

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1250 of 2014

IN

Civil Writ Jurisdiction Case No. 5900 of 2013

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Nisha Kumari Wife of Sri Ranjan Kumar resident of village -
Daniyalpur Chak Pahar Tola - Gaura, Block - Teghra, District -
Begusarai.

.... Petitioner-Appellant

Versus

1. The State of Bihar through the Principal Secretary, Human
Resources Development Department, Patna.
2. The Director, Primary Education Department, Government of
Bihar, Patna.
3. The District Magistrate, Begusarai.
4. The District Education Officer, Begusarai.
5. The District Programme Officer (Establishment), Begusarai.
6. The Block Development Officer, Block-Teghra, District-
Begusarai.
7. The Block Education Officer, Teghra, District-Begusarai.
8. The District Teacher Employment Appellate Tribunal, Begusarai
through its Member.
9. The Panchayat Secretary, Gram Panchayat Raj, Takiya, Block-
Bhagwanpur, District-Begusarai.
10. Mukhiya, Gram Panchayat Raj, Tekiya, Block-Bhagwanpur,
District-Begusarai.

.... Respondents-Respondents

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Appearance :

For the Appellant : Mr. Pramod Mishra, Advocate

For the Respondents : Mr. Sanjay Kumar Ojha, A.C. to GP-18

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CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI

and

**HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE I. A. ANSARI)

Date: 11-02-2015

The appellant, in the present appeal, is aggrieved
by the order, dated 08.08.2014, passed, in CWJC No. 5900 of
2013, by a learned single Judge of this Court, whereby the
petitioner's writ application, seeking quashing of order, dated

28.02.2013, passed by the Member, District Teacher Employment Appellate Authority, Begusarai (hereinafter referred to as the 'Appellate Authority'), was dismissed.

2. The facts of the case, as made out by the writ petitioner, in her writ petition, bearing C.W.J.C. No. 5900 of 2013, is, in brief, thus: Pursuant to the advertisement, inviting applications for appointment to the post of Panchayat Teachers in Gram Panchayat Raj, Takiya, at Bhagwanpur Block, the writ petitioner submitted her application on 14.11.2008. The petitioner claims to have secured 60 per cent marks in intermediate course and is a candidate, who had not received training in teaching, but is eligible for consideration to any post of Panchayat Teacher under Untrained Category as per Bihar Panchayat Elementary Teacher (Employment and Service Condition (Amendment) Rules, 2008. The petitioner alleges that she was not allowed to appear, in the counseling, by the Employment Unit of the Panchayat on the pretext that the counseling, for trained candidates, was going on and the counseling, for the untrained candidates, would be held later on; but no counselling for her was eventually held. When the writ petitioner approached the Panchayat Secretary, in this regard, she was told that her name did not figure in the merit list. Thereafter, the writ petitioner approached the Block Development Officer, Bhagwanpur Block, by filing application, on 08.04.2009, and, later on, District Magistrate, Begusarai,

on 18.12.2012, mentioning therein the complete facts of her case. Not receiving any relief forthcoming from the aforesaid two authorities, she filed her appeal/application before the District Teacher Employment Appellate Authority, Begusarai, on 22.02.2013, which came to be registered as Case No. 03 of 2013.

3. The learned Member, District Teacher Employment Appellate Authority, Begusarai, by his order, dated 28.02.2013, while rejecting the appeal/application of the writ petitioner, bearing Case No.03 of 2013, has observed, which if translated into English, reads, thus,

"The appellant/applicant has filed this appeal/application before the Tribunal on 22.02.2013 through an Advocate with a duly executed Vakalatnama. The Advocate of the appellant was heard on the appeal/application on 25.02.2013. The case is related to Employment Year 2008. According to the appeal/application, the applicant has submitted her application, on 14.11.2008, for employment to the post of Panchayat Teacher in Takiya Panchayat for the Employment Year 2008. The applicant has claimed to secured 60 per cent marks in Intermediate. According to the applicant, when she appeared for counselling on the scheduled date, her counselling was not held and she was told by the Panchayat Secretary that today



counselling of only trained candidates will be held. When the applicant tried to elicit some more information, she was told that her name does not figure in the merit list. The applicant repeatedly kept on enquiring about counselling. Recently, the applicant has come to know that one post of untrained female candidate is vacant in that Panchayat. It has been alleged by the applicant that her counselling was not held due to ulterior motive of the Mukhiya and the Panchayat Secretary. She has made this application for a direction to hold her counselling for her employment on the aforesaid post.

