

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.698 of 2012
IN
Civil Writ Jurisdiction Case No. 7944 of 2011

Alka Kumari W/O Niraj Kumar Singh, D/O Udhav Kuer R/O Bhojpurwa, P.S.-
Manjha Garh, District- Gopalganj

.... (7th Respondent in Writ Petition)-Appellant

Versus

1. The State of Bihar

2. The Principal Secretary, Human Resources Development Department, Govt. Of
Bihar, Patna

3. The Collector, Gopalganj

4. The B.D.O., Baikunthpur Block, District- Gopalganj

5. The Block Education Extension Officer, Baikunthpur Block, District- Gopalganj

6. The Chairman District Teachers Employmnet Appellate Tribunal, Gopalganj

7. Srimati Suman Tiwary D/O Mukesh Tiwary R/O Village- Dhanauti, P.S.-
Masrakh, District- Chapra (Petitioner in the Writ Petition)

.... Respondents

Appearance :

For the Appellant/s : Mr. Udit Narayan Singh

Mr. Uday Pratap Singh

For the State : Mr.Kumar Pankan, AC to SC 21

For the Respondent No. 7 : Mr. Amaresh Kumar Sinha

Mr. Harendra Prasad

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 16-01-2015

The 7th respondent in CWJC No. 7944 of 2012 is in
appeal. The writ petition was filed by the 7th respondent herein. The

relevant facts are as under.

The Block Development Officer, Baikunthpur Gopalganj District, initiated steps for appointment of untrained teachers in the general category, reserved for women. The appellant and the 7th respondent and certain other submitted their applications for the post. The qualification stipulated for the post is pass in Intermediate examination. On being selected by the concerned authority, the 7th respondent was appointed as teacher through order dated 4.3.2011. Challenging the same the appellant herein filed an appeal before the District Teachers Employment Appellate Tribunal, 6th respondent, (hereinafter referred to as 'Tribunal'). The plea raised by the appellant was that she secured 70.8% marks, whereas the 7th respondent secured 70% marks in the Intermediate. The Tribunal accepted her contention and allowed the appeal. It was directed that the appointment of the 7th respondent be cancelled and the appellant shall be appointed. Aggrieved by the said order, the 7th respondent filed the writ petition.

The learned Single Judge has allowed the writ petition and has set aside the order passed by the Tribunal. Hence, this Letters Patent Appeal.

Heard Mr. Udit Narain Singh, learned counsel for the appellant, Mr. Kumar Pankaj, learned counsel for the State and Mr. Amaresh Kumar Sinha. learned counsel for the respondent no.7.

It has already been mentioned that qualification stipulated for the post is passed Intermediate and the selection is purely on the basis of that. In case the appellant has secured more marks than the 7th respondent, certainly, she deserves to be selected. The only basis on which the Tribunal has set aside the appointment of the 7th respondent is that the appellant has secured 70.8% marks in the

Intermediate Examination, whereas the 7th respondent has secured 70% marks. In other words, the appellant was found to have secured 8% more marks than the 7th respondent.

In the context of comparison of marks, it can be only with reference to the degree or qualification of the same nature. Had it been a case where the appellant and the 7th respondent studied the same course and passed in it, the view expressed by the Tribunal can certainly be accepted. However, the fact is not that. While the 7th respondent passed the Intermediate examination conducted by the State of Bihar, the appellant is said to have passed the examination conducted by the Board of Higher Secondary Education, New Delhi. Neither the appellant pleaded nor the Tribunal recorded a finding, that the examination conducted by the Board of Higher Secondary Education was recognized as equivalent to Intermediate examination conducted by the State of Bihar. On the other hand, the State of Bihar categorically pleaded that it did not recognize any examination conducted by the Board of Higher Secondary Education, New Delhi. The learned Single Judge has taken note of the same and reversed the order passed by the Tribunal.

Learned counsel for the appellant is able to point out as to how the view taken by the learned Single Judge can not be accepted.

An attempt is made to rely upon the order dated 25.10.2011 passed by this Court in CWJC No. 18800 of 2011. That writ petition was filed by the appellant herein with a prayer to direct the respondents therein, to enforce the order dated 4.3.2011 passed by the Tribunal. Obviously, because the order passed by the Tribunal was in force at that time, the learned Single Judge directed implementation thereof. Once that very order passed by the Tribunal is set aside, the

order passed in CWJC No. 18800 of 2011, for implementation thereof, does not constitute any ground to deny the relief to the 7th respondent.

We, therefore, dismiss the appeal.

There shall be no order as to costs.

(L. Narasimha Reddy,CJ)

(Gopal Prasad, J)

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