

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.346 of 2015

IN

Civil Writ Jurisdiction Case No. 15563 of 2014

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1. Sri Krishna Kumar Thakur son of Sri Ram Lakhan Thakur resident of village Sridilpur , P.O. - Anandpur , Police Station- Bahadurpur, District- Darbhanga.

.... Appellant/s

Versus

1. The State of Bihar , through the Secretary, Panchayati Raj Department , Bihar, Patna.
2. The Collector-Cumk-District Election Officer (Panchayati), Darbhanga.
3. The Deputy Collector , Collectriate, Darbhanga.
4. The District Education Officer, Darbhanga.
5. The State Election Commission Bihar, Patna through its Secretary , 3rd Floor , Sone Bhawan, Bir ChandPatel Path , Patna - 800001.
6. The State Election Commissioner , State Election Commission Bihar, Patna, 3rd Floor , Sone Bhawan, Bir ChandPatel Path , Patna - 800001.
7. The Deputy Secretary , State Election Commission, Bihar, 3rd floor , Sone Bhawan , Bir Chand Patel Path , Bihar, Patna.
8. The Managing Committee , through its Secretary , Maharaj Rameshwar Singh , Mithila college , Anandpur (Sahora), Darbhanga.
9. The Sachiv , Maharaj Rameshwar Singh , Mithila College, Anandpur (Sahora), Darbhanga.
10. The Principal , Maharaj Rameshwar Singh Mithila College , Anandpur (Sahora), Darbhanga.
11. Ujjawal Kumar son of Sri Gunanand Jha, resident of village Ram Bhadurpur, Police Station - Bahadurpur, District- Darbhanga.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Anjani Kumar Sinha

For the Respondent/s : Mr. Siddharath Prasad AC to AAG-4

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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: 27-08-2015

An order passed by the learned Single Judge in CWJC

No.15563 of 2014 (Ujjawal Kumar Vs. State of Bihar & ors),

whereby writ application, filed on behalf of respondent No.11, has



been allowed and order, dated 22.08.2014, passed by State Election Commission, Bihar (Hereinafter referred to 'as the Commission') in Case No. 33 of 2012, holding respondent No.11 to be disqualified for election held in 2011 to the post of Mukhiya, Gran Panchayat Raj Ram Bahadurpur, in the district of Darbhanga, has been set aside, are under appeal.

2. The respondent No.11, after submitting his nomination for the post of Mukhiya of the concerned Gram Panchayat on 12.03.2011, had contested the election held on 30.04.2011 and on having scored highest number of votes, was returned as successful candidate. The oath of the office of the Mukhiya was administered to him on 26.05.2011. The appellant herein filed an application, on 30.01.2012, before the Commission seeking a declaration that respondent No.11 was disqualified for contesting the said election as he was in the service of Maharaja Rameshwar Singh Mithila Mahavidalaya, Anandpur (Sahora), District-Darbhangha, in terms of the provisions embodied in Section 136(1) (c), (d), (i) and Section 136(2) of the Bihar Panchayat Raj Act, 2006(hereinafter referred to as 'the Act'). The appellant, in support of the allegation that respondent No.11 was in service of the said College, relied upon an information received by him by the Public Information Officer-cum-District Education Officer under Right to Information Act, 2005.



3. The respondent No.11 contested the said petition filed by the appellant and took a plea by producing an order bearing letter No. 7 of 2009 issued by the Secretary of the College, according to which the service of respondent No.11 in the College stood terminated because of his continued absence from the date of his appointment. Though he did not dispute the fact that he was appointed as an Assistant in the College on 05.02.2003, the Mukhiya asserted that he had never attended the College nor did he draw any financial benefits pursuant to his appointment, leading to termination of his service as communicated to him through letter No.7 of 2009, dated 17.07.2009.

4. The Commission, upon examining the materials on record and rival pleadings of the parties, held respondent No.11 to be disqualified to contest the election after arriving at the conclusion that he was employed in the College. Respondent No.11, thereafter, preferred an application, under Article 226 of the Constitution of India, giving rise to CWJC No. 15563 of 2014.

5. Learned Single Judge found the conclusion, arrived at by the Commission, to be based on conjectures and surmises inasmuch as the Commission did not make any endeavour to examine the College authorities or to summon the records to satisfy itself as to whether respondent No.11 was in service of the College, in question, on the date of filing of the nomination papers or not and yet, set aside the

order of the Commission, dated 22.08.2014, by the order under appeal.

6. It is submitted by Mr. Anjani Kumar Sinha, learned senior counsel appearing on behalf of the appellant, that there was no denial of the fact, before the Commission, by respondent No.11 that he was appointed in the College on 05.02.2003. It is the case of the appellant that there was no cogent material before the Commission produced by respondent No.11 on the basis of which it could be held that service of the respondent No.11 stood terminated prior to the date when he had filed his nomination papers. It has, accordingly, been contended, on behalf of the appellant, that the Commission rightly held the respondent No.11 to be disqualified for election to the post of Mukhiya of the concerned Gram Panchayat Raj, in question, in terms of specific provisions under Section 136(1) (b), exercising jurisdiction under Section 136(2) of the Act.

6. We have perused the order of the Election Commission, dated 22.08.2014, and the order under appeal, dated 08.12.2013, passed by the learned Single Judge. The only dispute before the Commission was as to whether on the date of his nomination on 12.03.2011, respondent No.11 was in service of the Central Government or State Government or any Institution, getting financial aid from the State Government, Central Government or local



authority. The decision of the Commission to disqualify respondent No.11 for the post of Mukhiya invoking the said provisions was based on a report, dated 13.09.2013, submitted by Senior Deputy Collector, Darbhanga. From the said report, it appears that the Deputy Collector did not accept the stand of the Secretary of the College that through letter, dated 17.07.2009, respondent No.11 was communicated about termination of service on the reasoning that respondent No.11 was not given any opportunity complying with the principles of natural justice for termination of his service. The report to this effect by the Senior Deputy Collector, Darbhanga, is in our considered view, wholly unreasonable and irrational. Respondent No.11 would have been the one and only person, who could have raised the objection of non-compliance of principles of natural justice in issuance of the said letter, dated 17.07.2009, terminating his service from the College. It was not at all reasonable for the Deputy Collector, Darbhanga, submitting his report to the Election Commission to the effect that the petitioner continued in service because the order of termination, dated 17.07.2009, was passed in violation of principles of natural justice and, therefore, the said letter dated 17.07.2009 was not acceptable for coming to the conclusion that service of the respondent No.11 in the College stood terminated.

7. The Commission has based its decision on the said

report of the Senior Deputy Collector, which is, on the face of it, illogical. Learned Single Judge has recorded in the order that even the Senior Deputy Collector mentioned in his report that there was neither any document supporting allotment of any work to the respondent No.11 nor any payment, having made to him or his attendance in the College. Learned Single Judge also pointed out that the Commission did not make any endeavour either to examine the College authorities or summon the records to satisfy itself as regards the disputed claim of the parties before the Commission, namely, as to whether the respondent No.11 had continued in the service of the College as on the date of filing of nomination papers.

8. We do not find any infirmity in the reasons assigned by the learned Single Judge, while quashing of the order, dated 22.08.2014, passed by the Commission.

9. We do not find any infirmity in the order under appeal. This appeal is, accordingly, dismissed.

(I. A. Ansari, ACJ)

ArunKumar/-

(Chakradhari Sharan Singh, J)

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