

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1302 of 2014
IN
Civil Writ Jurisdiction Case No. 14804 of 2013
With
Interlocutory Application No.7163 of 2014
And
Interlocutory Application No.7164 of 2014
In
Letters Patent Appeal No.1302 of 2014

Pratima Kumari @ Pertima Kumari, Wife of Santosh Kumar Choubey, Resident of Village - Khorik Pakar, P.O. - Kritpur Matia, Police Station - Harshidhi, Block Harshidhi, District- East Champaran.

..... Respondent no.8-Appellant/s
Versus

1. The State of Bihar.
2. The Director, Primary Education, Government of Bihar, Patna.
3. The Collector cum District Magistrate, Motihari, East Champaran.
4. The District Education Officer, Motihari.
5. The Block Development Officer, Areraj Block, East Champaran.
6. The Panchayat Secretary Sevati, Raj Chatiya Bodharwa Panchayat, Block Areraj, District East Champaran.
7. The Mukhia, Panchayat Raj Chatiya Barharwa, P.O. Malahi, P.S. - Malahi, Block Areraj, District East Champaran.

..... Respondents-Respondents
8. Gulerana, W/o Raisul Azam, R/o Village Chatia Tola Math, P.S. Malahi, District- East Champaran.

..... Writ petitioner- Respondent/s

Appearance :

For the Appellant : Mr. Sanjeev Kumar Singh, Advocate
For the Respondent-State : Mr. Sanjay Prasad, A.C. to A.A.G.-6
For the respondent no.8 : Mr. Gopal Govind Mishra, Advocate
Mr. Kumar Madhurendu, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 04-02-2015

The Gram Panchayat Raj Chatiya Bodharwa,
Block Areraj, District-East Champaran, issued notification



inviting applications for appointment of Panchayat Teachers. The appellant, the 8th respondent, by name Gulerana, wife of Raisul Azam, and others submitted their applications. After selection process, the appellant was selected as Panchayat Teacher and appointed on 13.08.2010.

The 8th respondent filed CWJC No.14804 of 2013 challenging the appointment of the appellant. The appellant as well as other respondents raised objection as to the very maintainability of the writ petition on the ground that there existed alternative remedy for the 8th respondent and she did not avail the same within the stipulated time.

A representation was made by the 8th respondent, seeking permission to withdraw the writ petition, with a liberty to file an appeal before the appellate authority. The learned Single Judge granted such permission. However, he proceeded to make certain observations, as to the manner in which the appeal shall be adjudicated. The appellant feels aggrieved by the said observations, and accordingly, files this Letters Patent Appeal.

Heard Sri Sanjeev Kumar Singh, learned counsel for the appellant, Sri Sanjay Prasad, learned

counsel for the respondents- State, and Sri Gopal Govind Mishra, learned counsel for the 8th respondent.

The appointment of the Panchayat Teachers is made under the Bihar Panchayat Primary Teachers (Appointment and Service Condition) Rules, 2006 (for short, 'the Rules'). The Rules provide for an appeal to the appellate authority. The limitation stipulated for filing the appeal is 30 days. However, the appellate authority is conferred with power to condone the delay, if it is satisfied about the reasons therefor.

The 8th respondent filed the writ petition challenging the appointment. Once she realised that the writ petition is not maintainable unless alternative remedy is exhausted, she sought permission of the Court to withdraw the writ petition, and permit her to prefer an appeal. The matter ought to have ended with the granting of permission. The learned Single Judge, however, has made certain observations as to the steps to be taken by the appellate authority.

We find it difficult to sustain the same. The reason is that it is not known as to whether the 8th respondent would prefer an appeal at all. Secondly, even if she files an appeal, she has to satisfy the appellate authority

about the reasons for the delay. Thirdly, the nature of grounds, which the 8th respondent may raise and the parameters of adjudication of the appeal, cannot be anticipated or prejudged by this Court, much less any direction can be issued, in this regard.

Hence, we partly allow this Letters Patent Appeal setting aside the direction issued by the learned Single Judge as to the manner in which the appeal shall be disposed of. To be precise, we direct that the writ petition shall stand dismissed as withdrawn leaving it open to the 8th respondent to prefer an appeal.

None of the observations in the orders shall be taken as condoning the delay in presenting the appeal and the matter shall be decided on its own merit.

Interlocutory applications, 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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