



PSMs as Assistant Panchayat Teachers. The appellants herein were conferred with that status and were also extended the benefit of pay scale. The private respondents felt aggrieved about non-conferment of such benefit to them and they made a representation to the 4th respondent, in this regard. It was also stated that an objection was raised by them vis-à-vis the appointments of the appellants through order dated 30.07.2004 and even that was not taken into account.

The private respondents filed CWJC No.11842 of 2006 with a prayer to direct the 4th respondent to dispose of the representation. Accordingly, an order was passed to that effect, without expressing any view on merits. In case, the 4th respondent was of the view that the appointments of the appellants were vitiated in any manner, the first step to be taken by him was to issue notice to the appellants, duly indicating the reasons. However, he appears to have perused the records, without intimation to the appellants and on the basis of the same, he passed order dated 03.09.2009. He took the view that the appointments of the appellants were vitiated and required the 6th respondent to issue consequential orders. The 6th respondent passed the order dated 09.10.2009. He simply stated that as directed

by the 4th respondent, he is intimating the factum of removal of the appellants.

With the appointment as PSMs and absorption as Panchayat Teachers, valuable rights have accrued to the appellants. Such rights could have been taken away, only after conducting a detailed enquiry, with the participation of the appellants and notice to them. Any amount of enquiry, caused into the matter, without participation of the appellants cannot be a valid and cannot constitute the basis for any order, detrimental to their interest. It has already been mentioned that this Court did not record any finding in CWJC No.11842 of 2006 and had simply required the 4th respondent to dispose of the representation. However, in his order dated 03.09.2009, the 4th respondent expressed the view that the appointment of the appellants is vitiated.

The order dated 09.10.22009, passed by the 6th respondent is nothing but a sequel to the order dated 03.09.2009 passed by the 4th respondent. Once it emerges that the order dated 03.09.2009 is vitiated on account of violation of principles of natural justice, any step taken as a consequence thereof becomes equally untenable. The learned Single Judge, however, did not address this aspect of the matter.

We, therefore, allow these three Letters Patent Appeals and set aside the order passed by the learned Single Judge. As a result, the writ petitions are allowed setting aside the order dated 03.09.2009 passed by the 4th respondent and consequential order dated 09.10.2009 passed by the 6th respondent. It is left open to the private respondents to file an appeal before the 2nd respondent ventilating their grievance. If it is presented within four weeks from today, it shall be entertained without objection as to limitation, and shall be disposed of on its own merits. The appellants herein shall be made parties to the proceedings.

The appellants shall be entitled to be restored to their positions and to continue as teachers, in the meanwhile. It is also directed that in case there exists any work load with the schools within the Panchayat, the contesting respondents shall also be continued.

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

(L. Narasimha Reddy, CJ)

(Gopal Prasad, J)

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