

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1200 of 2014

In
Civil Writ Jurisdiction Case No. 12479 of 2012

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Pushpa Kumari daughter of Shyam Chandra Thakur and wife of
Kamleshwari Nandan Singh, resident of village Bishunpur Mansingh, PO.
Chamanpur, P.S. and District Sheohar

.... Appellant/s

Versus

1. The State of Bihar
2. The District Magistrate, Sheohar
3. The District Education Officer, Sheohar
4. The Member, the District Teacher Appointment Appellate Tribunal,
Sheohar
5. The Block Development Officer, Sheohar, Block-Shehor, Dist. Shehor
6. The Block Education Officer, Sheohar Block-Sheohor, Dist. Sheohor
7. The District Programme Officer, Sheohar ((Establishment through
office the District Education Officer, Sheohar)
8. The Panchayat Secretary, Gram Panchayat Raj Chamanpur, Block
Sheohar, District Sheohar
9. Mukhiya, Gram Panchayat Raj Chamanpur, Block-Chamanpur, Dist.
Sheohar
10. The Headmaster, Middle School (Upgraded Primary School),
Bishunpur Mansingh, Chamanpur, Block Sheohar, Dist. Sheohar
11. Anita Devi wife of Amrendra Kumar, resident of village Pachragot, P.S.
Tariyani, district Sheohar.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Dr. Kamal Deo Sharma
For the Respondent No.11 : Mr. Arun Kumar
For the State Respondent/s : Mr. Roy Shivaji Nath

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CORAM: HONOURABLE MR. JUSTICE I.A.ANSARI

and

**HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH**

ORAL ORDER

(Per: HONOURABLE THE MR. JUSTICE I.A.ANSARI)

5 15-01-2015 Leave to appeal, as sought for, is granted.

I. A. No. 6355 of 2014 has been filed by the appellant,
under Section 5 of the Limitation Act, seeking condonation of
delay of one year and 319 days in preferring the present letters

patent appeal against the order, dated 19.07.2012, passed in C.W.J.C.No. 12479 of 2012.

We have heard Mr. Kamal Deo Sharma, learned counsel for the appellant, Mr. Arun Kumar, learned counsel for respondent No.11 and Mr. Ray Shivaji Nath, learned AAG 3, appearing for the State respondents.

Having considered the reasons assigned in the present petition seeking condonation of delay, in preferring appeal, and having heard the learned counsel for the parties, this Court is satisfied that the appellant was prevented by sufficient causes from preferring the appeal within time.

In view of the above, the delay of one year and 319 days, in preferring the letters patent appeal, is hereby condoned.

I. A. No. 6355 of 2014 shall stand disposed of.

L.P.A. NO. 1200 OF 2014

The appellant herein, Pushpa Kumari, was appointed against the post of Panchayat Teacher, in Chamanpur Gram Panchayat, on 12.02.2007, by the authority concerned.

However, according to respondent No.11 herein, Anita Devi, she had been appointed against the said post as early as on 30.11.2006, but the said appointment was illegally cancelled, on 01.12.2006, by taking resort to forged letter. Alleging that her



appointment had been illegally cancelled on the basis of a forged letter, respondent No.11, Anita Devi, preferred an appeal before the District Teachers Appointment Appellate Authority, Sheohar (respondent No.4) and the appeal came to be registered as Case No. 09 of 2008. By order, dated 01.12.2011, the appellate authority (respondent No.4) disposed of the appeal by directing that respondent No.11 herein (who was appellant in Case No. 09 of 2008 aforementioned) shall be allowed to rejoin her post by the authority concerned.

As the order, passed by the learned appellate authority, dated 01.12.2011, was not complied, respondent No.11 filed a writ petition under Article 226 of the Constitution of India, which gave rise to C.W.J.C. No. 12479 of 2012. This writ petition was disposed of, on 19.07.2012, by directing respondent Nos. 8 and 9, namely, the Panchayat Secretary, Gram Panchayat Raj Chamanpur and the Mukhiya, Gram Panchayat Raj Chamanpur, respectively to comply with the directions issued, on 01.12.2011, by the learned appellate authority (respondent No.4).

