

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Letters Patent Appeal No.519 of 2015**

**Arising out of**

**Civil Writ Jurisdiction Case No. 1682 of 2013**

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Md. Kausar Alam, Son of Late Md. Hadish Ansari, Resident of village - Daroga Chakia, P.O. Ratanpur, P.S. - Ara Mufassil, District - Bhojpur

.... .... Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Education, Government of Bihar, Patna
2. The District Programme Officer (Establishment), Bhojpur at Ara
3. The District Teachers Employment Appellate Tribunal, Bhojpur at Ara
4. The Principal Secretary, Gram Panchayat Saraiya, Block - Barhara, District - Bhojpur
5. Md. Mokhtar Son of Abdul Hafiz Resident of Village - Machhua Tola, Milki, Ward No. 25, Ara, P.S. - Ara Town, District - Bhojpur

.... .... Respondent/s

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**Appearance :**

For the Appellant : Mr. Sumeet Kumar Singh with  
Mr. Satyendra Prasad Singh and  
Mr. Amit Kumar Singh, Advocates

For the State : Mr. Awanish Nandan Sinha, G.P. 11

For the Respondent No. 5 : Mr. Sia Ram Sahi with  
Mr. Ranjan Kumar Singh, Advocates

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**CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA**

**and**

**HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH**

**CAV JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH)**

**Date: 21-06-2016**

Heard learned counsel for the parties.

The appellant has filed the present intra-court appeal under Clause X of the Letters Patent of Patna High Court being aggrieved by order dated 15.07.2014 passed by the learned Single

Bench by which CWJC No. 1682 of 2013 filed by him has been dismissed.

The appellant along with respondent no. 5 and two other persons had applied for appointment on the post of Panchayat Teacher in the Extremely Backward Class category in the year 2008. Counselling was held on 28.02.2009 and the appellant also appeared in the same. Nothing happened for a long period and finally 14.08.2010 was the date fixed for distribution of appointment letters to the selected candidates. On 14.08.2010, as per the merit list, one Md. Isha was the candidate at Sl. No. 1 in the merit list under the said category and the appellant was at Sl. No. 2 whereas the respondent no. 5 was at Sl. No. 3. As there was one seat, since Md. Isha belonged to unreserved category, he did not opt for being appointment against the Extremely Backward Class category and made an application to this effect on 14.08.2010 itself. Thus, the appellant, being the next person in the merit list to Md. Isha, in the Extremely Backward Class category, was asked by the concerned Mukhiya and the Panchayat Secretary to put his signatures on two blank papers as he was to be appointed as Panchayat Teacher. Thereafter, appointment letters were issued in favour of 9 candidates but no appointment letter was issued against the post earmarked for Extremely Backward Class category. Later on, it appears that in the meeting held on 30.12.2010, the respondent no. 5 was appointed



against the post for Extremely Backward Class category on the ground that Md. Isha and the appellant had made separate applications on 14.08.2010 and 25.12.2010 respectively expressing their desire not to join the said post. The appellant, being aggrieved by the said act, made an application before the District Teachers Employment Appellate Authority, Bhojpur, Ara (hereinafter referred to as the 'Authority') on 24.01.2011 which was numbered as Case No. 69 of 2011. The Authority, by order dated 30.11.2012 has dismissed the appeal giving rise to C.W.J.C. No. 1682 of 2013 which has been dismissed by the order which is impugned in the present appeal.

Learned counsel for the appellant submitted that he was assured on 14.08.2010 that he would be appointed and accordingly he was made to sign on two blank papers but illegally the two were converted into a letter dated 25.12.2010 and an affidavit dated 27.12.2010 in which it was stated that the appellant was not interested in getting the said employment. It was submitted that the same is pure and simple fraud. Learned counsel submitted that the said letter and affidavit were obtained by him under the Right to Information Act on 25.05.2011. Learned counsel submitted that mere perusal of the so called letter dated 25.12.2010, copy of which has been made Annexure 6 to the writ application, would clearly indicate that the handwriting of the letter is of a different



person and not the appellant, who has only written his name, father's name and address. It was further submitted that the fraud committed would be obvious inasmuch as if the appellant was able to write his name, father's name and address in his own writing then there was no occasion for someone else to write the main contents of the letter dated 25.12.2010 and most importantly, if at all, such letter was written by the appellant addressed to the Mukhiya/Panchayat Secretary of Gram Panchayat Saraiya on 25.12.2010, then there could have been no occasion to again file an affidavit two days later i.e., 27.12.2010 of the same nature. Learned counsel submitted that the appellant was aware on 14.08.2010 itself that after Md. Isha had opted out, he was the rightful claimant to the said post and that is why on the assurance for being given the appointment letter, he had given two papers on which he has written his name and other details. Learned counsel submitted that the stand of the respondents that the appellant had given such letter is falsified for the simple reason that from 14.08.2010 till 25.12.2010, there was nothing from the side of the appellant for withdrawing his candidature and thus there is no explanation as to why only 9 appointment letters were given and no appointment letter was given to the appellant prior to that when for the other categories, 9 appointment letters for 9 posts were already given to the respective selected candidates. Learned counsel submitted that when the respondent no. 5 came to know about the



