

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1437 of 2012

IN

Civil Writ Jurisdiction Case No. 11825 of 2012

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Mukesh Kumar Son of Sri Ram Prasad Pandit, resident of Chouhatta,
P.O. Hajipur, District Vaishali.

.... Appellant

Versus

1. The State of Bihar
2. The Principal Secretary, Human Resources Development Department,
Bihar, Patna
3. The District Magistrate, Vaishali at Hajipur
4. The District Education Officer, Vaishali
5. The District Teacher Employment Appellate Authority, Vaishali,
District Vaishali
6. The Block Development Officer, Raghapur, District Vaishali
7. The Block Education Officer, Raghapur, District Vaishali
8. The Mukhiya, Gram Panchayat Raj, Baharampur (Raghapur), District
Vaishali
9. The Panchayat Secretary, Gram Panchayat Raj, Baharampur, District
Vaishali
10. Vikash Kumar Son of Chandrika Prasad Malakar, resident of village
Khusroopur Miyatdi, P.O. And P.S. Khusroopur, District Patna.

.... Respondents

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Appearance :

For the Appellant	:	Mr. Srikrishna Ranjan, Advocate
For the Respondent	:	Mr. Vasant Vikas, Advocate
For the respondent no. 8 & 9	:	Mr. Mukesh Kumar, Advocate
For the respondent no. 10	:	Mr. Rajeev Kumar Singh, Advocate
		Mr. Shashi Bhushan Kumar, Advocate
For the State	:	Mr. Kumar Alok, SC 8
		Mr. Rikesh Sinha, AC to SC 8

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

And

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 26-11-2015

Heard learned counsel for the appellant, who was

the unsuccessful writ petitioner, learned counsel for the

- 2 -

respondent nos. 8 & 9, and, learned counsel for the respondent no. 10, who was the private respondent whose appointment as Panchayat Teacher is in question and under cloud.

With consent of the parties, this appeal has been heard for final disposal at this stage itself.

The advertisement for appointment of Panchayat Teacher was issued in the year 2008 by the State. Applications were to be filed by the persons who were Intermediate for the posts of teacher in various panchayats of the State. The writ petitioner/appellant filed his application in the Panchayat Block Office. It was not forwarded to Panchayat Selection Committee. The selection process was completed after counselling, and respondent no. 10 was selected. The writ petitioner/appellant on coming to know this, that, he had been wrongly left out in the selection process, moved the Teachers Appellate Tribunal. The Teachers Appellate Tribunal sent notices to the Panchayat Selection Committee and Secretary of the Panchayat, and even though the notices were sent by registered post, they were returned unserved upon refusal to receive the notice. In the meantime, even though, the selection had been made of respondent no. 10, appointment letter was not issued. The Tribunal heard the matter and held that an application filed by the

- 3 -



writ petitioner/appellant in the Block office of the Panchayat, it was the duty of the Panchayat Secretary of the Panchayat to forward the same to the Panchayat Selection Committee which not having been done, it was required to be done. The Tribunal further ordered that writ petitioner/appellant may file a duplicate application which would be entertained, and as appointment letters had not been issued, writ petitioner/appellant would be taken in selection process. This order of the Tribunal was passed on 03.10.2009. Everybody understood it very well. Respondent no. 10 filed a writ petition in the High Court challenging this order of the Tribunal being C.W.J.C. No. 7807/2011. This would be of some consequence because a challenge was being made after two years. In the meantime, pursuant to the order of the Tribunal aforesaid, writ petitioner/appellant was purportedly sent notice for counselling on 05.08.2010 for appearing in the counselling to be held on 12.08.2010. The writ petitioner/appellant could not appear. The reason was simple. The notice itself was dispatched under registered post on 18.08.2010 as certified by the postal authority i.e. six days after due date of counselling. It was of course received much later on 21.08.2010. Why this was done is also clear because the appointment letter of respondent no. 10 was issued on 14.08.2010 and it is this date

that had to be crossed because a fresh counselling was held on 12.08.2010, and issuance of registered letter for counselling before 14.08.2010 would have jeopardized the appointment of respondent no. 10.

The writ petitioner/appellant finding that the relief whatever he had got had been successfully frustrated by the scheme put into operation by the selection authority and respondent no. 10, moved the Tribunal once again for implementation of the Tribunal's order for a fair counselling. It is at this moment, respondent no. 10 moved the High Court by filing C.W.J.C. No. 7807/2011, when he had apprehensions that the Tribunal may upset his appointment in an ex-parte order. He obtained order of status quo from the High Court and stay of further proceedings before the Tribunal in the second proceeding. From this fact another fact is clear that respondent no. 10 was aware of the Tribunal's first order, and the proceedings at the second instance for implementation of the first order of the Tribunal. Having thus obtained stay/status quo order from this court, the respondent no. 10 then managed to persuade the Tribunal to dispose of the proceedings on the ground that the matter was sub-judice before the High Court, and the High Court had stayed the matter. Therefore, the Tribunal dropped the further



- 5 -



proceedings on 15.06.2011. It is against this that petitioner filed the instant application. But in the meantime, respondent no. 10 having seen that the Tribunal's proceeding stood terminated, withdrew his challenge to the proceedings as before this Court. Naturally, writ petitioner/appellant was left remediless, which, inasmuch as the application before the Tribunal had been successfully frustrated by respondent no. 10, and respondent no. 10 also withdrew his writ petition. It is under those circumstances that the writ petitioner/appellant filed the writ petition in this court.

In our view, the conduct of the authorities and the respondent no. 10 clearly show that it was a calculated move all along to deprive the writ petitioner/appellant of his right to participate in the selection process. This court cannot take notice to these dubious method adopted. A notice of counselling, which was sent purporting to be pursuant to order of the Tribunal, at the first instance, is certified by the postal authorities to have been booked by registered post six days after the date of counselling. That is a fraud.

First, when writ petitioner/appellant sought to file his application it was not sent to the Selection Committee, when the Tribunal ordered for his counselling which was before the

- 6 -



appointment letters were issued, it was contrived to send the letter of counselling after the date of counselling. In the meantime, the letter of appointment was issued, then, when petitioner challenged it before the Tribunal, the second time, respondent no. 10 approached this Court in a writ proceedings and got order of status quo from this Court and stay in the proceeding before the Tribunal. Once the Tribunal dropped the proceedings he then withdrew the writ petition. These dubious and devious methods persuade us to interfere in the matter.

We would, thus, direct the Selection Committee of the Panchayat to take into account the educational qualification of the respective parties as obtaining on the date of first application i.e. first selection process which was held in the year 2008, and then compare the eligibility, suitability of the writ petitioner/appellant and respondent no. 10 and thereafter take a decision in accordance with law. If they find that the writ petitioner/appellant was more meritorious at that point of time and was liable to be selected, then they would have to decide and terminate the services of respondent no. 10 and appoint the writ petitioner/appellant in his place notwithstanding subsequent acquisition of additional qualification by respondent no. 10.

In the meantime, the writ petitioner/appellant would

- 7 -

not get any benefit of his past service, in the event, he is selected, his services would be deemed in such an event from the date when he is now appointed.

With these observations and directions, while setting aside the order of the learned Single Judge, we allow this appeal, we expect the Panchayat Samittee would comply with our orders within a period of one month from the date of receipt of a copy of this order.

We set aside the order of the learned Single Judge, accordingly. We need not refer to various reasons, for those, we have already recorded in this case in our order dated 07.08.2015.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

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