

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1480 of 2014

IN

Civil Writ Jurisdiction Case No. 3938 of 2014

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Md. Ezajul Haque Ansari, son of Late Md. Halim Ansari, Resident of Village and P.O. - Mashrak Tola Gopalbari, Police Station - Mashrak, District - Saran (Chapra), at present posted and working as Panchayat Teacher in Govt. Urdu Primary School, Bangra, Anchal - Mashrak, District - Saran (Chapra).

.... Petitioner/Appellant

Versus

1. The State of Bihar
2. The Principal Secretary, Education Department, Government of Bihar, Patna
3. The Director, Primary Education, Bihar, Patna.
4. The District Magistrate, Saran at Chapra.
5. The District Education Officer, Saran at Chapra.
6. The District Programme Officer (Establishment), Saran at Chapra.
7. The Block Development Officer, Mashrak, District – Saran.
8. The Block Education Officer, Mashrak, District – Saran.
9. The Mukhiya of Gram Panchayat Raj, Bangra, Block - Mashrak, District – Saran.
10. The Panchayat Secretary of Gram Panchayat Raj, Bangra, Block - Mashrak, District – Saran.
11. The Member, District Teacher's Employment Appellate Authority, Saran at Chapra.

.... Respondents/Respondents

12. Md. Akhtar Ali, son Shafi Ansari @ Layakat Ali, Resident of

Village - Bangra Purab Tola, P.O. - Dumarsan Bangra, Police
Station - Mashrak, District - Saran (Chapra).

.... Private Respondent/Respondent

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Appearance :

For the Appellant

: Mr. Bindhyachal Singh, Adv.

Mr. Yashraj Bardhan, Adv.

For the Respondent Nos.2 – 8 : Mr. Prabhat Kumar Singh, Adv.

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

And

**HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

C.A.V. JUDGMENT

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

Date: 03/11/2015

The appellant, in the present appeal, under Clause 10 of the letters patent of the High Court, was the petitioner in C.W.J.C. No.3938 of 2014 and is aggrieved by an order, dated 21.04.2014, passed by a learned single Judge, whereby the aforesaid petition, filed under Article 226 of the Constitution of India, has been dismissed. Learned single Judge, by the order, under appeal, has upheld an order, passed by the District Teachers Employment Appellate Authority, Saran, in Case No.904 of 2009, whereby the appellant's appointment, as a Urdu



teacher in Gram Panchayat Raj, Bangra, in the district of Saran, has been held to be illegal and has, accordingly, been cancelled, on the ground that he did not have the requisite qualification prescribed for Urdu teacher, under Bihar Panchayat Primary Teachers (Appointment and Service Conditions) Rules, 2006 (***hereinafter referred to as "the Rules"***).

2. The facts, which are not in dispute, are that for the appointment year 2006-2007, the appellant had applied for his appointment to the post of Urdu teacher in Gram Panchayat, Bangra. At the time of submission of his application, he had the qualification of matriculation with Urdu. He was selected for the said post and was appointed, on 05.01.2007, at Bangra Maktab, Mashrakh, Saran. It is his case that he belongs to Extremely Backward Class Category and he had submitted his certificate to this effect at the time of submission of his application. His appointment, as per Annexure-7, was subject to the condition that he acquired requisite Intermediate Qualification within a period of six years. The said condition is said to have been incorporated in view of the provisions, contained in the Rules, that if candidates, belonging to reserved category, with requisite qualification, were not available, Matric pass candidates, belonging to

the concerned reserved categories only, can be appointed if they submit an undertaking at the time of their appointment that they shall be acquiring the required qualification within a period of six years. The appellant is said to have acquired the required qualification of Intermediate with Urdu in the year 2008.

3. One Md. Akhtar Ali (respondent No.12 herein) filed a petition before the Divisional Commissioner, Saran, challenging the appellant's appointment, the ground of challenge being that the appellant did not have the requisite qualification. Respondent No.12 also claimed that he (i.e., respondent No. 12) had requisite qualification for appointment as a Urdu teacher and better merit than the appellant. On the basis of the petition, filed by the respondent No.12, though Case No.33-104 of 2007 was registered in the Office of the Divisional Commissioner, Saran, no order could be passed thereon. The Commissioner, Saran Division, by an order, dated 17.03.2009, passed the following order:-

***"This matter will be decided
by the authority, hence dropped."***

4. The dispute, as raised by respondent No.12, thus, came up for consideration by the District Teachers Employment Authority, Saran at Chapra

