

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Letters Patent Appeal No.1323 of 2014**  
**In**  
**Civil Writ Jurisdiction Case No. 9212 of 2010**  
**With**  
**Interlocutory Application No.7258 of 2014**  
**In**  
**Letters Patent Appeal No.1323 of 2014**

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Braj Kishor Sahni, S/o Late Raghuvar Sahni, R/O Village- Chapra Tola,  
Dumri, P.O.- Mali, P.S.- Sugauli, Distt.- East Champaran, Motihari.

.... .... Respondent-Appellant/s

Versus

1. The State of Bihar.
2. The Director, Primary Education Human Resources Department, Govt. of Bihar, Patna.
3. The District Superintendent of Education, East Champaran, Motihari.
4. The Block Development Officer, Sugauli, District- East Champaran, Motihari.
5. The Block Education Extension Officer Sugauli, District- East Champaran, Motihari.
6. The Panchayat Secretary, Gram Panchayat Mali, P.S.- Sugauli, District- East Champaran, Motihari.
7. The Mukhia of Gram Panchayat Mali, P.S.-Sugauli, District-East Champaran, Motihari.
8. The Member, District Teacher Appointment Appellate Tribunal, East Champaran, Motihari.

.... Respondent-Respondents

9. Bhushan Sahni, S/o Late Ojagir Sahni, R/o Village- Dumaria, P.S.- Sugauli, District- East Champaran, Motihari.

.... .... Petitioner-Respondent/s

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**Appearance :**

For the appellant : Mr. Sunil Kumar No.III, Advocate  
Mr. Rakesh Kumar No.1, Advocate  
Mr. Ramakant Yadav, Advocate

For the respondent-State : Mr. Subhash Prasad Singh, Govt. Advocate

For the respondent No.9 : Mr. Satish Chandra Jha-3, Advocate

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**CORAM: HONOURABLE THE CHIEF JUSTICE**

**And**

**HONOURABLE MR. JUSTICE I. A. ANSARI**

**ORAL ORDER**

**(Per: HONOURABLE THE CHIEF JUSTICE)**

6 08-01-2015

**Interlocutory Application No.7258 of 2014**

This application under Section 5 of the Limitation Act is filed with a prayer to condone the delay of 16 days in preferring the Letters Patent Appeal against the order dated 23.07.2014 passed by the learned Single Judge in CWJC No.9212 of 2010. In the application, it is stated that the delay occurred in making preparation of the appeal and the communication between the appellant and his counsel.

No counter affidavit is filed by the contesting respondent opposing the application.

The delay is meager and 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.1323 of 2014**

Respondent No.9 in CWJC No.9212 of 2010 preferred this Letters Patent Appeal feeling aggrieved by the order dated 23.07.2014 passed by the learned Single Judge in CWJC No.9212 of 2010.

The 9<sup>th</sup> respondent herein- Bhushan Sahani, (for short, 'the respondent') filed the writ petition feeling aggrieved by the order dated 06.05.2010 passed by the District Teachers Employment Appellate Tribunal, Motihari- respondent no.8 (for short, 'the Tribunal') in Appeal Case No.514 of 2009.

The facts in brief are as under:

The Gram Panchayat Mali, of East Champaran District, initiated steps for appointment of Shiksha Mitras to work in the school. The appellant, the respondent and certain others submitted applications. The competent authority selected and appointed the respondent as Shiksha Mitra through order dated 04.04.2003. Feeling aggrieved by that, the appellant filed Appeal Case No.514 of 2009 before the Tribunal. According to him, the appointing authority ignored the merit and appointed the respondent. It was pleaded that the appellant secured 65.33% marks, whereas the

respondent secured only 45.88% marks and still the latter was selected.

The plea of the respondent was that the appellant was disqualified for being appointed on the post of Shiksha Mitra since he held the office of the Up-Pramukh of the village and that the appointment of the respondent is not vitiated in any manner at all.

The Tribunal, however, has set aside the appointment of the respondent, taking the view that though the appellant herein was elected as Up-Pramukh of the village, he submitted his resignation. The said order was challenged by the respondent in the writ petition. The learned Single Judge allowed the writ petition. Hence, this Letters Patent Appeal.

Heard Mr. Sunil Kumar, learned counsel for the appellant and Mr. Satish Chandra Jha, learned counsel for the contesting respondent no.9.

It is no doubt true that the appointment of Shiksha Mitra is to be made on the basis of marks secured by the candidates in Matriculation and that the appellant secured 65.33% marks, whereas the respondent secured only 45.88% marks. If one is to go by the marks, the appellant deserves to be selected.

However, the appellant suffered disqualification for being appointed on the post of Shiksha Mitra on account of his being the Up-Pramukh of the Village.

The appellant does not dispute that he was elected as Up-Pramukh for the Village in the year 2001. His plea that he submitted his resignation on 30<sup>th</sup> January, 2003 can hold water only if his resignation was accepted by the competent authority, by the time the selection took place. Except that he stated that he submitted his resignation, he did not state as to when it was accepted. It is a well established law that the resignation becomes operative only on being accepted, unless the law provides otherwise. Mere submission of resignation does not bring about cessation of office by the incumbent.

This apart, the respondent obtained information from the Gram Panchayat itself, which is filed as Annexure-6. It is to the effect that the appellant held the office of Up-Pramukh between June, 2001 and June, 2006. No record to the contrary is placed either before the learned Single Judge or before us.

Thus, once it emerges that the appellant held the office of the Up-Pramukh at the relevant time, there

is no question of his being selected and appointed as Shiksha Mitra. The learned Single Judge has given correct reasons in support of his conclusion. We do not find any basis to interfere with the order of the learned Single Judge. Accordingly, this Letters Patent Appeal is dismissed.

Interlocutory application, if any, shall stand disposed of. There shall be no order as to costs.

**(L. Narasimha Reddy,CJ)**

**(I. A. Ansari, J)**

Sunil/-

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