

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1301 of 2015
IN
Civil Writ Jurisdiction Case No. 19065 of 2011**

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Amita Kumari, wife of Girindra Kumar, resident of village & P.O. Babhangama,
P.S. Bihariganj, District Madhepura

.... Petitioner/Appellant

Versus

1. The State of Bihar
2. The Principal Secretary, Human Resource Department, Government of Bihar,
Patna
3. The District Magistrate, Madhepura
4. District Superintendent of Education, Madhepura
5. Block Development Officer, Bihariganj, District Madhepura
6. Block Education Extension Officer, Bihariganj, District Madhepura
7. Mukhiya, Gram Panchayat Raj Babhangama, Block Bihariganj, District
Madhepura
8. Panchayat Secretary, Gram Panchayat Raj Babhangama, Block Bihariganj,
District Madhepura
9. Rekha Kumari, D/o Sukhdeo Prasad Yadav, resident of village Murliganj, P.O.
& P.S. Murliganj, District Madhepura

.... Respondents/Respondents

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Appearance :

For the Appellant/s : Mr. Uday Bhanu Roy, Advocate
For the Respondent/s : None

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**CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
and
HONOURABLE MR. JUSTICE ARUN KUMAR**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

Date: 16-12-2016

The delay of one year and 268 days in filing the appeal is
condoned. I.A.No.5677 of 2015 is, accordingly, disposed of.

The appeal has been filed against the order dated 3.5.2012
passed by a learned Single Judge of this Court in CWJC No.19065 of
2011 by which the writ petition has been dismissed as having no
merit.

The appellant, respondent No.9 and others were the
candidates for appointment as Panchayat Teachers. The date of



counseling was fixed on 16.2.2007 but respondent No.9 could not participate therein as, according to her, she had not been issued the notice of counseling. It is not in dispute that respondent No.9 had merit marks 70.44% whereas the writ petitioner-appellant had merit marks 69.11%. The appellant was appointed on the post but a grievance was raised by respondent No.9 before the District Magistrate, Madhepura, who, in turn, requested the Block Development Officer to look into the matter. It is not in dispute that under Rule 18 of the Bihar Panchayat Teachers (Appointment and Service Condition) Rules, 2006 as it then stood the power to decide any complaint with regard to such appointment, etc. was vested in the Block Development Officer. The Block Development Officer held a camp and upon examining the records finding that the respondent No.9 had more marks than the appellant directed her appointment.

This generated the first round of litigation being CWJC No.8064 of 2007 filed by the appellant. The writ petition having been allowed by order dated 13.2.2009 by a learned Single Judge of this Court, LPA No.392 of 2009 was filed by respondent No.9 which was allowed setting aside the order dated 13.2.2009 on the ground of violation of principles of natural justice and remanding the matter to be decided on merit after giving an opportunity of hearing to respondent No.9 to the writ petition. Finally by order dated 12.5.2010 the writ petition filed by the petitioner-appellant was disposed of with a liberty to the petitioner to file an appeal before the concerned appellate authority within one month and the appellate authority was directed to consider the matter on merits after due notice to respondent No.9 and after giving her an opportunity to be heard. Thereafter the order dated 30.8.2011 has been passed by the District Teachers' Employment Appellate Authority, Madhepura, to which the



power had been vested in the meantime. By the order dated 30.8.2011 the appeal of the writ petitioner-appellant was dismissed holding that it was without merit and it was directed that the respondent No.9 shall continue on the post. Aggrieved by the same the writ petition, out of which the appeal arises, has been filed by the appellant.

The learned Single Judge has noted the fact that the District Teachers' Employment Appellate Tribunal has formulated the questions or the issues, which were required to be decided in the matter, raised by the petitioner before the forum and one of the issues was whether there was proper counseling held by the Panchayat and whether there is material to show that the private respondent did not participate in the counseling out of her own freewill which disentitled her from appointment to give benefit of appointment to the present petitioner. It was also noted that the Tribunal has clearly and categorically held that no proper information was given to the candidates who were said to be in the merit list and further noted that there was hide and seek practiced while giving information to all the candidates and most of the candidates having higher marks were deliberately denied benefit of appointment. Accordingly, the learned Single Judge came to the conclusion that the Tribunal had done no wrong in allowing the private respondent to continue on the post as a Panchayat Teacher, because she was ordered to be appointed as far back as in the year 2007 itself when the matter was looked into by the erstwhile designated authority, the Block Development Officer.

Before us learned counsel for the petitioner-appellant has sought to impugn not the order of the appellate authority or the learned Single Judge, rather the order dated 2.5.2007 passed by the Block Development Officer regarding which it is stated that the writ petitioner was directed to be removed without any notice and without



providing her an opportunity of hearing. It is further submitted that power was vested in the Block Development Officer under the then Rule 18 but he had acted on the instruction of the Collector.

Learned counsel also submits that Rule 9(x) of the 2006 Rules provides for appointment by preparation of merit list of candidates on the basis of counseling whereas the respondent No.9 had never appeared for counseling at the initial stage nor before appointment nor any subsequent counseling was done for her.

It is evident that all the pleas raised by learned counsel for the appellant are based on technicality and not on the substantial merit of the matter which is unassailable that respondent No.9 had higher merit marks than the writ petitioner-appellant. Moreover, even from a perusal of the order dated 2.5.2007 passed by the Block Development Officer it is evident that the only direction that was issued by the District Magistrate was to enquire into the matter and after the matter was enquired by him he came to the conclusion that respondent No.9 had higher merit marks than the petitioner and for which reason he had passed the order.

So far as the violation of principles of natural justice is concerned, the appellant had full opportunity before the District Teachers' Employment Authority in the matter and thus it is too late in the day to raise such issue. This being the second round of litigation before this Court as the matter had been remanded earlier to the appellate authority it is not open to the appellant to raise the said issue at this stage any more.

So far as the violation of Rule 9(x) is concerned, the said violation was in fact committed by the authorities evidently in collusion with the candidates, like the petitioner-appellant herself, so as to ensure that the candidates with higher merit marks could not be



available in the counseling by them and proper notice with regard to the counseling having not been issued, has been clearly found by the appellate authority which is the last forum of facts. The learned Single Judge has also noted the said fact. Thus no reliance can be placed on Rule 9(x) by the appellant.

For all the aforesaid reasons, we do not find any merit in the appeal so as to interfere with the order of the learned Single Judge. The appeal is, accordingly, dismissed.

(Ramesh Kumar Datta, J)

spal/-

(Arun Kumar, J)

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CAV DATE	
Uploading Date	09.01.2017
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