

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1360 of 2014

IN

Civil Writ Jurisdiction Case No. 3389 of 2013

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1. Madhurendra Kumar Verma S/o - Shambhu Saran Verma Resident of Village - Shivganj, P.S. - Shikarpur, Distt. - West Champaran.
 2. Chandresh Prasad Yadav S/o - Late Bunni Yadav Resident of Village - Matiarua, P.S. - Lauriya, Distt. - West Champaran
 3. Nisha Kumari Srivastava D/o - Late Yogendra Prasad Srivastava Resident of Village - Raj Katcheri Narayanpur Ramnagar, P.S. - Ramnagar, Distt. - West Champaran.
 4. Ranjana Kumari D/o - Yogendra Patwari, Resident of Village - Bhelahi, P.S. - Lauria, Distt. - West Champaran.
 5. Anil Kumar Yadav S/o - Nathuni Yadav Resident of Village - Shosha Phulwara, P.S - Meghwal Mathia, District _ West Champaran

.... Appellants

Versus

1. The State of Bihar
2. Principal Secretary, Department of Human Resources, Government of Bihar, Patna.
3. Director, Primary Education, Government of Bihar, Patna.
4. District Magistrate, West Champaran.
5. District Education Officer, West Champaran.
6. Sub-Divisional Education Officer, Bettiah, West Champaran.
7. Block Development Officer, Gaunaha, Distt. - West Champaran.
8. Block Education Extension Officer, Gaunaha, Distt. - West Champaran.
9. Mukhiya, Matiarua Gram Panchayat, P.S. - Matiarua, Distt. - West Champaran.
10. Panchayat Secretary, Matiarua Gram Panchayat, P.S. - Matiarua, Distt. - West Champaran.
11. District Teacher Employment Appellate Authority, West Champaran through its Member.
12. Mithilesh Kumar S/o Sri Sawru Yadav Resident of Village - Saunaha, P.S. - Gowardhana (Dumri), Distt. - West Champaran.
13. Bittu Kumar Pandey S/o - Sri Narmadeshwar Pandey, Resident of Village - Khairwa Tola, P.S. - Gowardhana (Dumri), Distt. - West Champaran.
14. Soni Kumari W/o - Sri Nirpendra Kumar Resident of Village - Darrole, P.S. - Matiarua, Distt. - West Champaran.

Respondents 1st set

Respondents 2nd set

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Appearance :

For the Appellants : Mr. Y. V. Giri, Sr. Advocate
Mr. Nikhil Kumar Agrawal, Advocate
For the Resp. 1 to 8 & 11: Mr. Mritunjay Singh, AC to SC 23
For the Resp. 9 & 10 : Mr. Umesh Chandra Verma, Advocate
For the Resp. 12, 13, 14: Mr. Ajay Thakur, Advocate
Mr. Imteyaz Ahmad, Advocate
Mr. Nilesh Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI
and
HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH
CAV JUDGMENT
(Per: HONOURABLE MR. CHAKRADHARI SHARAN SINGH)
Date: 24 -06-2015

This appeal, under Clause 10 of Letters Patent of Patna High Court, is directed against the judgment and order dated 06.05.2014, passed in CWJC No. 3389 of 2013 (Mithilesh Kumar & Ors. v. the State of Bihar & Ors.).

2. By the order under appeal, the learned single Judge has quashed an order passed by the District Teachers Appointment Appellate Authority, West Champaran, Bettiah (the Appellate Authority) dated 18.07.2012, in Case No. 18 of 2012 and remanded the matter back to the Appellate Authority to hear all the parties of Case No. 18 of 2012 and pass an order afresh. Learned single Judge has remanded the matter back as the Appellate Authority by its order, dated 18.07.2012, refused to entertain the cases of writ petitioners/ private respondents on the ground of delay/ limitation despite the fact that they were pursuing the matter before the Appellate Authority, which related to preparation of a merit list for appointment to the post of Panchayat Teachers under Gram Panchayat Raj, Matiaria.

