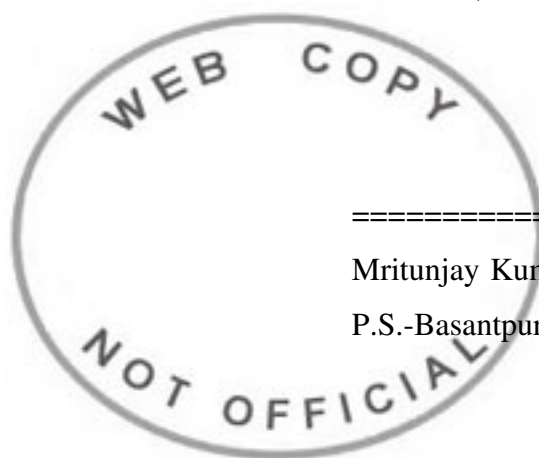




IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No. 835 of 2014

IN

Civil Writ Jurisdiction Case No. 945 of 2013

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Mritunjay Kumar, S/o Shankar Manjhi, resident of Village-Bala, P.O.-Kishanpura,
P.S.-Basantpur, District-Siwan.

.... Appellant/Opposite Party

Versus

1. The State of Bihar.
2. The Principle Secretary, Human Resource Department, Patna, Bihar.
3. The Director Primary Education, Patna, Bihar.
4. The District Appellate Authority (Selection of Teachers), Gopalganj.
5. The Commisioner, Saran Division at Chapra, Bihar.
6. The Collector, Gopalganj, Bihar.
7. The District Superintendent of Education, Gopalganj, Bihar.
8. Block Education Extension Officer, Block-Sidhwalia, District-Gopalganj.
9. Mukhiya, Gram Panchayat Raj Budhsi under Sudhwalia Block, District-Gopalganj.
10. Panchayat Secretariat, Budhsi Panchayat in Sudhwalia Block, District-Gopalganj.
11. The Block Development Officer, Block-Sidhwalia, District-Gopalganj.
12. Sri Lalit Kumar Ram, S/o Sri Bhubneshwar Ram, resident of Village+P.O.-Purandarpur, P.S.-Goraiya Kothi, District-Siwan.

.... Respondents/Opposite Parties

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Appearance :

For the Appellants : Mr. Prabhakar Nath Rai, Advocate

For the Respondents : Mr. Manoj Kumar Ambastha (G.P.-14)

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

And

**HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date: 11-08-2015

This appeal, under Clause - 10 of the Letters Patent Appeal of the Patna High Court, has been preferred by the appellant, being aggrieved by an order, dated 06/03/2014, passed by the learned Single Judge, in C.W.J.C. No. 945 of 2013, whereby, while allowing the writ application, filed by the respondent No. 12 herein, appointment of the appellant, as Panchayat Teacher of Budhasi Gram Panchayat of Gopalganj district, has been held to be illegal and he has accordingly been directed to be terminated from service.

2. The respondent No. 12 had assailed the order passed by the District Teachers Employment Appellate Authority, Gopalganj (*hereinafter referred to as the "Tribunal"*), dated 30/08/2012, in Case No. 37 of 2012, whereby the Tribunal had held appointment of the appellant, as Panchayat Teacher of the said Gram Panchayat, as valid and had rejected the claim of respondent No. 12 for his appointment to the said post.

3. Foundational facts are short and not much in dispute. The appellant and respondent No. 12, both were



applicants for appointment as Panchayat Teacher in Budhasi Gram Panchayat, under Gopalganj district, in a selection process, held in the year 2006, against the post reserved for scheduled castes category. Intermediate qualification is the prescribed minimum qualification for appointment to the said post under Bihar Panchayat Primary Teachers (Employment and Service Condition) Rules, 2006. The marks, scored by a candidate in Intermediate level/examination, are, admittedly, the basis for selection to the said post. The appellant was selected for the said post on the basis of his marks (569) obtained in the Intermediate examination out of total marks of 1000, which included vocational subject. Respondent No. 12 has, admittedly, scored 532 marks out of 900 without any marks in vocational subject. If the marks, scored by the appellant in vocational subject, are deducted from the total marks, scored by him in the Intermediate examination, he would, admittedly, have scored of 527 out of 900 marks. Apparently thus, whereas, the merit of respondent No. 12 in Intermediate examination was assessed on the basis of marks scored by him (532) out of 900, the appellant's merit was assessed on the basis of 569 marks, scored by him, out of



