

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.913 of 2014
Arising out of
Civil Writ Jurisdiction Case No. 3199 of 2012**

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Ram Sundar Kumar (wrongly mentioned as Ram Sundar Das in the writ petition),
son of Ram Pravesh Sharma, resident of village Waina, P.S. Ghosi, District
Jehanabad.

.... Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Human Resources
Development Department, Vikas Bhawan, New Secretariat, Bihar, Patna.
2. The District Magistrate, Jehanabad.
3. The District Education Officer, Jehanabad.
4. The Block Development Officer, Kako, Jehanabad.
5. The Block Education Extension Officer-cum-Secretary, Block Teacher
Appointment Committee, Kako, Jehanabad.
6. District Teachers Appointment Appellate Authority through its Member,
Jehanabad.
7. Manju Kumari, wife of Saryu Sharan, resident of village Badlu Bigha, P.O.
Nahalpur, P.S. Paras Bigha, District Jehanabad.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ramakant Sharma, Sr. Advocate.
Mr. Rajesh Kumar, Advocate.
For the Respondent/s : Mr. Sheo Shankar Prasad, S.C.-8
For the Resp. No. 7 : Mr. Kumar Chandra Shekhar, Advocate.

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH)

Date: 08-08-2016

Heard learned counsel for the parties.

2. In the present Letters Patent Appeal, the challenge is to
the judgment dated 16.05.2014 passed by the learned Single Bench,
by which CWJC No. 3199 of 2012 filed by the respondent no. 7 has
been allowed and the order passed by the District Teachers
Appointment Appellate Authority, Jehanabad (hereinafter referred to

as the 'Authority') in Complaint Case No. 518 of 2011 has been set aside.

3. The appellant along with others, including respondent no. 7, had applied for their appointment as Prakhanda Teacher in the year 2008 and had appeared for counselling before the Selection Committee. Respondent no. 7 was given selection letter dated 11.02.2009 and asked to submit her academic, caste and other certificates before the Block Resource Centre, Kako latest by 26.02.2009. The same was followed by an appointment letter issued to her under Memo No. 1263 dated 28.12.2010 posting her as Block Teacher in Up-graded Middle School, Golakpur under Kako Block in the District of Jehanabad.

4. The appellant, being aggrieved by selection of respondent no. 7, filed Complaint Case No. 518 (41) of 2011 before the Authority and after hearing the parties, by order dated 07.01.2012, the appointment of the respondent no. 7 was cancelled and the appellant was directed to place his claim for appointment before the Block Education Officer, Kako.

5. Respondent no. 7 assailed the said order before the learned Single Bench in CWJC No. 3199 of 2012, which has been allowed by judgment dated 16.05.2014 giving rise to the present Letters Patent Appeal.



6. Learned counsel for the appellant submits that the order of the Authority dated 07.01.2012 is well considered and logical and, thus, required no interference. He submits that the certificate relating to respondent no. 7 dated 05.09.2008 submitted along with the application form was only a medical certificate of fitness and not a Disability Certificate. It is further submitted that the requirement of filing of formal handicapped certificate in the proforma specified was mandatory in view of the terms of the advertisement itself and the finding of the learned Single Bench that there was no such stipulation is erroneous.

7. In this connection, learned counsel referred to Annexure-2 to the appeal, which is copy of the advertisement, in which it has clearly been mentioned that the advertisement was in terms of the Bihar Panchayat/Urban Unit Primary Teachers (Employment and Service Condition) (Amendment) Rules, 2008 of which Clause 3 stipulates that filling up of reserved seat for handicapped would be as per Memo No. 62 dated 05.01.2007 of the Personnel Department. He submits that the said Memo No. 62 dated 05.01.2007, copy of which has been annexed as Annexure-F to the I.A.No. 5166 of 2012 filed by the appellant in CWJC No. 3199 of 2012, provides a format of the Disability Certificate, which clearly lays down that it would be signed by the Civil Surgeon/Chief Medical



Officer/Chief of the Hospital and three members of the Medical Board. It is submitted that in the present case, the so called Disability Certificate, submitted by the appellant, was merely a fitness certificate as it was not in the required format and further, there was nothing to indicate that respondent no. 7 suffered from any physical disability. Learned counsel for the appellant submits that admittedly, such certificate was issued to respondent no. 7 on 17.12.2011 i.e., much after the selection process was over and she was appointed, which was clearly illegal. Learned counsel further submits that the stand of respondent no. 7 before the learned Single Bench was that she was appointed in the female category on the basis of her being handicapped, is also erroneous as in the counter affidavit filed by the State respondents, it has clearly been mentioned that there was no roster for the handicapped category to be given to a female handicapped candidate. Learned counsel submits that the appellant was number one in the merit list in the category of handicapped candidates and, thus, in law, he had the first claim to such appointment.

8. Learned counsel for the respondent no. 7 submits that the certificate produced by the respondent no. 7 clearly indicated that she had visual impairment and the same was later on established by a formal Disability Certificate and, thus, the fact remaining that she is a

handicapped person, her appointment cannot be faulted.

9. Having considered the rival contentions, we find merit in the submissions of learned counsel for the appellant. The claim of respondent no. 7 that she was appointed as a female handicapped person is not borne out by any of the official records and rather, the materials available on record, both in the writ proceeding as well as before the Authority, would indicate that there was no such reservation for handicapped female person. It is also an admitted position that respondent no. 7 was appointed in the category of female handicapped though the certificate produced by her, at the relevant time, was not a certificate which even indicates her to be physically handicapped.

10. Upon going through the said certificate, copy of which is part of the record, it is apparent that the same is merely a fitness certificate, though it mentions that she had refractive problems which was corrected by glasses. Therefore, the same can, in no way, be said to be indicative of any physical handicap, much less a valid document before the Selection Committee to rely upon to appoint respondent no. 7 in the category of physically handicapped.

11. The learned Single Bench has also not considered the fact that as per the advertisement itself, the provision of the Government Circular No. 62 dated 05.01.2007 was required to be

adopted for which a particular form was given relating to Disability Certificate, which, in the present case, has not been complied with. Further, as per the stand of the State authorities, there being no formal vacancy reserved for female in the handicapped category, the appellant having produced a valid certificate of disability, and such reservation being lateral and not vertical, he was required to be considered for such appointment. Thus, the order of the Authority dated 07.01.2012 is well reasoned based on the correct appreciation of the issue, both on facts as well as in law.

12. In view of the discussions made hereinabove, we are unable to uphold the judgment of the learned Single Bench dated 16.05.2014 passed in CWJC No. 3199 of 2012 and the same is, accordingly, set aside, and the writ petition stands dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

Sujit/-

AFR/NAFR	NAFR
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