3. The appellants herein were respondent Nos. 12 to 16 (respondents 2nd set) in CWJC No. 3389 of 2012.

4. In order to appreciate the nature of the dispute between the contesting parties, it would be appropriate to take note of the facts leading to the passing of the impugned order under appeal by learned single Judge.

5. There was an advertisement issued, in the year 2008, inviting applications for filling up 13 posts of Panchayat Teachers for the Panchayat Raj Matiarua of Gaunaha block under West Champaran district. Initially, the date of *counseling* was fixed on 28.02.2009, but because of some stay operating under general orders of the State Government, *counseling* was re-scheduled. Fresh dates of *counseling* were thereafter fixed. Counseling was done on 14.08.2010. At this stage, there are certain disputes. It is the case of the writ petitioners/contesting respondents that they participated in the counseling, which is being denied by the appellants. According to the case of writ petitioners, after counseling was done on 14.08.2010, consent letter was prepared and names of four persons, namely, Dipraj Mahto, Azimuddin, Mamta Kumari and Ritu Kumari were sent by the appointing authority as per merit, but, in the meanwhile, in order to pollute the entire selection process, the Panchayat Secretary was abducted by the husband of Mukhiya of

the Gram Panchayat and a forged merit list was prepared of only 13 persons in which names of these appellants appeared and, accordingly, forged appointment letters were issued in their favour by forcefully obtaining signatures of the then Panchayat Secretary. They, accordingly, joined their respective schools.

6. Questioning the selection of appellants, some aggrieved persons approached the District Teachers Appointment Appellate Authority, which gave rise to Case No. 541 of 2010. On 08.12.2010, the Appellate Authority, upon consideration of all facts, set aside the appointment of the appellants and others and directed to make appointment on the basis of respective merits, as per roster clearance, in the presence of Sub divisional Education Officer, Bettiah.

7. The order passed by the Appellate Authority came to be challenged before this court by filing CWJC No. 194 of 2011 mainly on the ground that before passing the order, dated 08.12.2010, the appellants were not given any notice and, thus, opportunity of being heard was denied. In the meanwhile, in compliance of the order, dated 08.12.2010, passed by the Appellate Authority in Case No. 541 of 2010, the Sub divisional Officer, Bettiah, proceeded and fixed date for selection. On the other hand, this Court took up CWJC No. 194 of 2011 on 07.01.2011 and

passed an interim order that any appointment to be made, pursuant to the order of Appellate Authority, dated 08.12.2010, will be subject to final decision in the writ proceeding.

8. It is the case of the writ petitioners/ private respondents that a meeting of the appointment committee of Gram Panchayat Matiarua was held, on 29.01.2011, in the presence of the Sub-Divisional Education Officer, Bettiah, and Block Development Officer, Gaunaha. A merit list was prepared as per roster on the basis of which respondent No.13 was appointed as untrained general teacher in male category against unreserved post, whereas respondent No. 12 was appointed as general teacher in male category Backward Class. They were directed to join as Assistant Teacher in Government Primary School, Tahkul. The fact that respondents Nos. 12 and 13 were appointed, pursuant to selection held on 29.01.2011, has been disputed by the appellants and, in support of the plea of denial of this fact, the appellants have brought on record Annexures-2 to the memo of appeal, which I shall deal with later.

9. CWJC No. 194 of 2011, preferred by these appellants was finally allowed by this Court by an order, dated 09.04.2012, quashing the order of the Appellate Authority, dated 08.12.2010, passed in Case No. 541 of 2010, on the sole ground that before



passing the said order, which had civil consequences of removal of the appellants, no notice was given to them and, in the absence of any notice or right of hearing afforded to them, the order could not be sustained and, accordingly, it was set aside. This Court, by the said order dated 09.04.2012, passed in CWJC No. 194 of 2011 (Madhurendra Kumar Verma & Ors v. the State of Bihar & Ors), directed the Appellate Authority to fix appropriate date for hearing the parties and decide the matter afresh. The Court further observed that the Appellate Authority “would make endeavour to see that the adjudication is made with due co-operation of one and all within a period of three months thereafter”. This is also not in dispute that respondents Nos. 12 and 13 herein had intervened before this Court in CWJC No. 194 of 2011 as, according to their case, in the selection held pursuant to the order of the Appellate Authority, dated 08.12.2010, in Case No. 541 of 2010, they were declared selected and appointment letters were issued in their favour.