As the present appellant's appointment was still not cancelled, a contempt proceeding was initiated at the instance of Respondent No.11, namely, Anita Devi, the contempt proceeding being M.J.C.No. 6623 of 2012.



Following the initiation of the contempt proceeding, respondent Nos. 8 and 9 have passed an order, on 06.06.2014, cancelling appointment of the present appellant, Pushpa Kumari, and appointing at the post, which the appellant had been occupying, respondent No.11, namely, Anita Devi.

Aggrieved by the cancellation of her appointment in the manner as indicated hereinabove, the appellant has already filed a writ petition, under Article 226 of the Constitution of India, which has been registered as C.W.J.C. No. 8632 of 2012 and the said writ petition is still pending.

However, on realizing that it was by virtue of the order, dated 01.12.2011, passed by the learned appellate authority and the compliance thereof directed by order, dated 19.07.2012, passed in C.W.J.C. No. 12479 of 2012, this appeal has been preferred by the present appellant, Pushpa Kumari, on the ground that her appointment had been cancelled without giving her any opportunity of hearing by the learned appellate authority and this fact had not been brought to the notice of either the learned appellate authority or before the learned single Judge when the order, dated 19.07.2012, aforementioned was passed in C.W.J.C. No. 12479 of 2012.

It is submitted, on behalf of the appellant, that since the



appellant had already been appointed, on 12.02.2007, her appointment ought not to have been cancelled without giving her an opportunity of showing cause, but she has been denied to have her say in the matter, because of the fact that she had not been impleaded as a party in the appeal, which had come to be registered by the learned appellate authority as Case No. 09 of 2008.

Seriously resisting the appeal, it has been submitted, on behalf of the respondent No.11, that the respondent No.11 was, at no stage, aware about the appointment of the present appellant or that the present appellant had been appointed in the place of respondent No.11. It is also contended, on behalf of respondent No.11, that even if the present appellant was appointed, on 12.02.2007, as a Panchayat Teacher, she does not fall within the purview of the eligible quota.

We consciously avoid expressing any opinion on the correctness or otherwise of the submissions made on behalf of respondent No.11 inasmuch as we are clearly of the view that before directing that the respondent No.11 be allowed to rejoin her post, it was incumbent, on the part of the learned appellate authority, to find out and ascertain if, on cancellation of appointment of respondent No.11, any one else had or had not

been appointed against the said post. This exercise was not, admittedly, carried out by the learned appellate authority.

In the circumstances indicated above, we are of the view that the order under appeal passed, on 19.07.2012, needs to be interfered with and the writ petition needs to be heard by impleading the appellant herein. This apart, we are also of the considered view that the writ petition (i.e., C.W.J.C.No. 12479 of 2012) which we intend remanding back, as well as C.W.J.C. No. 8632 of 2012 needs to be heard together at the earliest.

Considering, therefore, the matter in its entirety and in the interest of justice, the order, dated 19.07.2012, aforementioned is hereby set aside and the proceeding of C.W.J.C. No. 12479 of 2012 is remanded, for disposal, in accordance with law, along with C.W.J.C. No. 8632 of 2012. We also request the learned single Judge to dispose of the two writ petitions at the earliest.

Before parting with this appeal, we make it clear that from the observations, which we have made above, shall not be read to mean that we have held that the order of appointment of the present appellant/or cancellation of the appointment of respondent No.11 are bad in law so that the learned single Judge remains free and may decide the issues in accordance with law.

In order to avoid further delay in the disposal of the two

writ petitions, namely, C.W.J.C. No. 12479 of 2012 and C.W.J.C. No. 8632 of 2012, the parties to this appeal are directed to appear, and the Registry is hereby directed to list both the writ petitions aforementioned, on 29.01.2015, before the appropriate Bench.

The appeal shall stand disposed of in terms of the above observations and directions.

(I. A. Ansari, J)

(Chakradhari Sharan Singh, J)

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