

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.75 of 2015

IN

Civil Writ Jurisdiction Case No. 20724 of 2010

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Renu Kumari, D/O Devendra Prasad Rai , W/O Sri Sunil Kumar Rai, resident of
Village+ Post- Bahadurpur Patori, P.S. - Patori, District – Samastipur.

.... Appellant

Versus

1. The State of Bihar through Principal Secretary, Human Resources Development Department, Government of Bihar, Vikash Bhawan, Patna.
2. The Commissioner-cum-Secretary, Human Resource Development Department, Government of Bihar, Vikash Bhawan, Patna.
3. The District Teachers Employment Appellate Authority, Samastipur.
4. The District Superintendent of Education, Samastipur .
5. The Block Education Extension Officer, Morwa Block P.S. - Tajpur, District – Samastipur.
6. The Mukhiya-cum-Chairman, Panel Preparation Committee, Gram Panchayat, Morwa South, P.S. - Tajpur, District - Samastipur .
7. The Panchayat Secretary, Gram Panchayat, Morwa South, P.S. - Tajpur, District – Samastipur.
8. Reeta Kumari, W/O Sri Ranjit Kumar Rai, resident of Village - Rajakha Rampur, P.S. - Tajpur, District – Samastipur.
9. The Head Master, Government Primary School, Anandpur (Rajakha Rampur) P.S. - Tajpur, District – Samastipur.

.... Respondents

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Appearance :

For the Appellant/s : Mr. Firoz Raza, Advocate
Mr. Narendra Kumar, Advocate
Mr. Sudhir Kumar Thakur, Advocate

For the Respondents

No. 1 to 5 : Mr. Anjani Kumar, A.A.G.-6

For the Respondent

No. 8 : Mr. Nirmal Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI

and

**HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

ORAL JUDGMENT

**(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH)**

Date: 09-12-2015

The present appeal has been preferred, under Clause 10

of the Letters Patent of the High Court, against the order, dated 19.07.2011, passed in C.W.J.C. No. 20724 of 2010, by a learned single Judge, whereby the writ application filed by the appellant, under Article 226 of the Constitution of India, has been dismissed.

2. Briefly stated, the facts of the case are that pursuant to an advertisement issued, in the year 2006, for appointment to the post of Panchayat Teachers in Gram Panchayat, Morwa (South), respondent No. 8 was selected and appointed. She had Intermediate qualification in vocational course, Intermediate qualification being the minimum eligibility condition for appointment to the post.

3. Subsequently, by an order, dated 25.04.2007, issued by the Block Education Extension Officer, Morwa, appointment of respondent No. 8 came to be cancelled on the ground that Intermediate qualification in vocational course was not the recognized eligibility for the purpose of appointment as a Panchayat Teacher. Consequent upon cancellation of appointment of respondent No. 8, a decision was taken to fill up the said vacancy. A process of selection was undertaken by the Selection/Appointment Committee of the concerned Gram Panchayat. The appellant was selected and appointed, on 27.10.2007, as Panchayat Teacher, against the post, which had become vacant, because of cancellation of appointment of respondent No. 8.

4. It appears that some of the persons, who held Intermediate qualification in vocational courses and were appointed as Panchayat Teachers, had approached this Court by filing writ application as their appointments were cancelled on the ground that such certificate in vocational course was not a recognized qualification for appointment to the post of Panchayat Teacher.

5. It is not in dispute that this Court held that the Intermediate qualification, in vocational course, was equivalent to Intermediate qualification in general courses and, therefore, the persons, who held such qualification in vocational course, were eligible for appointment as Panchayat Teachers.

6. Following this Court's decision, as indicated above, the State-respondents decided to reinstate those persons, whose appointments as Panchayat Teachers, were cancelled on the ground that they held Intermediate qualification in vocational course, which was earlier not treated to be a qualification recognized for such appointment. In the light of the said decision of the State Government, respondent No. 8 was directed to be reinstated against the post to which the appellant was selected for appointment in the year 2007 and was accordingly appointed. This resulted into removal of the appellant from the said post, through letter, dated 21.05.2009, issued by the Panchayat Secretary of the concerned Gram Panchayat.