10. In view of the order of remand of this Court, dated 09.04.2012, passed in CWJC No. 194 of 2011, the Appellate Authority got instituted a separate case being Case No. 18 of 2012. In the said case, the respondents 2nd set herein also presented their case claiming that they had more merit points than the appellants and that they had better right to be appointed as Panchayat Teachers.



The Appellate Authority did not consider the case of respondents 2nd set as their claim was barred by limitation for the reason that they had not raised any objection against appointment of these appellants in Case No. 541 of 2010, though the process of selection and appointment had already been completed on 14.08.2010. On the sole ground that respondents 2nd set had not raised any objection against selection of the appellants in the year 2010, the Appellate Authority rejected their claims being barred by limitation.

11. It is in the background of these facts that learned single Judge, by the order under appeal, remanded the matter back to the Appellate Authority noticing that the Appellate Authority unnecessarily mixed up the cases of many persons, whereas it ought to have dealt with the case of respondents 2nd set and others separately. Learned single Judge consciously made an observation that if the Appellate Authority felt necessity of looking into the original records relating to selection/ appointment of respondents Nos. 12 to 16, the concerned authority would be under obligation to produce such records. Learned single Judge directed the Collector of West Champaran to ensure production of all records before the Appellate Authority within time limit to be fixed by the Appellate Authority. Learned single Judge observed that the Court expected that whatever issue would be raised before the Appellate Authority

by either of the parties would be examined and decided in accordance with law expeditiously.

12. We have heard Mr. Y. V. Giri, learned Senior Counsel for the appellants, who were respondents Nos. 12 to 14 before learned single Judge in CWJC No. 3389 of 2013. Mr. Ajay Kumar Thakur, learned counsel, has appeared on behalf of the contesting respondents Nos. 12 to 14, who were writ petitioners in CWJC No. 3389 of 2013. We have also heard Mr. Mritunjay Kumar, learned AC to SC 23 on behalf of the respondents Nos. 1 to 8 and 11, who are the State respondents, and Mr. Umesh Chandra Verma, who has represented respondent Nos. 9 and 10, Mukhiya and Panchayat Secretary respectively of the concerned Gram Panchayat.

13. Mr. Y. V. Giri, learned Senior Counsel, in his submission, has laid great emphasis on the failure, on the part of respondent Nos. 12 to 13, to file objection against their non selection within a reasonable time. He has submitted that they did not raise any objection after selection and appointment of the appellants herein either before the selection committee or before the statutory Appellate Authority immediately after the appellants were appointed. He has submitted that for the first time, they raised their grievance before the Appellate Authority after the matter was remanded by an order of this court dated 09.04.2012 passed in



CWJC No. 194 of 2011. He, therefore, submits that the Appellate Authority, by the impugned order, dated 18.07.2012, had rightly refused to consider the case of respondents 2nd set, their claim being time barred. He has placed reliance upon Supreme Court's decisions, reported in *2009 (2) PLJR 929 (Alok Kumar v. the State of Bihar, (2011) 5 SCC 607 (S. Co-operative Housing Society Ltd. v. M Prabhakar & Ors) and (2012) 7 SCC 610 (Vijay Kumar Kaul & Ors. v. Union of India & Ors)* in support of his submission that delay and laches is an important factor to be borne in mind, while deciding the dispute between the parties. He has contended that in the facts and circumstances of the case learned single Judge committed an error, while interfering with the order of the Appellate Authority. He has submitted that the respondents 2nd set had not raised their claim before the appropriate forum/authority/ court within a reasonable time and their claims ought to have been refused as they were guilty of unexplained delay and laches. He has referred to Annexure-2 to the writ application, which has been described as "counter affidavit on behalf of respondent No.8" in CWJC No. 194 of 2011. It seems from the said affidavit that Mukhiya of Matiaria Gram Panchayat was respondent No. 8 in CWJC No. 194 of 2011. However, the said counter affidavit appears not to have been filed by the Mukhiya of the Gram Panchayat, rather, by defeated Mukhiya of



the Gram Panchayat. The said affidavit is said to have been filed by her as the matter related to her tenure as Mukhiya of the Gram Panchayat in question. She has stated that it was a false statement that any force was used by the husband of present deponent over then Panchayat Secretary and his signature was obtained on appointment letters forcibly.