No plausible reasons or explanation has been given for filing the appeal/application with inordinate delay on 22.02.2013 for the Employment Year 2008. No proof of earlier filing any application in this regard to the competent authority has been submitted. The applicant has also not alleged that anyone possessing lesser marks than her has been employed. The applicant has also not mentioned in her appeal/application that her name figured in the merit list. According to the appeal/application, the applicant has got no ground to maintain the appeal/application. The appeal/application is also wholly time barred. For the reasons aforementioned, the appeal cannot be admitted.

In the result, the application is

rejected.”

4. Aggrieved by the rejection of her appeal by the Appellate Authority, the writ petitioner filed a writ petition, under Article 226 of the Constitution of India, which gave rise to C.W.J.C. No. 5900 of 2013. As this writ petition, too, stood dismissed by order, dated 08.08.2014, passed by a learned single Judge of this Court on the ground that the writ petitioner had failed to explain satisfactorily the delay of two years in approaching the Appellate Authority, writ petitioner, feeling aggrieved is before us in appeal.

5. We have heard Mr. Pramod Mishra, learned counsel, appearing on behalf of the appellant, and Mr. Sanjay Kumar Ojha, learned Assistant Counsel to Government Pleader No.18 for the respondents.

6. Learned counsel, appearing for the appellant, has submitted that the rejection of appellant's appeal by the Appellate Authority, as well as dismissal of the writ petition, on the ground of delay, is not in consonance with Bihar Panchayat Elementary Teacher (Employment and Service Conditions) (Amendment) Rules, 2008 (hereinafter referred to as '2008 Rules') inasmuch as Rule 18 of 2008, Rules, while providing for appeal, did not prescribe any period of limitation. He further submits that the employment to the post of Panchayat Teacher commenced in the year 2008, the same dragged on up to the year 2010. The appellant, in the meanwhile, also approached, in this regard, the concerned



Block Development Officer and the jurisdictional District Magistrate, but could not get relief. Thereafter, she moved the Appellate Authority. She has, thus, taken recourse to all remedies available to her under the Rules and thereby has not approached the Appellate Authority belatedly; but the learned single Judge, while dismissing the writ application, has not properly appreciated these factual aspects of the case, which warrants, now, interference in appeal.

7. Resisting the above submission, Mr. Sanjay Kumar Ojha, learned counsel, appearing for the respondents, has submitted that even if no limitation had been prescribed in the Rules, the appellant should have approached the Appellate Authority within a reasonable period of time. No explanation has been submitted by the appellant for approaching the Appellate Authority after two years of the cause of action.

8. Perused the records.

9. Now, coming to the rules regarding limitation for filing of appeal before the Appellate Authority, true it is that Bihar Panchayat Elementary Teacher (Employment and Service Condition Rules, 2006, did not, originally, prescribe any period of limitation for filing appeal before the Appellate Authority, but the Notification No.7, dated 23.10.2008, issued by the Human Resources Development Department, Government of Bihar, in sub-Clause (iv) of Clause (Kha) thereof provides that an appellant shall prefer appeal in

relation to any grievance with regard to employment before the Authority within a period of 30 days and any appeal, filed beyond the period of 30 days, may be entertained by the Authority if there are sufficient reasons.

10. What cannot be, however, ignored is that the period of limitation has been prescribed in the year 2008, with provision having also been made for extending the period of limitation and thereby condoning the delay in preferring appeal. Even if this provision, relating to period of limitation, is treated as prospective, the appeal, before the Appellate Authority, was not maintainable inasmuch as the appellant, on coming into force the amended provision, prescribing the period of limitation, could not have approached the Appellate Authority without assigning any reason and without seeking any extension of the period of limitation and thereby condonation of delay.

11. Coupled with the above, it is also significant to note that the amendment to a procedural law will be treated to be prospective unless the legislation has expressly given or impliedly made the amendment prospective in nature.

12. What has been discussed and pointed out above, we do not find any error, legal or factual, in the findings, reached by the learned single Judge, that the writ petitioner (i.e., the appellant herein) having approached the Appellate Authority belatedly and without assigning any

reason or plausible explanation therefore was rightly disallowed.

13. In the result and for the foregoing reasons, this appeal fails and shall accordingly stand dismissed.

14. No order as to costs.

(I. A. Ansari, J.)

Chakradhari Sharan Singh, J.: I agree.

(Chakradhari Sharan Singh, J.)

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