

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1190 of 2012

In

Civil Writ Jurisdiction Case No.2877 of 2011

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Abdul Raqeeb Alam, son of Md. Yunus, R/O Village- Khairdih, P.S.- Sikandra,
District- Jamui

.... Petitioner- Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Human Resources Development Department, Bihar, Patna
2. The Director, Primary Education Human Resources Development Department, Bihar, Patna.
3. The Commissioner, Munger Division, Munger.
4. The District Magistrate, Jamui.
5. The District Superintendent of Education, Jamui.
6. The Block Development Officer, Sikandra, Jamui.
7. The Member, District Teachers Employment Appellate Authority, Jamui.
8. The Mukhiya, Gram Panchayat Raj- Gokhula-Fatehpur, Sikandra, Jamui.
9. The Panchayat Secretary, Gram Panchayat Raj Gokhula-Fatehpur, Sikandra, Jamui.
10. Girish Singh S/O Not Known To The Petitioner R/O Village- Rawai, P.S.- Sikandra, District- Jamui.

.... Respondents -Respondent/s

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Appearance :

For the Appellant/s : Mr. Niranjan Kumar, Advocate
Mr. Mritunjay Kumar, Advocate
For the Respondent-State : Mr. Siddhartha Prasad, A.C. to A.A.G.-4
For the Respondent No.8 : Mr. Manohar Pd. Singh, Advocate
Mr. Bhim sen Prasad, Advocate
For the Respondent No.9 : Mr. Nawal Kishore Singh, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 22-01-2015

The unsuccessful petitioner in CWJC No.2877 of 2011 is the appellant. Feeling aggrieved by the order dated 18th May, 2012 passed in the writ petition, he filed this Letters Patent Appeal.



The Gram Panchayat Raj Gokhula Fatehpur, Sikandra, Jamui- the 9th respondent herein, initiated steps for appointment of teachers in the primary school, existing in the village. One such post was the Assistant Teacher in Urdu. Notification in that behalf was issued. The appellant and certain others submitted their applications. After verification of the eligibility of the candidates, the appointing authority, i.e. Panchayat Secretary, issued call letters to four candidates, including the appellant for the post of Assistant Teacher in Urdu. Counselling/interviews were conducted on 06.10.2007. The appellant emerged as successful candidate and he was issued order of appointment on 21.10.2007. Thereafter he started working.

The 10th respondent herein by name Girish Singh, submitted a complaint before the District Teachers Employment Appellant Authority, Jamui-7th respondent herein, alleging that the appointment of the appellant to the post of Assistant Teacher in Urdu in the Panchayat is not proper. The 7th respondent entertained the appeal and issued notice to the appellant as well as the Panchayat Secretary.

During the course of hearing, the 7th respondent observed that the 10th respondent is not an aggrieved person, not being an applicant for the post and, accordingly,



he does not have *locus standi*. However, he proceeded to examine the matter on merits. The Panchayat Secretary, stated that the post of Assistant Teacher in Urdu was to be allocated to the unreserved female candidate as per roster, whereas the appellant, who is a male, was appointed against that post. On that basis, the 7th respondent passed order dated 25.01.2011 setting aside the appointment of the appellant and directed the appointing authority to take necessary steps to fill up the post. The same was challenged in the writ petition.

The learned Single Judge dismissed the writ petition, through order dated 18.05.2012 merely on the ground that there is serious doubt as to the very existence of the post of Urdu teacher in the school.

Heard Sri Niranjana Kumar, learned counsel for the appellant and Sri Siddhartha Prasad, learned A.C. to A.A.G.-4 for the respondent-State.

The Gram Panchayat, Raj Gokhula, Fatehpur, Sikandra, Jamui issued a notification inviting application for various posts, including a teacher in Urdu. The Bihar Panchayat Primary Teacher (Employment and Service Conditions) Rules, 2006 provide for appointment of an Urdu teacher if there exist at least 10 students who intend to learn Urdu. If the strength is more than 30 students of that

category, there is scope to appoint another Urdu teacher. About ten applications were received. The qualifications of the candidates were verified and counselling for eligible candidates was conducted on 06.10.2007. The petitioner was found suitable and was appointed through order dated 21.10.2007. Thereafter, he started working.

The 10th respondent was not even an applicant for the post of Assistant Teacher in Urdu. The 7th respondent categorically held that the 10th respondent is a frequent petition monger, and nuisance maker. That being the case, the 7th respondent ought to have rejected the appeal outright. However, he examined the matter on merits.

The only defect that the 7th respondent noticed was that the post was ear-marked for unreserved female, whereas the appellant is a male candidate. That was not even the case of the 10th respondent. Even if any mistake has occurred in identifying the roster point, the occasion to set aside the appointment would have arisen only if the aggrieved candidate questioned it. The only aggrieved party in such a case, could have been a female candidate from unreserved category. The record discloses that there was not even one applicant, belonging to that category. The 7th respondent accorded precedence to reservation over the

recruitment. It must not be forgotten that reservation is a matter of convenience in the process of recruitment. Any question pertaining to it can be considered only when any aggrieved person approaches the Court. In that view of the matter, there was absolutely no basis for the 7th respondent to set aside the appointment of the appellant.

We, therefore, allow the Letters Patent Appeal and set aside the order dated 18.05.2012 passed by the learned Single Judge in CWJC No.2877 of 2011. As a consequence, the writ petition is allowed and the order dated 25.1.2011 passed by the 7th respondent in Case No.13 of 2010 is set aside. The appellant shall be reinstated in service forthwith. However, he shall not be entitled to backwages.

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

(L. Narasimha Reddy, CJ)

(Gopal Prasad, J)

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