appellant filing the case before the Authority, he threatened the appellant in the night of 09.03.2011 due to which the appellant filed an application before the Superintendent of Police, Bhojpur on 10.03.2011 which was enquired into by the local Police Station and a report was sent to the Superintendent of Police, Bhojpur on 13.04.2011 finding the complaint made by the appellant to be true. After obtaining copies of the so called letter dated 25.12.2010 and affidavit dated 27.12.2010, due to the same being forged and fabricated, another application was sent by the appellant to the Superintendent of Police, Bhojpur on 26.05.2011. It was submitted that in the aforesaid background, the Authority disposed off Case No. 69 of 2011 by order dated 15.06.2011 holding that the counselling held in the year 2009 and no consent in the proper format taken, the appointment of respondent no. 5 was directed to be postponed and the District Superintendent of Education, Bhojpur was directed to enquire into the matter and take suitable action for appointment of the appellant. Learned counsel submitted that the application dated 26.05.2011 made by the appellant to the Superintendent of Police, Bhojpur was enquired into by the Krishnagarh P.S. and enquiry report dated 17.08.2011 was submitted only after recording a statement of the ex-Mukhiya that the appellant had made an application and also affirmed affidavit giving his desire not to join the said post, without mentioning the fact that the



appellant's signature was taken on blank paper. Thus, the report was inconclusive stating that nothing was revealed in the enquiry. Learned counsel submitted that the respondent no. 5 preferred CWJC No. 16340 of 2011 challenging the order dated 15.06.2011 passed in Case No. 69 of 2011 by the Authority which was disposed off on 26.03.2012 by quashing the order dated 15.06.2011 on the ground that he was not made a party or heard before passing of the order and the matter was remitted back to the Authority for fresh adjudication after hearing both the parties. The matter on remand was numbered as Appeal No. 69 of 2011/80 of 2012 which was dismissed by order dated 30.11.2011 which was impinged in the writ application. Learned counsel submitted that there being no requirement for the appellant to submit any letter or affidavit withdrawing his candidature, the sole ground for appointing the respondent no. 5 is clearly fraudulent and requires interference by this Court.

Learned counsel for the respondent no. 5 submitted that the appellant has clearly stated in the pleadings in the writ application that he had signed two blank papers and thus the signature of the appellant is not in doubt either on the letter dated 25.12.2010 or on the affidavit dated 27.12.2010. Learned counsel submitted that the stand of the appellant before the Authority is an after thought for oblique reasons and rightly the same has been



rejected by the Authority as well as the learned Single Bench. It was further submitted that the proceeding of the meeting of the Selection Committee dated 30.12.2010 has clearly noted that Md. Isha, who was at Sl. No. 1 had given up his claim whereas the appellant had also given a letter stating that he would not join on the post and thus there is no illegality committed either by the Selection Committee or the Authority. It was further submitted that the learned Single Bench has also rightly taken the view that there were disputed question of facts which could not be adjudicated in a writ application and if the Single Bench declines to exercise the jurisdiction on the ground that the writ petition involves disputed question of facts, the Letters Patent Appeal may not be entertained. For such proposition, he has relied upon a decision of this Court in the case of **Md. Nizamuddin vs. State of Bihar** reported as **2014 (3) PLJR 515**.

Upon considering the rival contentions, we find merit in the submissions of learned counsel for the appellant. The circumstances involving the present controversy clearly indicate that the process with regard to selection and appointment of a candidate of the Extremely Backward Class category in the Saraiya panchayat is clearly vitiated and does not inspire confidence. Pursuant to the counselling conducted on 28.02.2009, when 14.08.2010 was the date fixed for distribution of appointment letters to the selected candidates, when other 9 selected candidates were given the



appointment letters, there was no reason why such appointment letter was not given in the case of Extremely Backward Class category also on the same day. If the case of the respondents is taken to be true, that the person at Sl. No. 1 namely Md. Isha had declined to join and had given a letter to this effect on 14.08.2010 itself, the obvious consequence would be that the second man in the merit list, that is, the appellant should have been given the appointment letter. There was no occasion for there being any reason to delay the same. Thus, withholding the appointment letter to the appellant on 14.08.2010, when the only person above him had given a letter declining to join, is indicative of there being a conspiracy to deny the appellant his legal due. The other factor which vindicates the stand of the appellant, that for completing necessary formalities he was asked to sign on two blank papers, is that even in the so called meeting of the Selection Committee which was held on 30.12.2010, there is reference only to the letter of the appellant dated 25.12.2010 and not to the affidavit dated 27.12.2010, though both have been taken as a ground for denial for appointment to the appellant by the respondents, and later on before the Authority as well as the learned Single Bench in the Writ Petition. It would also be worthwhile to note that even the so called signature by the appellant in the letter dated 25.12.2010 and the affidavit dated 27.12.2010, before the name of the appellant, it is written '*Naam*' (Name). Thus, though the



