

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.89 of 2015
IN
Civil Writ Jurisdiction Case No. 5258 of 2010
With
Interlocutory Application No.372 of 2015
In
Letters Patent Appeal No.89 of 2015

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Sushila Kumari, W/O Sri Jibanand Jha, R/o Village-Bhaur, Block Pandaul, District-Madhubani.

.... Respondent-Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Human Resources, Government of Bihar, Vikash Bhawan, Bailey Road, Patna.
2. The District Magistrate, Madhubani.
3. The District Superintendent of Education-cum- District Programme Co-ordinator, Bihar Education Project, Madhubani.
4. The Block Development Officer, Pandaul, District-Madhubani.
5. Block Education Extension Officer, Pandaul, District-Madhubani.
6. Mukhiya, Gram Panchayat at Raj Bhaur, P.S. Pandaul, District-Madhubani.
7. Panchayat Secretary, Gram Panchayat Raj Bhaur, P.S. Pandaul, District-Madhubani.

Respondents/ Respondents.

8. Jyoti Kumari Pandey, W/o Shri Bharat Kumar Pandey, resident of village and P.O. Bhaur (South) P.S. Pandaul, District-Madhubani.

.... Petitioner-Respondent/s

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Appearance :

For the Appellant : Mr. Bhubneshwar Prasad, Advocate

For the Respondents 1 to 5 : Mr. Satya Deo Kumar, S.C.-5

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 10-02-2015

Interlocutory Application No.372 of 2015

This application under Section 5 of the Limitation Act is filed with a prayer to condone the delay in filing the Letters Patent Appeal.

Learned counsel for the appellant submits that the delay occurred on account of the fact that the appellant was not possessed of financial resources enabling her to arrange for appeal. Other reasons are also stated.

We are satisfied with the reasons assigned for the belated filing of the Letters Patent Appeal.

The interlocutory application is, accordingly, ordered and the delay is condoned.

Letters Patent Appeal No.89 of 2015

Respondent no.8 in CWJC No.5258 of 2010 is the appellant. The writ petition was filed by the 8th respondent herein.

The appellant was appointed as Shiksha Mitra in a School at Bhaur Village, Madhubani district. The 8th respondent was also appointed as Shiksha Mitra in the same institution.

The State of Bihar framed Rules for the up-gradation of appointment of Siksha Mitras as Panchayat Teachers. The Scheme came into force on 01.07.2006. On finding that the 8th respondent i.e. the writ petitioner, was holding the post of Siksha Mitra at the relevant point of time, she was appointed as teacher.

The appellant felt aggrieved by denial of appointment to her and filed CWJC No.3820 of 2008 before this Court. The writ petition was dismissed on 15.04.2009 holding that the appellant was not working as a Shiksha Mitra as on 01.07.2006. The order became final.

In the year 2009, the Government established the District Teacher Employment Appellate Authority (for short, 'appellate authority'). The appellant filed an appeal before the appellate authority. Through its order dated 30.11.2009, the appellate authority allowed the appeal. It has set aside the appointment of the 8th respondent as teacher and directed that the appellant be appointed as teacher in her place. The said order was challenged in CWJC No.5258 of 2010. The learned Single Judge took note of the order passed in CWJC No.3820 of 2008 and held that once this Court dismissed the writ petition filed by the appellant herein, there was no basis for the appellate authority to entertain the appeal at all, much less to grant the relief. The said order is challenged in this appeal.

Heard Sri Bhubneshwar Prasad, learned counsel for the appellant and Sri Satya Deo Kumar, learned Standing Counsel -V for the respondents.

The fact whether a particular Shiksha Mitra was

functioning in that capacity as on 01.07.2006, becomes relevant in the context of extending the benefit of the appointment as Panchayat Teacher. The appellant was denied that benefit and, on the other hand, the 8th respondent was appointed as teacher.

The appellant filed CWJC No.3820 of 2008 feeling aggrieved by the denial of the appointment. In its order dated 15.04.2009, this Court observed as under:

“The benefit under rule 20 of the Bihar Primary Teachers (Appointment and Service Condition) Rules, 2006 acquiring the status of a Panchayat Shikshak to Shiksha Mitra was available only to those who were working as Shiksha Mitra on 01.07.2006, the date when the Rules came into force. The petitioner was clearly not working as Shiksha Mitra on the date that the Rules came into force and cannot claim to have acquired the status of Panchayat Shikshak.”

With this finding, the occasion for the appellant to claim benefit of appointment as teacher ceased. In case, the appellant felt aggrieved by the order passed in CWJC No.3820 of 2008, she was supposed to pursue the remedy of appeal. However, she permitted the order to become final.

It appears that the appellant did not bring the factum of dismissal of CWJC No.3820 of 2008 to the notice of the appellate authority. For all practical purposes, the

appellate authority sat in appeal over the order passed in CWJC No.3820 of 2008 and granted reliefs to the appellant. That was totally impermissible in law. The learned Single Judge took note of the same and allowed the writ petition filed by the 8th respondent. We do not find any basis to interfere with the same.

The Letters Patent Appeal is, accordingly, dismissed.

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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