

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1340 of 2012

IN

Civil Writ Jurisdiction Case No. 17224 of 2008

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Md. Nasimul Hoda, S/o Late Md. Muslim R/O Village-Tharhi Bhawanipur, P.S.-
Pipra, District- Supaul. Appellant.

Versus

1. The State of Bihar.
 2. The Commissioner and Secretary Human Resources Development, Government of Bihar, Patna.
 3. The District Magistrate, Supaul.
 4. The District Superintendent of Education, Supaul.
 5. The Block Development Officer, Pipra, P.S.- Pipra, District- Supaul.
 6. The Block Education Extension Officer, Pipra, P.S.- Pipra, District- Supaul.
 7. The Block Agriculture Officer, Pipra, P.S.- Pipra, District- Supaul.
 8. The Mukhiya, Gram Panchayat Raj, Tharhi Bhawanipur, P.S.- Pipra, District- Supaul.
 9. The Panchayat Secretary, Gram Panchayat Raj Tharhi Bhawanipur, P.S.- Pipra, District- Supaul.
 10. The Headmaster, Harijan Primary School, Tharhi Bhawanipur, P.S.- Pipra, District-Supaul. Respondents.
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Appearance :

For the Appellant : Mr. Pramod Mishra with Arun Kumar, Advocates.

For the Respondents : Mr. Anjani Kumar, AAG-6

Mr. Shailendra Kumar Singh, AC to AAG-6.

For the Respodnent No.9: Mr. Sanjay Kumar, Adav.

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

And

HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 26-03-2015

The appellant has filed this appeal, being aggrieved
by and dissatisfied with the judgment and order dated 03.02.2012

of the learned Single Judge passed in C.W.J.C.17224 of 2008 (Md. Nasimul Hoda Vs. the State of Bihar & ors). We have heard learned counsels for the appellant, the State and respondent no.9.

2. Pursuant to advertisement issued petitioner/appellant, who had the qualification of Maulvi which is equivalent to Intermediate, applied for the post of Panchayat Teacher under handicapped category. There were other persons also who applied under handicapped category but one Neeraj Kumar had applied for the post of Hindi teacher. One Md. Tariq Anwar had also applied for the post of Urdu teacher. There were two other applicants also. When the matter of appointment was taken up it was found that the writ petitioner/appellant was placed at serial no.1. Having much higher academic qualification (higher marks), the appellant was appointed as Urdu teacher vide appointment letter dated 25.02.2007 in Harijan Primary School, Tharhi Bhawanipur, P.S. Pipra, District Supaul. He, having joined and started teaching, was suddenly terminated by an *ex parte* order issued by the Block Development Officer, Pipra, Supaul. This order was challenged before this Court. Before the learned Single Judge, it was urged that the order of termination being *ex parte* could not be sustained. It was secondly submitted that the writ petitioner/appellant, having been appointed as Urdu teacher under

handicapped category, there was no conflict of interest with one Neeraj Kumar who was also a candidate under handicapped category but he was a non-Urdu teacher and the vacancy was for an Urdu teacher. Therefore, any complaint by Neeraj Kumar under the handicapped category for the Urdu teacher was not correct.

3. The learned Single Judge appears to have made out a third case on his own. From records, he found that there was still another candidate for Urdu teacher, namely, Md. Tariq Anwar whose certificate of handicap percentage was higher though in merit he was much below the writ petitioner/appellant. The learned Single Judge held that in such an event Md. Tariq Anwar should have been offered the employment. Let it be noted that it was nobody's case that Md. Tariq Anwar was complainant. In fact, the writ petitioner/appellant points out that Md. Tariq Anwar was not interested because he had already got permanent employment elsewhere. The learned Single Judge on this third case dismissed the writ petition and directed for fresh consideration. Hence, this appeal.

4. We may note that at the appellate stage notices were issued to Md. Tariq Anwar. He has appeared but he has chosen not to oppose the appeal. As per the writ petitioner/appellant, the reason is simple. He stands employed

elsewhere.

5. We have considered the matter. In our view, this appeal has to be allowed. On the facts noted above, there cannot be a dispute that the writ petitioner was duly appointed. Such an appointment could not have been cancelled in an *ex parte* manner as has been done. The order of cancellation of his appointment has grave civil consequences and, therefore, it could not have been done without notice to the parties. Thus, the order was in gross violation of principles of natural justice and affecting the livelihood of the writ petitioner/appellant, which is a fundamental right. The order would be *void-ab-initio*. Secondly, even if there was a complaint by Neeraj Kumar, as noticed by the learned Single Judge, Neeraj Kumar had not come to this Court. Neeraj Kumar was not a candidate for Urdu teacher. How could there be a conflict of interest between the writ petitioner/appellant and Neeraj Kumar and how could at the first instance or on complaint of Neeraj Kumar, the appointment of writ petitioner/appellant be set aside. We fail to understand.

6. Thus, we have no option but to allow this appeal, set aside the judgment of the learned Single Judge as also the order of the Block Development Officer, Pipra cancelling the appointment of the writ petitioner/appellant. The appellant would

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be forthwith reinstated as an Urdu teacher in the aforesaid school if the position has not already been filled up. In the facts and circumstances, he would not be entitled to any remuneration for the period he has not worked but for any other purpose it would be deemed that he had been in continuous service.

7. With these observations and directions, this appeal stands allowed.

(Navaniti Prasad Singh, J.)

(Jitendra Mohan Sharma, J.)

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