

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1591 of 2014

In

Civil Writ Jurisdiction Case No. 4606 of 2010

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Shashi Kumari, D/O Shri Shyam Deo Chaudhary, W/O Shri Sheojee Singh,
R/O Mohalla- Nyay Marg Shri Nagar Siwan, P.S.- Siwan Muffasil, Distt.-
Siwan, at present posted and working as Panchayat Teacher in Govt. Primary
School Ghogharaha, Anchal- Baikunthpur, Distt.- Gopalganj

..... Appellant

Versus

1. The State of Bihar
2. The Principal Secretary, Human Resources Development Department,
Government of Bihar, Patna
3. The Director, Primary Education Bihar, Patna.
4. The Divisional Commissioner, Saran Division at Chapra
5. The District Magistrate Gopalganj
6. The Deputy Development Commissioner-Cum-Chairman, District Education
Establishment Committee, Gopalganj
7. The District Superintendent of Education, Gopalganj
8. The Block Development Officer, Baikunthpur, Distt.- Gopalganj
9. The Block Education Extension Officer, Baikunthpur, Distt.- Gopalganj
10. The Mukhiya of Gram Panchayat Raj, Bansghat Mansuria, Block-
Baikunthpur, Distt.- Gopalganj
11. The Panchayat Secretary of Gram Panchayat Raj Bansghat Mansuria,
Block-Baikunthpur, Distt.- Gopalganj
12. The District Teacher's Employment Appellate Authority, Gopalganj
13. Vandana Kumari, W/O Shri Santosh Kumar, R/O Vill.- Bansghat
Mansuria, P.S.- Mohamadpur, Distt.- Gopalganj

..... Respondents

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Appearance :

For the Appellant : Mr. Umesh Kumar Mishra, Advocate

For the State : Mr. Upendra Pratap Singh,
A.C. to S.C.-25

For Respondent No.13 : Mr. Vitesh Kumar Singh, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE I. A. ANSARI

ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

4 07-01-2015 Certain patently illegal steps taken by the District

Teachers Employment Appellate Authority (for short, 'the
Appellate Authority'), Gopalganj-12th respondent, has given rise
to an avoidable litigation and this Letters Patent Appeal is part of
the same.



Gram Panchayat Raj, Bansghat Mansuria, Block Baikunthpur, District Gopalganj-10th respondent initiated steps for appointment of Teachers in the Government Primary School, Ghogharaha, Anchal-Baikunthpur, District-Gopalganj. The percentage of marks obtained in the Intermediate examination happens to be one of the factors, in the selection. The appellant, 13th respondent, by name Vandana Kumari, and certain others, applied for the said post. The appellant secured 60% marks in the Intermediate examination whereas the 13th respondent is said to have secured 60.1% of marks. The appointing authority selected the appellant and the order of appointment was issued on 26.06.2007. The appellant joined the post and she is discharging her duty since 27.6.2007.

13th respondent submitted a representation before the appellate authority-the Block Development Officer, ventilating her grievance. When no relief was granted therein, she approached this Court by filing C.W.J.C. No.16252 of 2008 challenging the appointment of the appellant. The said writ petition was dismissed on 15.05.2009, leaving it open to the 13th respondent to approach the Appellate Authority. Accordingly, the 13th respondent filed an appeal before the Appellate Authority. Through order dated 2.9.2009 the Appellate Authority allowed the appeal with an observation that the appointment of the appellant is illegal and the

13th respondent deserved to be appointed in her place.

According to the appellant, she made a representation to the Member of the Appellate Authority on 8.9.2009 stating that the order dated 2.9.2009 was passed without notice to her and the Member, in turn, passed the order dated 10.10.2009 upholding her appointment. However, another memo was issued on 30.10.2009 (Annexure 17 to CWJC No.4606 of 2010) directing compliance with the earlier order dated 2.9.2009. Challenging the said order, the appellant filed C.W.J.C. No.4606 of 2010.

Her principal contention is that neither she was made party to the proceedings nor any notice was issued to her. To be precise, her plea is the one of violation of the principles of natural justice. The writ petition was contested by the respondents. It was pleaded that the appellant has resorted to act of forgery in bringing the order dated 10.10.2009 said to have been passed by the Member of the Authority and that she has no right to challenge the order dated 10.10.2009.

The learned single Judge dismissed the writ petition. Hence this appeal.

Heard Mr. Umesh Kumar Mishra, learned counsel for the appellant, and Mr. Vitesh Kumar Singh, learned counsel for respondent No.13. Also heard Mr. Upendra Pratap Singh, learned Assistant Counsel to Standing Counsel No.25, appearing for the

State.

The record is not clear as to whether the percentage of marks obtained by a candidate in Intermediate examination happens to be sole basis for selection. Further, margin of difference between the marks obtained by the appellant on the one hand and the 13th respondent on the other hand is too meagre.

It was fundamental that the 13th respondent should have impleaded the appellant herein in her appeal filed before the Appellate Authority. Even if there was lapse on her part in this regard, the Appellate Authority ought to have ensured that the affected persons are made parties. However, it proceeded to decide the matter on merits despite the fact that the appellant was not made party before it, and the appeal was allowed on 2.9.2009, setting aside the appointment of the appellant herein. Though certain developments are said to have taken place subsequent to the order dated 2.9.2009, such as that the Member has recalled the order and thereafter restored it, we are not concerned with the legality or validity of the same.

It clearly emerges that the order dated 2.9.2009 suffers from a basic flaw of violation of the principles of natural justice. On that ground alone, the order is liable to be set aside. Subsequent steps, whatever be their nature do not have the effect of curing the fatal lapse. Learned single Judge, however, appears

to have concentrated on the steps that are said to have taken place, after the disposal of the appeal.

We, therefore, allow this appeal and set aside the order passed by the learned single Judge. As a consequence, we allow the writ petition and set aside the order dated 2.9.2009 passed by the Appellate Authority, through which, the appointment of the appellant was set aside, as well as the subsequent orders. We direct that the Appellate Authority shall hear the appeal afresh by ensuring that the appellant is made party.

To avoid further delay, we direct that the appellant be added as party to the appeal before the Appellate Authority and that appellant as well as 13th respondent shall appear before it on 20th of January, 2015. The appeal shall be disposed of within six weeks thereafter.

This appeal and the interlocutory application, if any, shall stand disposed of. There shall be no order as to costs.

(L. Narasimha Reddy,CJ)

(I. A. Ansari, J)

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