

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.471 of 2014
IN
Civil Writ Jurisdiction Case No. 12310 of 2013**

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1. Nilam Kumari Daughter Of Sri Achhelal Prasad Resident Of Village, P.O. And Police Station- Pakri Dayal, District- East Champaran (Motihari)

.... Appellant

Versus

1. Gita Kumari Wife Of Ashok Kumar Alankar Resident Of Village/P.O./Police Station- Pakri Dayal, District- East-Champaran (Motihari)
2. The State Of Bihar, Through Secretary, Department Of Education, Bihar, Patna
3. The Principal Secretary, Department of Personnel and Administrative Reforms, Govt. Of Bihar, Patna
4. The District Education Superintendent, East Champaran (Motihari)
5. The District Education Officer, East Champaran (Motihari)
6. The Block Education Officer, Pakri Dayal, Police Station- Pakri Dayal, District- East Champaran (Motihari)
7. The Mukhiya-Cum-President, Panchayat Teachers Appointment Committee, Tharbitia Panchayat, Block/P.S.- Pakridayal, District- East Champaran (Motihari)
8. The Panchayat Secretary, Tharbitia Panchayat, P.S./Block- Pakridayal, District East Champaran (Motihari)

.... Respondents

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Appearance :

For the Appellant : Mr. Ritesh Kumar Narain Singh, Advocate
For the State : Mr. Rajiv Roy, GP 5
Mr. Suresh Kumar AC to GP 5

For the respondent No.1: Mr. Chkrapani, Advocate
Mr. Ambuj Nayan Chaubey, Advocate

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CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI

and

**HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

CAV JUDGMENT

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

Date: 19 -02-2015

In this *intra* Court appeal under Clause 10 of Letters Patent of this Court, challenge is posed to the order, dated 10.02.2014, passed by a learned single Judge, in CWJC No. 12310 of 2013, whereby the learned single Judge has allowed



the writ application, filed under Article 226 of the Constitution of India, by Gita Kumari (respondent No.1). The said Gita Kumari had preferred the writ application, giving rise to the said CWJC No. 12310 of 2013, assailing order, dated 29.04.2013, passed by the District Teachers Appointment Appellate Authority (hereinafter referred to as the Tribunal), in Case No. 429 Of 2008, whereby the learned Tribunal had cancelled her appointment as Panchayat Teacher and had directed the Panchayat Secretary of Gram Panchayat, Tharbitia, to appoint the appellant, Nilam Kumari, against the said post. The appellant herein, Nilam Kumari, was also the appellant before the learned Tribunal.

2. On perusal of the order passed by learned single Judge under appeal, it would transpire that the order of the Tribunal, dated 29.04.2013, was challenged by respondent No.1 on the ground, *inter alia*, that the Tribunal, before passing the said order, did not ensure service of notice of the complaint upon respondent No.1, filed before the Tribunal, by the appellant.

3. Gita Kumari, the writ petitioner- respondent No.1, pleaded, in her said writ application, that in the original complaint filed by the appellant, Nilam Kumari, on 20.01.2009, no grievance was raised against her. According to her, for the first time, on 27.09.2011, the appellant, Nilam Kumari, raised a plea against respondent No.1, Gita Kumari, before the Tribunal,

by filing a petition in the proceeding already pending before it.

4. From the order under appeal, it also appears that the learned single Judge, in order to satisfy himself, as to whether the notices were, in fact, served upon respondent No.1 or not, had called for the original records of Case No. 429 of 2008, which was disposed of by the Tribunal by order, dated 29.04.2013, impugned in the writ proceeding. Learned single Judge, upon examining the original records, concluded that in the original complaint filed on 20.01.2009, not even a word was whispered before the Tribunal as regards illegality in selection and appointment of respondent No.1, Gita Kumari, and, in fact, such an application was filed only on 27.09.2010, though, in the meanwhile, the appellant had filed as many as five separate applications. On 27.09.2010 itself, the Tribunal had passed the order for issuance of notice upon respondent No.1 fixing 18.10.2010 as the date for taking up the matter. The Tribunal did not record, in its subsequent order, as to whether the earlier order, dated 27.09.2010, passed directing issuance of notice upon respondent No.1, was at all complied with or not. By a subsequent order, dated 16.11.2010, yet another notice was ordered to be issued by the Tribunal to respondent No.1. The Tribunal, without giving any indication in its order, as regards service of notice, passed yet another order, on 12.09.2011, for issuance of notice, upon respondent No.1, through registered



