

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No 1193 of 2012

IN

Civil Writ Jurisdiction Case No 15978 of 2011

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Pramod Prasad Pandey S/O Late Prabhunath Pandey Resident Of Village
Sonawalia, P.O. Rajapatti, P.S. Baikunthpur, District Gopalganj.

.... Appellant/s

Versus

1. The State Of Bihar through the Principal Secretary, Human Resource Development Department, Government of Bihar, Patna.
2. The District Teacher Appointment Appellate Authority, Gopalganj, District Gopalganj through Its Member.
3. The Member of the District Teacher Appointment Appellate Authority, Gopalganj, District Gopalganj.
4. The District Education Officer, Gopalganj.
5. The Block Development Officer, Baikunthpur, District Gopalganj.
6. The Block Education Officer, Baikunthpur, District Gopalganj.
7. The Panchayat Secretary, Gram Panchayat Raj Gamharia, Block Baikunthpur, P.S. Baikunthpur, District Gopalganj.
8. The Mukhiya, Gram Panchayat Raj Gamharia, Block Baikunthpur, P.S. Baikunthpur, District Gopalganj.
9. Triloki Nath Singh S/O Sri Ramdeo Singh Resident Of Village Ekderwa, P.S. Baikunthpur, District Gopalganj.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr Ashish Giri, Advocate

For the S t a t e : Mr Ratna Deep Prasad, AC to AAG XI

For Respondent No 9 : M/s Naresh Ch Verma & Natraj Verma, Advocates

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CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH

And

HON'BLE JUSTICE SMT NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE NAVANITI PRASAD SINGH)

Date: 04-11-2015

Delay in filing the appeal is condoned.

2 IA No 5122 of 2012 stands disposed of.

3 The present intra-Court appeal is directed against the



order dated 23.03.2012 passed in *CWJC No 15978 of 2011* (Pramod Prasad Pandey –Versus- State of Bihar & Others). By the said order, the learned Single Judge of this Court has refused to entertain the writ application holding that the writ application was not entertainable after an inordinate delay of more than 4 to 5 years in challenging the order dated 16.07.2007 of the respondent-Block Development Officer (For brevity, *the BDO*).

4 In this intra-Court appeal, it has been sought to be impressed upon us that delay in the facts should not come in way of doing justice. We will, thus, examine the facts.

5 Pursuant to notice issued to respondent No 9 in the appeal, who was also respondent No 9 in the writ proceedings being the person who had been appointed as Panchayat Teacher whose appointment was now being challenged with corresponding claim of appointment for himself by the writ petitioner/appellant, respondent No 9 has appeared.

6 We have heard the learned counsel for the writ petitioner/appellant, learned counsel for the State and learned counsel for respondent No 9 and, with their consent, dispose of this appeal at this stage itself.

7 In 2006, the State Government came up with Bihar Panchayat Teachers (Appointment and Service Conditions) Rules,

2006 (For brevity, *the Rules*). Under the aforesaid Rules, advertisement by various Panchayats was issued for appointment of Panchayat Teachers. The writ petitioner, who is the appellant, as well as respondent No 9 applied for the post of Panchayat Teacher in respect of Gram Panchayat Raj Gamharia, Block – Baikunthpur, District – Gopalganj. There were other applicants as well. When, for sometime, the appellant, who claims that he was the most meritorious candidate, was not called for appointment, he had serious apprehensions about the motive of the Mukhiya of the said Gram Panchayat. Allegedly, on or about 20.12.2006, he filed an application before the BDO, Baikunthpur, District – Gopalganj making grievance in this regard. Let it be noted that under Clause 18 of the Rules aforesaid, BDO is the appellate authority in respect of matters relating to appointment of Panchayat Teachers within his jurisdiction. It appears that while his application was pending before the BDO, as aforesaid, one Chandra Bhushan Kumar was appointed on 21.01.2007 as Panchayat Teacher in the same position which the writ petitioner/appellant was desirous of. Writ petitioner/appellant did not challenge this. It appears there was one other, that is, respondent No 9, Triloki Nath Singh who was also in the queue. He also apprehended irregularities. He petitioned the District Magistrate – cum- Collector, Gopalganj in this regard. The Collector –cum-



District Magistrate, Gopalganj referred the matter to the BDO, who found that the appointing authority being the Gram Panchayat, sent the matter to the Gram Panchayat. The Gram Panchayat, on 03.02.2007, cancelled the appointment of Chandra Bhushan Kumar and instead appointed respondent No 9 Triloki Nath Singh on 03.02.2007 as Panchayat Teacher. The writ petitioner/appellant did not challenge this. These events were then reported by the Panchayat Samiti to the BDO on basis whereof the BDO, by the impugned order dated 16.07.2007, dismissed the application of the writ petitioner/appellant clearly holding that as the position was no more vacant and appointment of Triloki Nath Singh had been made, which obviously was not challenged, the application of writ petitioner/appellant was dismissed. Primarily, it is this order that is challenged in the writ petition. It is necessary to report some other subsequent events.

