

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No 1463 of 2012

IN

Civil Writ Jurisdiction Case No 12821 of 2011

- =====
1. Md Mahbub Alam S/O Md Yahya Resident Of Village- Olipur (Fatehnagar), P.S- Manihari, District- Katihar.
 2. Jahan Ara Begum W/O Abdur Rauf And D/O Md Ainul Haque @ Ainul Haque Resident Of Village- Maltipur, P.S- Amdabad, District- Katihar.

.... Appellant/s

Versus

1. The State Of Bihar
2. The Commissioner -Cum- Secretary, Department Of Human Resources Development, Govt. Of Bihar, Patna.
3. The Member District Appointment Teachers Appellate, Tribunal Katihar.
4. The District Superintendent of Education Officer- Cum- District Programme Convenor, Katihar.
5. The Secretary- Cum- Project Director, National Child Project Society, Katihar.
6. The Assistant Director, National Child Project Society, Katihar.
7. The B.D.O., Block- Balrampur, District- Katihar.
8. The B.E.E.O., Block- Balrampur, District- Katihar.
9. The B.D.O. Block- Kadwa, District- Katihar.
10. The B.E.E.O., Block- Kadwa, District- Katihar.
11. The Mukhiya, Gram Panchayat Raj- Bhimyal, Block- Balrampur, District- Katihar.
12. The Secretary, Gram Panchayat Raj- Bhimyal, Block- Balrampur, District- Katihar.
13. The Mukhiya, Gram Panchayat Raj- Chouni, Block- Kadwa, District- Katihar.
14. The Secretary, Gram Panchayat Raj- Chouni Block- Kadwa, District- Katihar,
15. Abuzar @ Md Abuzar S/O Abdur Rauf Resident Of Village- Lahsa, P.S- Mansahi, District- Katihar.

.... Respondent/s

WITH

Letters Patent Appeal No 705 of 2014

IN

Civil Writ Jurisdiction Case No 12821 of 2011

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Abuzar @ Md Abuzar Son of Abdur Rauf resident of village Lahsa, Police Station Mansahi, District Katihar

.... Appellant/s

Versus

1. The State of Bihar
2. The Commissioner cum Secretary, Department of Human Resources Development, Government of Bihar, Patna
3. The Member District Appointment Teachers Appellate Tribunal, Katihar
4. The District Superintendent of Education Officer-cum-District Programme Convener, Katihar
5. The Secretary-Cum-Project Director National Child Project Society, Katihar
6. The Assistant Director, National Child Project Society, Katihar

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7. The B.D.O., Block Balrampur, District Katihar
 8. The B.E.E.O., Block Balrampur, District- Katihar
 9. The B.D.O., Block Kadwa, District- Katihar
 10. The B.E.E.O., Block Kadwa, District- Katihar
 11. The Mukhiya, Gram Panchayat Raj, Bhimiyal, Block Balrampur District- Katihar
 12. The Secretary, Gram Panchayat Raj, Bhimiyal, Block Balrampur District- Katihar
 13. The Mukhiya, Gram Panchayat Raj, Chaouni, Block Kadwa, District- Katihar
 14. The Secretary, Gram Panchayat Raj, Chouni, Block Kadwa District- Katihar
 15. Md Mehbub Alam son of Md Yahya r/o village Olipur (Fatehnagar), P.s.- Manihari, District- Katihar
 16. Japan Ara Begum W/o Abdur Rauf and d/o Md Ainul Haque @ Ainul Haque r/o village Maltipur, P.s.- Amdabad District- Katihar

.... Respondent/s

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For the Appellant/s : M/s Sanjay Kr Singh, Dharendra Kr Jha
& Jibendra Mishra, Advocates

For the State : Mr Roy Shivaji Nath, AAG III with
Mr Amrendra Kumar, AC to AAG III

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CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH

And

HON'BLE JUSTICE SMT NILU AGRAWAL

ORAL JUDGMENT

(Per: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH)

Date: 20-08-2015

In both the intra-Court Appeals, the issue is singular. The appellants are the writ petitioners. They had been in National Child Labour Project Society, Katihar (For brevity, *the Society*). In 2008, State Government notified the Rules for recruitment of Panchayat Teachers. In terms of Rule 4 (2) read with Rule 9, in the recruitment process, 20% weightage was granted to people who had taught in various non-formal and other such schools including schools for children and child labour for one or more year. The writ petitioners-

appellants had intended to apply for Panchayat Teachers. Similar was the case with some others. They were not being granted experience certificates. They filed writ petitions in the High Court. The High Court, in the writ petition, directed the District Mass Education Officer, Katihar to issue certificates of experience which would be relevant under Rule 9 of the 2008 Rules. It appears subsequently, State filed a modification application. Considering the said, the Court then modified its order and ordered that instead of District Mass Education Officer granting the certificate, it would be the Director of the Society who would issue the experience certificate. To that extent, the earlier order stood modified.

2 The District Teachers Appointment Appellate Authority, purporting to act under power of superintendence, which it did not have, had issued directions earlier in conformity with the first order. When the order was modified, it issued direction as if the Court had invalidated its earlier order and in the modification order, it held that such experience certificate granted by any authority named in those orders were invalid for the purposes of Rule 9. Accordingly, the petitioners, who were granted 20% weightage on basis of certificates granted by the Society, were threatened with dismissal on account of 20% weightage being taken away. The learned Single Judge held that the Authority committed no wrong in so directing. It may be a

certificate of experience but it would not be a certificate of experience entitling them to weightage in terms of Rule 9.

3 Prima facie, we are not satisfied with the reasoning given by the learned Single Judge. The reason is simple. In the modification order, there is only change in the person competent to grant the experience certificate. The learned Single Judge has not altered the judgment which holds that such a certificate is relevant in terms of Rule 9. From the order passed on the modification application, there appears to be a submission being made on behalf of the State that such a certificate granted by the District Mass Education Officer is not relevant under Rule 9, but that is not the order of the Court. Moreover, if we look to Rule 4 (2), such non-formal teaching experience has to be given weightage.

4 However, learned Additional Advocate General III Mr Roy Shivaji Nath seeks time to ascertain the position with regard to Rule 9.

5 We are not inclined to grant further indulgence to the State in this matter inasmuch as the certificates that were granted and the weightage given was pursuant to orders of the learned Single Judge, as noted above. That order, State did not challenge. It had sought modification and was satisfied with the modification. The modification was only in respect of the officer who would grant the certificate and nothing more. Writ petitioners-appellants having bona

fide applied and having been selected and having worked for over five years, now it would be inequitous to cancel their appointments by invalidating the certificates issued by the Society and forcing them out of job having already lost the age to seek any other gainful employment.

6 In that view of the matter, we are constraint to hold that the learned Single Judge was in error in holding that in the modified order, the efficacy of the certificate under Rule 9 was taken away. There is no justification for this. That being so, we cannot sustain the order of the learned Single Judge. It is set aside.

7 The writ petition and the appeal are allowed with a direction to the authorities not to interfere with the appointments of the writ petitioners-appellants solely on ground, as aforesaid.

(Navaniti Prasad Singh, J)

M.E.H./-

(Nilu Agrawal, J)

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