14. In our opinion, such affidavit has no sanctity at all as admittedly deponent of the said affidavit was not the Mukhiya of the Gram Panchayat on the date of filing of the affidavit and, therefore, not a party to CWJC No. 194 of 2011.

15. Mr. Ajay Kumar Thakur, learned counsel appearing on behalf of respondents 2nd set, on the other hand, has supported the impugned order under appeal passed by learned single Judge. He has contended that this is an admitted fact that the respondents 2nd set had more merit points than the appellants for the purpose of appointment as Panchayat Teachers in the said Gram Panchayat. He submits that only documents will demonstrate whether the petitioners participated at the time of counseling or not. He has further submitted that the respondents 2nd set acquired a right to be heard after they were found selected by the appointment committee in its meeting held on 29.01.2011 on the basis of which appointment letters were issued in their favour. He has also submitted that the

respondents 2nd set were interveners in CWJC No. 194 of 2011 and, therefore, the Appellate Authority ought not to have refused to consider their claims in the proceeding instituted vide Case No. 18/2012 in the light of remand order, dated 09.04.2012, passed in CWJC No. 194 of 2011.

16. From the pleadings on record and rival submissions made on behalf of the parties, we find that the Appellate Authority vide order, dated 08.12.2010, had set aside the appointments of the appellants, finding serious irregularities in the process of selection and it was in that background that the Appellate Authority had directed preparation of a fresh merit list on the basis of approved roster to be prepared in presence of the Sub-Divisional Education Officer, Bettiah, in order to attach some degree of sanctity and purity in the process of selection and appointments to the posts of Panchayat Teachers. This Court set aside the order, dated 08.12.2010, on a technical ground that the appellants, who were appointed pursuant to earlier selection, were not noticed and afforded opportunity of hearing, and remanded the matter back to the Appellate Authority to decide the matter afresh. We put emphasis on following observation of this court dated 09.04.2012:-

“The Appellate Authority would make endeavour to see that the adjudication is made with due co-operation of one and all within a

period of three months thereafter”.

17. In our opinion, the remand order, dated 09.04.2012, of this Court was widely worded and the Appellate Authority, in terms of the said order, was required to consider the matter in its entirety. Consideration of the case of respondents 2nd set became more important and relevant for adjudication by the Appellate Authority as they claimed that the appointment committee, in its meeting, held on 29.01.2011, in the presence of the Sub divisional Officer, Bettiah, had selected and appointed them as Panchayat Teachers.

18. In such circumstance, in our opinion, learned single Judge, by the order under appeal, rightly quashed the order of the Appellate Authority, dated 18.07.2012, whereby the Appellate Authority refused to take up the cases of respondents 2nd set as time-barred.

19. We do not find any force in the submission made by Mr. Y. V. Giri, learned Senior Counsel, relying upon Supreme Court decisions, as referred to above. The decisions, relied upon by Mr. Giri, relate to the self imposed restrictions, which the superior Courts, including High Courts under Article 226 of the Constitution of India, resort to, while exercising their discretionary power and refuse to entertain a belated claim, but the decisions, relied by Mr.

Giri, learned Senior Counsel, are not applicable in the context and the facts and circumstances of the present case as have been noted above.

20. We do not find that the order of learned single Judge, under appeal, dated 06.05.2014, passed in CWJC No. 3389 of 2013, requires any interference by us in an *intra court* appeal. The appeal is, accordingly, dismissed.

21. There shall be no order as to costs.

(Chakradhari Sharan Singh, J.)

I. A. Ansari, J.: I agree.

(I. A. Ansari, J.)

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