7. Aggrieved by the said decision of removal of the appellant, she preferred an appeal before the District Teachers Employment Tribunal, Samastipur, giving rise to Appeal No. 779 of 2009 (Pan). The appeal, however, came to be dismissed, giving the appellant a cause of action to file a writ application before this Court, under Article 226 of the Constitution of India, which came to be registered as C.W.J.C. No. 20724 of 2010.

8. Learned single Judge, by the order under appeal, dated 19.07.2011, dismissed the said application holding that the decision of the District Teachers Employment Appellate Authority could not be assailed, the same being based on the judgment rendered by this Court on the question of equivalence of qualification of Intermediate certificate in vocational course and that the said decision of this Court had acquired finality.

9. Learned Counsel, appearing on behalf of the appellant, has submitted that appointment of the appellant, on the basis of the decision of the Selection Committee, on 27.10.2007, was not subject to any condition. He has further submitted that since the sufficient number of posts were available and if at all there was any requirement for reinstatement of respondent No. 8, in the light of the orders, passed by this Court, she could have been allowed to be reinstated against available vacancy as per roster without disturbing the valid

appointment of the appellant. He has further submitted that even today, there are vacant posts available in the concerned Panchayat, of Panchayat Teachers, against which, the appellant can be allowed to continue.

10. Mr. Anjani Kumar, learned Additional Advocate General No. 6, appearing on behalf of the respondents, defending the order under appeal, has submitted that respondent No. 8 was reinstated, in terms of the decision of this Court, holding that the Intermediate qualification in vocational course was a valid qualification for appointment as a Panchayat Teacher. He has further submitted that the appointment of the appellant was against the vacancy created because of cancellation of appointment of respondent No. 8. Mr. Anjani Kumar, learned Additional Advocate General No. 6, contends that it was incumbent upon the respondents to remove the appellant for reinstating respondent No. 8 against the post to which, she was earlier appointed. He has submitted that there is no infirmity in the order under appeal.

11. Mr. Nirmal Kumar, learned Counsel, appearing on behalf of the respondent No. 8, has also made submissions on similar line and has contended that respondent No. 8 was rightly reinstated in terms of the decision of this Court.

12. Having considered the materials on record and the



submissions made on behalf of the parties, we find no infirmity, as such, in the order under appeal. This is not in dispute that respondent No. 8 possessed the qualification of Intermediate in vocational course, which subsequently came to be held by this Court to be a valid recognized qualification for appointment as Panchayat Teacher. Removal of respondent No. 8 on the ground of lack of qualification to hold the post, on the basis that she possessed Intermediate qualification in vocational course, was apparently illegal and invalid. To the extent, the State-respondents took a decision to reinstate respondent no. 8, therefore, cannot be faulted with.

13. The only question, which has remained, is as to whether, in the peculiar facts and circumstances of the case, when selection of the appellant for the post of Panchayat Teacher and her appointment on the said post, cannot be said to be illegal, her case was required to be considered by the competent authority by allowing her to continue against available vacancy.

14. Learned Counsel, appearing on behalf of the appellant, on the basis of information received, under the Right to Information Act, has contended that there are vacancies existing in the said Panchayat against which the case of the appellant can be considered for her reinstatement.

15. Mr. Anjani Kumar, learned Additional Advocate

General No. 6, referring to certain orders passed by this Court, brought on record by way of supplementary affidavit, has submitted that in the peculiar facts and circumstances of the case, the concerned Selection Committee of the Gram Panchayat may consider reinstatement of the present appellant against the existing vacancy.

16. In view of the given facts and circumstances of the present case, we consider it expedient and in the interest of justice to modify the order, under appeal, by issuing a direction to the Appointment Committee of the Morwa (South) Gram Panchayat to consider reinstatement of the appellant against available vacancy of Panchayat, as per the roster, duly sanctioned by the competent authority. Decision, in this regard, must be taken within one month from the date of receipt/production of a copy of this order.

17. With the above observations and directions, this appeal is disposed of.

(I. A. Ansari, ACJ)

(Chakradhari Sharan Singh, J)

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