(hereinafter referred to as "the Tribunal"). The learned Tribunal, upon interpretation of Rules 6 and 8 of the Rules, came to a conclusion that for appointment as a Urdu teachers, a candidate must have Higher Secondary/ Intermediate or equivalent qualification and Maulvi qualification. As regards the appellant's case for grant of temporary relaxation in the matter of requisite qualification for the post, reserved for Extremely Backward Class Category, as claimed by the appellant, the learned Tribunal had recorded that neither the appellant nor the Panchayat Secretary produced any evidence before him that the post, against which the appellant was appointed, was reserved for an Extremely Backward Class Category candidate. The learned Tribunal has also recorded that the appellant was appointed against Roster Point No.90, which was reserved for the Backward Class Female. The learned Tribunal held that the appointment of the appellant, who claimed to be belonging to Extremely Backward Class Category, against post reserved for Backward Class Female, was totally illegal and, accordingly, cancelled the appointment of the appellant as a Urdu teacher. At the same time, the learned Tribunal did not find any merit in the claim of respondent No.12 for his appointment as a Urdu teacher and, accordingly, refused to grant any relief in favour of

respondent No. 12. For rejecting the claim of respondent No.12, the learned Tribunal has recorded that respondent No. 12 could not prove his case as to whether he ever participated in the process of counselling.

5. In the background of the facts as noted above, two writ applications were filed, one by the appellant, giving rise to C.W.J.C. No.3938 of 2014, and the other by respondent No.12, giving rise to C.W.J.C. No.4134 of 2014. By a common order, which is under appeal herein, the learned single Judge has dismissed both the writ applications. Respondent No.12 has not preferred any appeal against the said order of the learned single Judge. As a matter of fact, from the order, under appeal, what transpires is that it was contended, on behalf of respondent No.12 before the learned Tribunal, that he (i.e., respondent No. 12) was not interested in his own appointment, but for cancellation of the entire process of earlier selection and appointment and, thereafter, fresh consideration of appointment of all persons including himself.

6. Mr. Bindhyachal Singh, learned counsel, appearing on behalf of the appellant, has submitted that the learned Tribunal has wrongly interpreted provisions of Rules 4, 6 and 8 of the Rules and held the appellant not



having requisite qualification for consideration of his appointment. As regards the finding of the learned Tribunal that the appellant was illegally appointed against Roster Point No.90, which was meant for Backward Class Female, Mr. Singh, learned Counsel, has submitted that the finding is wholly erroneous. Mr. Singh, learned Counsel, has further contended, relying upon Annexures-1 & 2 of the *memo* of appeal, that the appellant was appointed against Roster Point No.88, which was reserved for Extremely Backward Class.

7. We find from the order, passed by the learned Tribunal, which has been affirmed by the learned single Judge, that the appellant's appointment has not been cancelled on the ground that he did not have the requisite qualification for the purpose of consideration of his selection and appointment to the post of Urdu teacher against post reserved for Extremely Backward Class. The learned Tribunal has recorded that in course of the proceedings before it, neither the appellant nor the Panchayat Secretary could bring any evidence to show that the post, against which the appellant was appointed, was reserved for Extremely Backward Class to which the appellant belonged. Even in the writ proceedings, the appellant did not bring on record any material to show that



he was appointed against Roster Point No.88, which was reserved for Extremely Backward Class. Annexure-1 to the present *memo* of appeal, said to be the xerox copy of the selected candidates for appointments, was, admittedly, not brought on record in the writ proceedings nor Annexure-2 showing Roster Points for different categories of candidates. The learned Tribunal, in its order, has clearly recorded that there was no evidence (i) to the effect that the appellant's appointment was against the post reserved for Extremely Backward Class Category, and that (ii) no candidate, with requisite qualification, was available for appointment, which called for granting of relaxation in qualification in favour of the appellant.

8. In our considered view, the appellant's case, in the present appeal, is based entirely on new facts and documents, which have, for the first time, been brought on record by way of Annexures-1 and 2 to the present *memo* of appeal. It is trite that parties cannot be allowed to question the validity of the order of the Tribunal or learned single Judge on the basis of completely new facts.

9. Mr. Bindhyachal Singh, learned counsel, appearing on behalf of the appellant, assailing the order, under appeal, has contended that temporary relaxation, as



provided under the relevant Rule, as regards qualification for reserved category candidates, is equally applicable for the candidates applying for the post of Urdu teacher. We are not required to deliberate at all on this aspect, in the facts and circumstances of the present case, *inasmuch* as there was no evidence on record before the learned Tribunal or before the learned single Judge that the post, against which the appellant was appointed, stood reserved for Extremely Backward Class Category. Secondly, there is no material on record to arrive at a definite conclusion that the appellant was required to be given such relaxation in qualification, because there was no other candidate of Extremely Backward Class Category, having requisite qualification of Intermediate/Maulvi.

10. We, therefore, do not find any merit in the present appeal, which is, accordingly, dismissed.

11. However, there shall be no order as to costs.

12. Before parting with this appeal, we may, however, hasten to point out that since new facts have been brought in the appeal before us and we do not find it legally permission or desirable to examine the merit of the new facts which the appellant has brought on record, we leave the appellant free to approach the learned Tribunal

with appropriate application for review, provided that the appellant succeeds in making a case for review of the order, dated 20.12.2013, which was impugned in the writ petition.

(Chakradhari Sharan Singh, J.)

I. A. Ansari, ACJ. : I agree

(I. A. Ansari, ACJ.)

Praveen-II/-

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