

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No 1728 of 2014

IN

Civil Writ Jurisdiction Case No 9326 of 2010

- =====
1. The State of Bihar through the Principal Secretary, Human Resources Development Department, Govt. of Bihar, Patna
 2. The Director, Secondary Education, Govt. of Bihar, Patna
 3. The District Education Officer, Munger
 4. The Deputy Development Commissioner, Munger, Distt. - Munger
 5. The Chairman, District Board, Munger, Distt. - Munger

.... Appellant/s

Versus

Babuli Kumari d/o Baldeo Prasad Sah, r/o village Dhanimani, Patam, P.O.- Patam, P.S.- Jamalpur, Distt. Munger

.... Respondent/s

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For the Appellant/s : Mr Ashok Kumar, Choudhary, AAG XIII with
Mr Reema Kumar, AC to AAG XIII

For the Respondent/s : Mr Suman Kumar Mishra, Advocate

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CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH

And

HON'BLE JUSTICE SMT NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE NAVANITI PRASAD SINGH)

Date: 08-09-2015

There is delay in filing the appeal. Having considered the limitation petition (IA No 9747 of 2014), delay in filing the appeal is condoned.

2 With consent of learned counsel for the appellant, the matter is heard for its disposal at this stage itself.

3 This appeal has been filed by the State being aggrieved by judgment and order dated 07.08.2014 passed in CWJC No 9326 of

2010 (*Babuli Kumari –Versus- State of Bihar & Others*).

4 The facts are not in dispute. The writ petitioner, who is the contesting respondent herein, had applied for the post of Assistant Teacher. She was selected and appointment letter was issued under the signatures of Executive Officer, Zila Parishad, Munger and the District Education Officer, Munger. Her appointment was for the subject *Sanskrit*. After scrutiny of her documents, she was appointed as Assistant Teacher at Janta High School, Taufir Diyara in the district of Munger where she joined on 01.03.2007. There is no dispute that she belongs to OBC category. Having joined in March 2007, there was no problem upto October, 2007. Thereafter, her salary was stopped. She approached this Court but was relegated back to the authorities to make a representation. Having made the representation, she waited but, instead of getting any order for payment of salary, an order, on 11.09.2009, was passed under the joint signatures of Deputy Development Commissioner, Munger, District Education Officer, Munger as well as the Chairman of Zila Parishad, Munger cancelling her appointment as Assistant Teacher. This order of cancelling her appointment was not interfered in appeal.

5 The learned Single Judge, when this order and the appellate order was challenged, held that no such order, on any ground, could be passed without hearing the writ petitioner.

Admittedly, no notice nor any hearing was at all provided to her. On this issue itself, we are not inclined to interfere in the State's appeal because it is an elementary principle of law that no order, having civil consequences, can at all be passed without giving opportunity to the person to hear. The order passed in violation of principles of natural justice is void ab initio.

6 There is yet another reason why we would not like to interfere. It is not the case of the State that the writ petitioner misled the authorities into getting her appointment. It has never been the case of the State that the writ petitioner played any fraud or made any misrepresentation to seek the appointment. She was an OBC candidate and had applied as such. She was, accordingly, selected and appointed as far back as in 2007. We are now in 2015, 8 years hence. If we now tell her that she was wrongly appointed for no fault of her but fault of the authorities, where she will go? She had already lost several opportunities to seek other jobs. She will be left nowhere to go and her entire future would be ruined. It would be now highly inequitable to deny her continuity of service, accordingly, especially in the facts that she was never at fault.

7 We, accordingly, dismiss this appeal and affirm the order of the learned Single Judge with modification that for the period for which she has not worked, she would be entitled to not more than 50%

of her wages due.

8 Authorities to take immediate steps to reinstate her granting continuity of service. All arrears of salary must be calculated and paid within three months from today.

9 The cost awarded as against the State is deleted in the peculiar facts and circumstances of the case.

(Navaniti Prasad Singh, J)

M.E.H./-

(Nilu Agrawal, J)

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