1000, including the marks of the vocation subject. Learned Single Judge has, referring to the State Government decision, as contained in Letter No. 1082, dated 18/07/2006, held that while determining the respective merits of the candidates, marks, scored in vocational subject, was not to be taken into account. Having found that respondent No. 12 had better merit points than the appellant, on the basis of respective marks obtained by them in Intermediate examination, the learned Single Judge allowed the writ application, holding respondent No. 12 to be a better candidate of the same category, whose case was ignored on wrong calculation and computation of marks of the appellant and accordingly, set aside his appointment with a direction to the Selection Committee of the Gram Panchayat to take steps afresh for filling up the post of Panchayat Teacher on the basis of the same panel from amongst the same candidates out of which, the appellant was appointed ignoring the claim of the respondent No. 12.

4. Learned counsel, appearing on behalf of the appellant, assailing the order of the learned Single Judge, has submitted that respondent No. 12, as a matter of fact, had not



participated in the process of counselling and, therefore, no direction could have been issued for his appointment as Panchayat Teacher. We do not find much substance in this submission made by learned counsel for the appellant. It appears that this issue was raised by the appellant before this Court in an earlier writ application filed by respondent No. 12, bearing C.W.J.C. No. 13665 of 2012, wherein the appellant was impleaded as respondent No. 11. This Court, by an order, dated 02/03/2012, while disposing of the said writ application, had directed that if it was found by the Tribunal, on the basis of records of selection and appointment, that respondent No. 12 had voluntarily given up his claim for being appointed on the post of Panchayat Teacher in the Panchayat in question and/or the petitioner had not appeared in the process of counselling despite service of a valid notice, it would not disturb the appointment of the appellant.

5. In the light of the said order of this Court, dated 02/03/2012, the Tribunal passed the order, dated 30/08/2012. There is no finding in the order of the Tribunal, dated 30/08/2012, that respondent No. 12 had voluntarily given up his claim for his appointment. On the other hand, the Tribunal

accepted the claim of the appellant that he had 569 marks in the Intermediate examination and had, therefore, better merit points than respondent No. 12.

6. We do not find any infirmity in the reasoning assigned by the learned Single Judge that the merit list ought to have been prepared on the basis of marks scored by the respective candidates in the Intermediate examination out of 900 marks. There is no dispute raised on behalf of the parties that if the marks scored by the appellant in vocational subject are deducted and his merit is assessed, on the basis of 900 marks in the Intermediated examination, he is bound to be placed below respondent No. 12. Learned counsel for the appellant has not been able to satisfy us that it was compulsory for passing Intermediate examination to have additional or vocational subject. We notice from the order of the learned Single Judge, which has not been disputed by the parties, that offering of a vocational subject or additional is optional and teaching of such optional or vocational subject is not available uniformly all over the State of Bihar and is done in very few selected schools. It has, therefore, rightly been held by the learned Single Judge that comparative merits of the

candidates, participating in the process of selection for appointment to the post of Panchayat Teachers, was to be assessed on the basis of their respective scores in Intermediate examination, out of total 900 marks.

7. In view of the facts, which are admitted, and as have been discussed above, we find no infirmity in the order of the learned Single Judge, dated 06/03/2014, passed in C.W.J.C. No. 945 of 2013.

8. We do not find any merit in this appeal. This appeal is, accordingly, dismissed.

(I. A. Ansari, ACJ.)

(Chakradhari Sharan Singh, J.)

Praveen-II/-

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