

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.425 of 2015
Arising out of
Civil Writ Jurisdiction Case No. 858 of 2010**

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Gautam Prakash, Son of Ram Baran Mistri, Resident of village- Sagarpur, P.S. Khijarsarai, District- Gaya.

.... Appellant

Versus

1. The State of Bihar
2. The Commissioner-Cum-Secretary, Human Resources Deptt. Govt. of Bihar, Patna.
3. The Director, Primary Education, Govt. of Bihar, Patna.
4. The District Magistrate, Gaya
5. The District Superintendent of Education, Gaya
6. The Sub-Divisional Officer, Khijarsarai, Gaya.
7. The Block Development Officer, khijarsarai, Gaya.
8. The Block Education Officer, Khijarsarai, Gaya
9. The Headmaster, Middle School, Jamuyawan, Khijarsarai, Gaya
10. The Mukhiya, Gram Panchayat, Jamuyawan, Block - Khijarsarai, Gaya.

.... Respondents

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Appearance :

For the Appellant : Mr. Rajeev Kumar Singh, Advocate.
Mr. P.M. Sharan, Advocate
For the State : Mr. Mahtab Alam, A.C. to S.C. 3

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 11-07-2016

Re.:I.A. No. 2007 of 2015

The application is for condonation of delay of 85 days in filing the Letters Patent Appeal.

2. For the reasons mentioned in the Interlocutory Application, we are satisfied that the appellant has shown sufficient cause to seek condonation of delay of 85 days in filing the present

Letters Patent Appeal.

3. Consequently, Interlocutory Application No. 2007 of 2015 is allowed and delay of 85 days in filing the Letters Patent Appeal is condoned.

Re.: L.P.A. No. 425 of 2015

Heard learned counsel for the parties.

2. The challenge in the present Letters Patent Appeal is to an order passed by the learned Single Bench of this Court on 17th of September, 2014 in C.W.J.C. No. 858 of 2010, whereby the writ application filed by the appellant challenging his removal from the post of Panchayat Shiksha Mitra remained unsuccessful.

3. The appellant challenged the order of removal passed by the Mukhiya of Gram Panchayat Jamuawan, Block- Khijarsarai, Gaya on 10th of August, 2007. The appellant belongs to the category of Backward Class but has been appointed against the post meant for Extremely Backward Class. Thus, it was found that the appellant could not have been appointed against a post not meant for the category to which the appellant belongs. A perusal of the record shows that the appellant has got weightage of 15 marks so also another candidate Jitendra Kumar who has been appointed in the category of Backward Class. The appellant has been appointed against the post meant for Extremely Backward Class. Since the appellant

does not belong to Extremely Backward Class, therefore, he could not have been appointed against the said post.

4. The appellant has not challenged the appointment of Jitendra Kumar against the post meant for Backward Class but has challenged his removal as Shiksha Mitra. Once the post was meant for Extremely Backward Class candidates and the appellant being not one belonging to the said category, he could not have been appointed against the said category and has been rightly ordered to be removed.

5. The argument of the learned counsel for the appellant is that the question of appointment of the appellant as Shiksha Mitra cannot be examined after the commencement of Bihar Panchayat Elementary Teachers (Employment and Service Conditions) Rules, 2006 (hereinafter referred to as “2006 Rules”). The Learned Counsel relies upon the Division Bench judgment of this Court reported as Smt. Renu Kumari Pandey & Ors. Vs. The State of Bihar & Ors., 2011 (4) PLJR 297; judgment of the Full Bench of this Court reported as Kalpana Rani Vs. The State of Bihar through the Principal Secretary, Human Resources Development Department, Government of Bihar & Ors., 2014 (2) PLJR 665 and also the judgment reported as Shyam Murari Paswan & Ors. Vs. Arun Paswan & Ors., 2016 (2) PLJR 110.

6. We do not find any merit in the said argument. The



Division Bench in Renu Kumari Pandey's case (supra) has held that after the commencement of 2006 Rules, no person can be permitted to make a grievance in respect of his non-selection or non-continuation as a Panchayat Shiksha Mitra. But present is not a case of non-appointment but of removal of a candidate as a Panchayat Shiksha Mitra. The appellant could not have been appointed against the post reserved for Extremely Backward Class. No person can claim right of appointment against a non-existent post of Shiksha Mitra but a person can be served for such period his appointment is found to be illegal in any manner. Therefore, the said judgment will not provide assistance to him as he has no right to claim the post of Panchayat Shiksha Mitra on account of mere continuation against the said post. The other two judgments also deal with a case where the candidates have claimed right of appointment as Panchayat Shiksha Mitra after 1st of July, 2006.

7. We may notice that the writ application suffers from delay and laches inasmuch as the order of removal was challenged in a petition filed in the year 2010.

8. We do not find any merit in the Letters Patent Appeal, which is dismissed.

9. It may be pointed out that due to mistake of office the writ application was again posted for hearing after the same was

dismissed on 17th of September, 2014. After the writ application was posted for hearing, the writ application was again dismissed on 7th of January, 2015. The concerned official has pointed out that it was his inadvertent mistake which led to posting of the writ application again for hearing.

10. We, thus, find that the order dated 7th of January, 2015 is an order which is redundant and is ineffective for all practical purposes in view of the earlier order passed by the learned Single Bench on 17th of September, 2014. Present is an appeal against the order dated 17th of September, 2014 by which the writ application has been dismissed and now the Letters Patent Appeal is also dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

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