signature and the name of the appellant may be in the same style, but for the purposes of making a signature, the same, if prefixed by the word '*Naam*' (Name) cannot *sensu stricto* be considered to be a signature, moreso in the present case where there was a controversy as to whether such writing of name and other details by the appellant can be treated to be his signature and whether the contents were indicative of the intention and desire of the appellant to state such fact either in the letter or the affidavit. This is further reflected from the application filed by the appellant before the Authority on 24.01.2011 where he has not only written the entire contents in his own writing but has also not written the word '*Naam*' (Name) before signing. Such signing by the appellant can also be seen on his complaint before the Superintendent of Police and various petitions filed before the Authority. We may also indicate here that surprisingly, though the respondents claim to have been given affidavit by the appellant dated 27.12.2010, as it is from their record that a copy has been obtained by the appellant under the Right to Information Act, but surprisingly the same is not mentioned in the so called meeting of the selection committee held on 30.12.2010. The conduct of the appellant of making an application before the Authority within a reasonable period i.e., 24.01.2011 and complaint to the Superintendent of Police also cannot be overlooked. Even the reason assigned in the so called decline by the appellant to accept



such employment, that is, his ill-health and him running a shop supports the contention of the appellant that the same has not been written by him or under his instructions, for if the same had been a fact, the illness and running a shop not being a new development, there would have been no occasion for the appellant either to apply in the year 2008 or appear for counselling on 28.02.2009 and subsequently also on 14.08.2010 i.e., the date fixed for distribution of appointment letters to the selected candidates. Further, if at all the appellant had given such letter on 25.12.2010 to the effect that he would not be joining on the post which has been noted in the meeting of the Selection Committee dated 30.12.2010, there was no occasion for him to again state the same thing on affidavit two days later i.e., 27.12.2010, which has also unexplainably not been taken note of by the Selection Committee, though admittedly being in their record/possession. It is also surprisingly as to why the affidavit was also required in the case of the appellant whereas no such affidavit was taken by the candidate Md. Isha who was at Sl. No. 1 in the merit list. Thus, clearly there was abuse of power and fraud on the system. As far as the decision of a Division Bench of this Court in the case of **Md. Nizamuddin** (supra) is concerned, the matter related to payment of admitted dues/fees to the petitioner-appellant for the work done in his capacity as the then Government Pleader, Civil Court, Patna, there being dispute as to what rates would govern the



claim of fees, the learned Single Bench had dismissed the appeal and in that background, in the Letters Patent Appeal the learned Division Bench had held that though the exercise of power under Article 226 of the Constitution of India is discretionary in nature and if a Single Judge declines to exercise jurisdiction on the ground that the writ petition involves disputed questions of fact, a Letters Patent Appeal may not, **ordinarily**, be entertained, but ultimately the Division Bench had granted relief to the writ petitioner. Thus, there is no similarity between the facts and circumstances of that case and the present case. Moreover, the admitted merit of the appellant compared to that of respondent no. 5 not being in dispute coupled with fact that circumstances are overwhelming in favour of the appellant, the facts which are required for adjudication of the present case, cannot be said to be 'disputed' so as to prevent the Court in its writ jurisdiction from interfering. This also is a distinguishing factor of the present case compared to that of **Md. Nizamuddin** (supra).

For the reasons aforesaid, the order of the learned Single Bench dated 15.07.2014 passed in CWJC No. 1682 of 2013 cannot be sustained and is accordingly set aside. Consequently, CWJC No. 1682 of 2013 stands allowed and the order of the Authority dated 30.11.2011 passed in Appeal No. 69 of 2011 / 80 of 2012 is also set aside.

As a result, the appointment of respondent no. 5 on the

post of Panchayat Teacher in Gram Panchayat Saraiya, Block Barhara, District Bhojpur is set aside and the appellant is held entitled for such appointment/selection. The exercise should be completed within one month from the date of production of a copy of this order before the respondent no. 2, the Mukhiya and the Secretary of Gram Panchayat Saraiya, Block Barhara, District Bhojpur.

Accordingly, the Letters Patent Appeal stands allowed in the aforementioned terms.

**(Ahsanuddin Amanullah, J)**

**Hemant Gupta, J**      *I agree.*

**(Hemant Gupta, J)**

Anjani/-

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