post. In another order, dated 11.10.2012, the Tribunal recorded that the appellant had taken no steps for service of notice upon respondent No.1. Upon perusal of the original records of the Tribunal, learned single Judge found that the Tribunal was not maintaining properly the records of a judicial proceeding and doubted the correctness of the fact that notices were sent by registered post on 24.11.2012. It also appears, as has been found by learned single Judge, on the basis of original records, particularly, the order, dated 03.12.2012, that the notice, alleged to have been issued, on 24.11.2012, to respondent No.1 by registered post had been returned back to the Tribunal with endorsement of the postal peon to the effect that addressee was not traceable on the given address. The Tribunal, peculiarly enough, recorded, on 03.12.2012, in its order, that notice was evidently served upon respondent No.1 and fixed next date of the case as 19.12.2012. Learned single Judge, in such circumstance, found that the Tribunal could not have passed the order, dated 03.12.2012, recording that the notices were evidently served on respondent No.1- the writ petitioner.

5. In the background of the findings noticed above, learned single Judge allowed the writ application by the order under appeal and set aside the impugned order of the Tribunal with a direction that the complaint, filed by the appellant, would be decided afresh after giving due notice to the concerned

parties. As the parties were represented before the writ Court by their respective counsel, learned single Judge directed the appellant and respondent No.1 to appear before the Tribunal on 10.03.2014 and asked the Tribunal to proceed afresh, in the matter, in accordance with law.

6. Mr. Ritesh Kumar Narain Singh, learned counsel for the appellant, has submitted that learned single Judge ought not to have set aside the impugned order, dated 29.04.2013, passed by the Tribunal, in Case No. 429 of 2008, whereby the Tribunal had set aside the appointment of Gita Kumari, respondent No.1, as Panchayat Teacher and had directed for appointment of appellant, Nilam Kumari, since Gita Kumari had lesser marks than the appellant. He has further submitted that appellant was the only aspirant for the post of Panchayat Teacher for Gram Panchayat Raj, Tharbitia, who had challenged the selection and appointment, in question. In such circumstances, he submits, learned single Judge ought not to have asked the Tribunal, by the order under appeal, to consider the cases of all eligible persons. He submits that by doing so, learned single Judge has given an opportunity to all other eligible candidates also to raise plea against appointment, in question, for which they were not otherwise entitled to as their claims were barred by limitation to prefer appeal against the appointments in question.

7. In support of the order under appeal, Mr.



Chakrapani, learned counsel appearing on behalf of respondent No.1, has drawn our attention to the documents, brought on record by the appellant herself, in her counter affidavit filed in the writ proceeding, which include the copies of notices said to have been issued to the appellant and the order sheet maintained by the Tribunal in concerned Case No. 429 of 2008. Mr. Chakrapani has submitted that numbering of the case, i.e., No. 429 of 2008, gives an impression that it was instituted in the year 2008 by the appellant, whereas the selection process, in question, started in the year 2009 and the first order was passed, on 18.07.2010, for issuance of notice to the respondent No.1. He has submitted that the Tribunal failed to maintain sanctity expected of a quasi judicial authority, adjudicating upon the competing rights of parties, before it, which would be evident from the order sheet brought on record as annexure-D to the counter affidavit filed by the appellant in the writ proceeding.

8. From the order under appeal, passed by learned single Judge, it appears that learned single Judge came to a specific finding that there was no evidence of service of notice upon respondent No.1 after examining and scrutinizing the records of the Tribunal in Case No. 429 of 2008. The finding, so recorded by the learned single Judge, is fully supported by the order sheet brought on record by way of annexure-D to the

counter affidavit filed on behalf of appellant in writ proceeding.

9. We do not find any merit in the submission, made on behalf of the appellant, that the learned single Judge ought not to have allowed all eligible persons to participate in the proceeding before the Tribunal upon remand made by the order passed by him. We do not find any infirmity in the order passed by learned single Judge as the dispute relates to appointment on the basis of selection and all applicants to such posts will certainly have a right to say on a complaint made by the appellant.

We, therefore, find no merit in this appeal. It is, accordingly, dismissed. In the facts and circumstances of the case, there shall be no order as to costs.

(Chakradhari Sharan Singh, J)

I. A. Ansari, J. I agree.

(I. A. Ansari, J)

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