

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1618 of 2014

IN

Civil Writ Jurisdiction Case No. 19043 of 2012

=====

Md. Naushad, son of Md. Farook, Resident of Village – Saidpur (Balua), P.S. -
Matihani, District - Begusarai

.... Petitioner- Appellant/s

Versus

1. The State of Bihar
2. The District Teacher Employment Appellate Tribunal, Begusarai
3. The District Magistrate, Begusarai
4. Sub Divisional Officer (Balua), Begusarai
5. The District Education Officer, Begusarai
6. Panchayat Secretary, Gram Panchayat, Parmanandpur, Balua, Begusarai
7. Mukhiya Gram Panchayat Parmanandpur, Balua, Begusarai
8. Saroj Kumari daughter of Ram Laxhan Mishra, Primary Teacher, Primary
School, Sheikdih, Kasba, P.S. - Balua, District - Begusarai
9. Nishat Ikbal W/O Md. Sanjar Resident of Village- Pokharia, P.S. - Begusarai,
District - Begusarai

.... Respondent/s

=====

Appearance :

For the Appellant : Mr. Naresh Chandra Verma, Advocate
Mr. Natraj Verma, Advocate

For the Respondents-State : Mr. Mr. S. Raza Ahmad, A.A.G. IX
Mr. Vishwambhar Prasad, A.C. to AAG IX

For respondent Nos. 8 & 9 : Mr. Krishna Kant Singh, Advocate

=====

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

And

**HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date: 08-10-2015

Pursuant to a selection process, which had been initiated,
in the year 2008, for appointment of Urdu teacher in Gram Panchayat
Parmanandpur, Block-Balua, within the district of Begusarai, the
appellant herein applied. In the roster, which had been prepared to fill
up eight vacancies, one post of Urdu Teacher was shown vacant.

Following the appellant's application seeking appointment, he was called for *counselling*.

It is the appellant's case that upon his attending *counselling* and becoming successful, he was, by letter, dated 25.05.2009, asked to submit his '*Sahmati Patra*', i.e., letter of acceptance, within 31.05.2009. The appellant did the needful thereafter accordingly, but no appointment letter was issued to him and, upon enquiry made, he came to know that respondent No.6, namely, Panchayat Secretary, Gram Panchayat, Parmanandpur, had issued appointment letter to respondent No.9, namely, Nishat Ikbal, who had not appeared for *counselling*.

As the appellant was not appointed, he filed an appeal in the District Teachers Employment Appellate Authority, Begusarai (hereinafter referred to as 'the Tribunal').

By order, dated 17.08.2012, passed in Case No.92 of 2010, the learned Tribunal dismissed the appellant's appeal, assigning the reason that the appointment of respondent No.8, namely, Saroj Kumari, was made against a post, which, as per reservation roster, was reserved for a physically handicapped female of unreserved category with ocular disability and as the post, in question, was not meant for unreserved category, the appointment of respondent, namely, Saroj Kumari, who is respondent No.8 in the present appeal, was not illegal and /or impermissible in law.

Aggrieved by the dismissal of his appeal, the appellant herein filed a writ petition, under Article 226 of the Constitution of India, which gave rise to CWJC No.19043 of 2012.

By order, dated 22.08.2013, as the writ petition has been dismissed, the appellant has preferred this appeal.

We have heard Mr. Natraj Verma, learned Counsel, appearing for the appellant, and Mr. S. Raza Ahmad, learned Additional Advocate General No. IX, appearing for the State-respondents. We have also heard Mr. Krishna Kant Singh, learned Counsel, appearing for respondent Nos.8 and 9.

Upon considering the present appeal, what we find is that while it was the case of the writ petitioner-appellant that the post, in question, to which the appellant ought to have been appointed, was a post meant for Urdu teacher of unreserved category, the case of the State-respondents, as discernible from the affidavit filed by the Panchayat Secretary, is that the said post was a solitary post for appointment of a female from unreserved category with ocular disability. The learned Tribunal could have dismissed the appellant's appeal on the ground that the appellant has not been able to prove his case, but it could not have simply accepted the case of the Panchayat Secretary that the said post was meant for female of unreserved category of physically handicapped with ocular disability, without taking evidence, there being serious dispute over this fact.

Situated thus, we are clearly of the view that the learned Tribunal failed in serious error in upholding the contention of the Panchayat Secretary. In all fairness, in a case of this nature, the learned Tribunal ought to have recorded the evidence sought to be adduced by the parties and, then, decided the matter, in accordance with law, in the light of evidence, which might have come on record.

In the result and for the foregoing reasons, we set aside the order, dated 22.08.2013, passed, in CWJC No.19043 of 2012, and also the order, dated 17.08.2012, passed, in case No.93 of 2010, by the learned Tribunal.

We remand the proceedings to the learned Tribunal with a direction to dispose of the appeal after recording evidence, which may be adduced by the parties concerned. The concerned parties are directed to appear and adduce evidence before the learned Tribunal, on 1st of December, 2015.

With the above observations and directions, this appeal stands partly allowed.

There shall, however, be no order as to costs.

(I. A. Ansari, ACJ)

(Chakradhari Sharan Singh, J)

Sunil/-

U			
---	--	--	--