

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1800 of 2012

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Nitin Kumar, S/O Sri Prem Kumar Thakur, R/O Village- Ghosout, P.S.- Sibaipatti,
Distt.- Muzaffarpur

.... Appellant/s

Versus

1. The State of Bihar, Secretary, Bihar Primary Teachers, Patna
2. The District Superintendent of Education, Muzaffarpur
3. The District Teachers Employment Appellate Authority, Muzaffarpur
4. The District Magistrate, Muzaffarpur
5. The Block Development Officer, Minapur, Muzaffarpur
6. The Panchayat Secretary, Gram Panchayat Koili, Minapur, Distt.- Muzaffarpur
7. The Mukhiya, Gram Panchayat Koili, Minapur, Muzaffarpur
8. Radha Kumari, W/O Dilip Kumar Sharma, R/O Village- Rampur Hari, P.S.-
Minapur, Distt.- Muzaffarpur

.... Respondent/s

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Appearance :

For the Appellant	:	Mr. Basant Kumar Choudhary, Sr. Advocate Mr. Suresh Mishra, Advocate
For Respondent No. 6	:	Mr. Rajnikant Mishra, Advocate
For Respondent No. 8	:	Mr. V.R.P. Singh, Advocate Mr. Pushpendra Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: **HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH**)

Date: 26-04-2016

Heard the parties including the contesting private respondent and learned counsel for the Panchayat Secretary and with their consent this appeal is being disposed of at this stage itself.

This intra-court appeal is directed against the order of the learned Single Judge dated 14.05.2012, passed in C.W.J.C. No. 2131 of 2011. The writ petition was dismissed, hence, the appeal.



It appears that in 2008 in the second phase a recruitment process for recruiting Panchayat Teachers was undertaken, inter alia, in respect of Gram Panchayat Koili, Minapur, Muzaffarpur. The writ petitioner-appellant and respondent no. 8, apart from several others, applied. After counselling the writ petitioner was selected. This selection process was challenged by respondent no. 8 before the District Teachers Employment Appellate Authority, Muzaffarpur (for short the Appellate Authority). Her case was that she had applied along with two years teaching experience certificate, but was not awarded 20% marks to which she was entitled and because of that the writ petitioner-appellant was wrongly selected. The detailed order that was passed by the Appellate Authority clearly notices that the Panchayat Secretary was summoned along with the records. The Appellate Authority examined the records in detail and found that when Radha Kumari, respondent no. 8 had made her application she had annexed her experience certificate as well. On this finding the Appellate authority further found that she was entitled to 20% additional marks and thus found that as the writ petitioner-appellant was granted 81.5% marks upon 20% being given to respondent no. 8, there was a tie. Radha Kumari, respondent no. 8 being elder, would then be entitled to be appointed. Accordingly, the Appellate Authority set aside the appointment of the writ petitioner-appellant and directed

that Radha Kumari be appointed.

Being aggrieved this writ petitioner-appellant filed the writ petition. Learned Single Judge examined the matter as well as the counter affidavits filed and agreeing with the findings recorded by the Appellate Authority, dismissed the writ petition. Hence, the appeal.

In appeal, Sri Basant Kumar Choudhary learned Senior Counsel pressed two issues. Both of facts. Even though we were reluctant to go into the issues which have been held by the two forums against the appellant, he persuaded us to look into them. His first submission was that on the date of counselling Radha Kumari, respondent no. 8 did not produce her experience certificate and as such in the counselling register, which she has signed, no mark was assigned to her. Secondly, he submitted with reference to the application of Radha Kumari, respondent no. 8 before the Appellate Authority itself that she had filed the application on 15.11.2009 along with her teaching experience certificate. Sri Choudhary submitted that the process of filing applications were over in February, 2009 and, therefore, this would be an admission on part of Radha Kumari that she had filed the experience certificate on 15.11.2009, that is much later. It would corroborate the entries in the counselling register.

On the other hand, learned counsel for respondent



no. 8 pointed out that the application was in fact filed on 15.11.2008, the receipt whereof is also produced. It is a typographical mistake to be written as 15.11.2009. On affidavit, it is stated that when the counselling register was being signed and the column for experience was left blank for everybody, she had protested but was told that those calculations would be done and marks entered before final merit list was drawn up. That was not done. Her application was along with the experience certificate. The Appellate Authority had examined the facts in detail from the original records. We, on our part, had also directed the Panchayat Secretary to produce the records and file an affidavit in this regard. Though the affidavits have been filed, records have not been produced. Relevant record was Radha Kumari's application form. We had already indicated in our earlier orders that if records are not produced by the Panchayat Secretary, we would draw an adverse inference. In spite of that though the so called counselling register, application register are produced in Court, not a word is mentioned about Radha Kumari's application form in the affidavit nor her application form is furnished. The natural adverse inference would be that if the same were to be produced, it would hurt the cause, a cause of the Panchayat Secretary. In other words, it would contradict the stand that the experience certificate was not produced.

We would also like to notice one more thing. In

the application register the marks awarded to the writ petitioner appellant is shown as 704 in Intermediate with 78.8% being its equivalent. When we come to counselling for some inextricable reason the marks 704 is increased to 734. Learned counsel for the appellant is at a loss to explain how and why this was added, then the percentage as written earlier i.e. 78.8 is scored out and it is enhanced to 81.5. Why and how, is again not explained. To us the reason is simple. If 20% for experience is awarded to Radha Kumari, she gets the total percentage of 81.5. It is to match this that this interpolation was done, to help the writ petitioner-appellant. The reason is obvious.

In view of the facts noted above, we are not inclined to entertain this intra-court appeal. It is dismissed.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

Arjun/Rajesh

AFR/NAFR	AFR
CAV DATE	
Uploading Date	04/05/2016
Transmission Date	