8 The BDO, having dismissed the application of the writ petitioner/appellant and the appellant not having challenged the appointment of respondent No 9, when BDO as an appellate authority under Rule 18 of the Rules aforesaid, was substituted by the District Teachers Appointment Appellate Tribunal (For brevity, *the Tribunal*), the writ petitioner/appellant then filed an application before the Tribunal challenging the order dated 16.07.2007 of the BDO and the



appointment of Triloki Nath Singh which was made on 03.02.2007. In 2008, the writ petitioner/appellant moved the Tribunal. The Tribunal dismissed the application on the ground that the Tribunal was not sitting in appeal over the order passed by the BDO. The Tribunal in fact was substituted in place of BDO as the appellate authority in the year, 2008. Therefore, the order of BDO could not be interfered with by the Tribunal. It is these two orders that is the order of the BDO passed on 16.07.2007 and by the Tribunal passed on 22.02.2011 that were challenged by the writ petitioner/appellant in *CWJC No 15978 of 2011*. The learned Single Judge, as noted above, held that the challenge to the order of the BDO dated 16.07.2007 was a belated challenge and refused to interfere. It is the correctness of this view and approach that is challenged before this Court in this intra-Court appeal.

9 Respondent No 9, who has appeared upon notice, submitted that in fact the so-called application before BDO was not filed on 20.12.2006 but was filed much later after appointment of respondent No 9 and the dates had been interpolated. He further submitted that the report of the Mukhiya was clear that the writ petitioner/appellant had not furnished original documents and, therefore, his consent was not sought and his appointment was not made. Whatever may be the truth in these submissions, we cannot

consider them as they are not duly supported by any affidavit in the shape of counter affidavit much less by any document.

10 Now we have to consider whether the writ petitioner/appellant had made out a case for interference or not? In our view, not only would delay and laches come in his way, a more pertinent impediment would be constructive res judicata. From the facts noted above, it would be seen that while the writ petitioner/appellant had moved the BDO, the appellate authority, seeking his appointment on the post of Panchayat Teacher during pendency of his application itself, first one Chandra Bhushan Kumar was appointed on that same very post as Panchayat Teacher on 21.01.2007. He (Chandra Bhushan Kumar) was then removed by the Panchayat Samiti and instead respondent No 9 Triloki Nath Singh was appointed as Panchayat Teacher on the same very post on 03.02.2007 which writ petitioner/appellant wanted for himself. It cannot be said that the writ petitioner/appellant was unaware of this because this was solitary post for which he was contesting with others. His application, being pending before the BDO, he did not amend the same nor sought the relief as against Triloki Nath Singh (respondent No 9). The Panchayat Samiti also informed these facts to the BDO in the pending appeal, still the writ petitioner/appellant did not choose to amend his pleadings and challenge the said appointment. The BDO, in absence

of any challenge to the appointment of Triloki Nath Singh, then dismissed the appeal of the writ petitioner/appellant by order dated 16.07.2007 holding that Triloki Nath Singh had already been appointed on the said post and the said post was not vacant any more for appointment of writ petitioner/appellant. This order was passed on 16.07.2007 but was not challenged by the writ petitioner/appellant before any forum/authority much less this Court. For the first time, challenge to this order is being made when this writ petition was filed in this regard in 2011 that is after four years.

11 In these facts, there are two principles which disentitle any relief to the writ petitioner/appellant. Firstly, as rightly noted by the learned Single Judge, delay and laches and the second would be constructive res judicata. The writ petitioner/appellant ought to have challenged the appointment of respondent No 9 as before the BDO himself where his application was pending at that time. He chose not to do so. The BDO was the competent authority created under the statute to deal with such matters. Appointment of respondent No 9, not in challenge, the BDO rightly dismissed the application of the writ petitioner/appellant. After the BDO office was substituted by the Tribunal in 2008, writ petitioner/appellant tried his luck before the Tribunal. The Tribunal rightfully held that it could not interfere with the order of the BDO because it was not the authority

over the BDO rather it was substituted by the BDO as the appellate authority.

12 On the aforesaid facts and legal principle, in our view, the writ petitioner/appellant, by his own conduct, has lost his remedy, if any, against any illegality that was committed.

13 We, therefore, find no reason to interfere in this appeal. It is, accordingly, dismissed.

(Navaniti Prasad Singh, J)

(Nilu Agrawal, J)

M.E.H./-AFR

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