

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.825 of 2014

Arising out of

Civil Writ Jurisdiction Case No. 17695 of 2012

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1. The State Of Bihar through the Principal Secretary, Human Resources Development Department, Vikash Bhawan, Patna.
 2. The District Magistrate, Lakhisarai.
 3. The District Programme Officer, Lakhisarai.
 4. The Block Development Officer, Lakhisarai.
 5. The Gram Panchayat, Dheera through the Mukhiya, District - Lakhisarai.
 6. The Mukhiya, Gram Panchayat Raj, Dheera, P.O. Dheera Anchal Halsi District - Lakhisarai - 811315.
 7. The Panchayat Secretary, Gram Panchayat Dheera P.O. Dheera Anchal Halsi District - Lakhisarai - 811315.
 8. The District Teachers Appointment Appellate Tribunal, Lakhisarai through its Member.

.... Appellant/s

Versus

Sukhdeo Paswan Son of Gulab Paswan Resident of Village Dheera P.O. Dheera, P.S. Halsi, District - Lakhisarai.

.... Respondent/s

With

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Letters Patent Appeal No. 869 of 2014

Arising out of

Civil Writ Jurisdiction Case No. 15887 of 2012

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1. The State of Bihar
2. The District Magistrate, Lakhisarai
3. The Block Development Officer, Galsi, District - Lakhisarai
4. The District Programme Officer, Lakhisarai null null
5. The Block Education Extension Officer, Halsi, Lakhisarai
6. The Panchayat Secretary, Dhira Gram Panchayat P.S. Halsi, District - Lakhisarai

7. The Mukhiya, Gram Panchayat Raj, Dhira, P.O. Halsi District - Lakhisarai
8. Sukhdeo Paswan S/o Gulab Paswan R/o Village + P.O. Dhira, P.O. Halsi District - Lakhisarai
9. The District Teachers Appointment Appellate Tribunal, Lakhisarai through its Member

.... Appellant/s

Versus

Ayodhya Paswan S/o Gharo Paswan R/o Village and P.O. Dhira, P.O. Halsi District - Lakhisarai

.... Respondent/s

Appearance :

(In LPA No.825 of 2014)

For the Appellant/s : Mr. Anjani Kumar, AAG 6
For the Respondent/s : Mr. Ajay Kumar Gupta, Advocate

(In LPA No.869 of 2014)

For the Appellant/s : Mr. Anjani Kumar, AAG 6
For the Respondent/s : Mr. Arun Kumar with
Mr. Ram Vinay Pd. Singh, Advocates

CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA
and
HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)
Date: 28-09-2016

This order shall dispose off two appeals arising out of an order passed by the learned Single Bench in two writ applications on 17.12.2012 whereby the writ petition filed by Sukhdeo Paswan was allowed directing the authorities to reinstate him whereas the writ petition of Ayodhya Paswan was disposed of with the following directions:



“.....The Court finds it difficult to shut its eyes and interpret justice in a manner that it apparently reflects injustice to another. The duty of the Court is not to meet out injustice in the garb of justice. There has to be an even handed approach by the Court. If justice is leading to injustice which leaves conscience of the Court dissatisfied, in the facts of the present case, it is the duty of the Court to ensure that justice is meted out to Sri Ayodhya Paswan also who has had to suffer for no reason fault of his own but that attributable only to the authorities. He cannot be left at the receiving end alone with a festering sense and injustice done to him.

Mandamus is therefore issued to the Principal Secretary that he is bound to adjust Sri Ayodhya Paswan in the district of Lakhisarai on a job commensurate to his qualification and equivalent to the salary and service conditions that he was holding. Implementation of the order of the Tribunal would not be an excuse by him to put Sri Ayodhya Paswan and his family on the streets. Simultaneously the Principal Secretary has to comply of the order of the Tribunal”

The aforesaid order passed by the learned Single Bench arises out of fact that Sukhdeo Paswan was appointed as Shiksha Mitra on 19.02.2003 when the minimum qualification for holding of the said post was Matriculation. Subsequently, the minimum qualification for the said post was enhanced to Intermediate on 11.08.2004. On 21.04.2005, an order was passed by the State Government that the contract of Shiksha Mitra shall not be renewed

who did not possess the Intermediate qualification. In a judgment reported as 2008 (2) PLJR 458 (Kishori Prasad v. State of Bihar), this Court held that Shiksha Mitra could not be removed if he attains the qualification of Intermediate within 33 months from the date of initial appointment.

Shukhdeo Paswan was removed on account of the fact that he does not possess the qualification of Intermediate but on the strength of the order passed by the State Government on 04.07.2008, he staked claim for reinstatement.

In the meantime, Ayodhya Paswan was offered appointment on 19.02.1995 against the vacancy created by termination of Sukhdeo Paswan. He joined on 01.07.2005. Since Sukhdeo Paswan was not being reinstated, he approached the District Teachers Employment Appellate Authority which allowed the appeal of Sukhdeo Paswan and ordered to be reinstated. Since such order was not being implemented, Sukhdeo Paswan invoked the jurisdiction of this Court but against the order passed by the Tribunal, Ayodhya Paswan filed a writ petition challenging the order passed by the Appellate Authority.

The learned Single Bench has allowed the writ petition filed by Sukhdeo Paswan but issued direction for appointment of Ayodhya Paswan accepting the argument raised that injustice is being

caused to Ayodhya Paswan.

We have heard learned counsel for the parties and we do not find any merit in L.P.A. No. 825 of 2014 arising out of C.W.J.C. No. 17695 of 2012 against an order passed in the writ application filed by Sukhdeo Paswan but in respect of appeal filed against an order passed in the writ application filed by Ayodhya Paswan, we find that Ayodhya Paswan was appointed only against the resultant vacancy on account of non-extension of contract of Sukhdeo Paswan. Once Sukhdeo Paswan has been ordered to be reinstated, the incumbent who joined in the meantime cannot claim any right of appointment.

The learned Single Bench has issued a writ of mandamus to appoint Ayodhya Paswan on a job commensurate to his qualification and equivalent to the salary and service conditions which he was holding against the vacancy caused on account of non-extension of contract of Sukhdeo Paswan. We find that Ayodhya Paswan has no legal right to act as a Shiksha Mitra, renamed as Panchayat Teacher, as his appointment was against a vacancy caused by Sukhdeo Paswan. For a writ of mandamus, there has to be legal right and corresponding inaction. Since there is no legal right of Ayodhya Paswan, the learned Single Judge could not issue any mandamus to appoint him against a non-advertised post.

In view thereof, L.P.A. No. 869 of 2014 stands dismissed

and L.P.A. no. 825 of 2014 is allowed and the order passed by the learned Single Bench issuing direction to appoint Ayodhya Paswan is set aside.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

Anjani/P. Kumar

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