

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Letters Patent Appeal No.1308 of 2014**

**Arising out of**

**Civil Writ Jurisdiction Case No. 1121 of 2014**

**Along with**

**Interlocutory Application No. 7239 of 2014**

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Pramod Kumar Son of Late Kameshwar Choubey Resident of Village - Bhopatpur,  
P.O. Bhatti, P.S. Mohania, District - Kaimur

.... .... Appellant/s

Versus

1. The State of Bihar
2. The Principal Secretary, Education Department, Government of Bihar, Patna
3. The Director, Primary Education, Government of Bihar, Patna
4. The District Magistrate, Kaimur at Bhabhua
5. The District Education Officer, Kaimur at Bhabhua
6. The District Programme Officer, Kaimur, Kaimur at Bhabhua
7. The Block Education Extension Officer, Bhabhua, District - Kaimur
8. The Selection Committee through Mukhiya, Dihra Gram Panchayat, Kaimur
9. The Panchayat Secretary, Dihra Gram Panchayat, Bhabhua Block of Kaimur
10. The Member, District Teachers Employment Appellate Authority, Kaimur at Bhabhua
11. Sipahi Sharma Son of Ramchandra Sharma Resident of village - Nakhtaul, P.O. Dumraith, P.S. Bhabhua, District - Kaimur

.... .... Respondent/s

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**Appearance :**

For the Appellant : Mr. Mithilesh Kumar Upadhyay, Advocate

For the State : Mr. Rajesh Kumar Sinha AC to GP 25

For the Respondent No. 11: Mr. Rajendra Prasad Singh, Sr. Advocate with  
Mr. Mukesh Kumar Singh, 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: 24-06-2016**

Heard learned counsel for the parties.

Re.: Interlocutory Application No. 7239 of 2014

The present Interlocutory Application has been filed seeking condonation of delay of 192 days in filing of the present appeal.

Taking into consideration the averments made in the Interlocutory Application and after hearing learned counsel for the parties, we find that sufficient cause has been shown for the appeal being filed beyond the limitation period.

For the reasons aforesaid, the delay in filing of the present appeal stands condoned. Interlocutory Application No. 7239 of 2014 stands disposed off.

Re.: Letters Patent Appeal No. 1308 of 2014

The appellant has filed the present appeal under Clause X of the Letters Patent of Patna High Court being aggrieved by the order dated 23<sup>rd</sup> January, 2014 passed by the learned Single Bench by which C.W.J.C. No. 1121 of 2014 filed by him has been dismissed.

The appellant applied for the post of Panchayat Teacher for which respondent no. 11 was an applicant. Thereafter, as per the scrutiny held on 31.12.2008, in the merit list prepared and approved by the Selection Committee, the appellant was placed at Sl. No. 11. Subsequently, counselling was held on 28.02.2009 in



which 11 candidates had appeared and later again counselling was held on 25.07.2009 in which 16 candidates, including the appellant, appeared, but his name was not included in the list of selected candidates by which respondent no.11 and three other persons were selected. The said persons were also appointed pursuant to order dated 29.06.2011 passed in Appeal No. 54 of 2011 by the District Teachers Employment Appellate Authority, Kaimur (Bhabua) (hereinafter referred to as the 'Tribunal'). The appellant assailed the order dated 29.06.2011 of the Tribunal in C.W.J.C. No. 1121 of 2014 which was dismissed on 23.01.2014 leading to filing of the present appeal.

Learned counsel for the appellant submits that the merit list prepared by the concerned Panchayat was illegal and improper, inasmuch as the benefit of experience given to the respondent no. 11 was based on a certificate submitted by him after the last date of application. It is further submitted that the appeal itself before the Tribunal was only by one Baby Devi and not by the respondent no. 11 and, thus, the order of the Tribunal dated 29.06.2011, which mentions that the respondent no. 11 along with Baby Devi and two others had filed the appeal, shows manipulation and, accordingly, the order is fit to be set aside. Learned counsel submits that even comparison of the signature of the then Panchayat



Secretary on the counselling call letter and the selection list appears to be different, which indicates fraud. Learned counsel submits that the records obtained from the Tribunal under the Right to Information Act reveals that the application of Baby Devi bears the date 07.03.2011 but the applications of the other three persons, including the respondent no. 11, do not bear any date and further, that all the said three applications are in the same handwriting. It was also submitted that the appellant not being made party and heard by the Tribunal, is violation of the principles of natural justice.

Learned counsel for the State and respondent no. 11 submit that the appellant, admittedly, has lesser percentage marks, both at the intermediate level and after counting of the experience, i.e.,  $55+20=75\%$  with regard to the appellant and  $58.44+20=78.44\%$  with regard to the respondent no. 11. It is submitted that clearly the respondent no. 11 is more meritorious as compared to the appellant. They submit that the fact of the respondent no. 11 having the requisite experience for being granted additional 20 points not having been disputed, there is no illegality in his appointment. They further submit that in the records of the Tribunal, the application of the respondent no. 11 is present and, thus, the contention of the appellant that without the respondent no. 11 having filed any application, the order in his favour is illegal, is also misconceived.

Learned counsel submit that one of the reasons given by the learned Single Bench for dismissing the writ petition of delay, also cannot be faulted, since the order of the Tribunal was passed on 29.06.2011 and the writ petition was filed only in January, 2014, i.e., after more than 2 ½ years.

Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, we do not find any merit in the appeal. The appellant cannot have any genuine grievance by the appointment made of a person who was more meritorious, which is apparent from the marks obtained by him and the respondent no. 11 at the intermediate level. Further, it is not the case of the appellant that the respondent no. 11 did not have the experience or that the documents submitted before the Selection Committee in support of such experience were forged or fabricated. Thus, clearly, on merits, the respondent no. 11 had a better claim than the appellant. The fact that the Tribunal, after going through the records, finding that the respondent no. 11 and three others were the selected candidates, issued a direction to give them the appointment letter, cannot be faulted, as nothing has been pointed out before the Court to indicate that such candidates were not eligible to be appointed as per the merit list. Thus, direction of the Tribunal was only consequential to the Selection Committee itself preparing the



merit list in which all the four persons, including the respondent no. 11, were the persons found fit to be selected. Further, the issue raised of there being violation of principles of natural justice is not fit to be entertained in the present case for the simple reason that the Tribunal had only directed for issuance of letter to the candidates who deserved to be given the same as per the merit list prepared and the grievance before the Tribunal was also that though the applicants were the selected candidates, appointment letters were not being given only on the ground of verification of their documents and in this background, the Tribunal had issued the direction to issue appointment letters in their favour; thus, there was no requirement of hearing any other person(s) as nobody had come before the Tribunal challenging the said merit list. We may further note that the stand of the appellant, both in the writ petition as well as in the present appeal, that he submitted his objection before the selection authorities immediately after coming to know about his name not being included in the select list, clearly indicates that he was aware of such fact, but still he did not approach the Tribunal, as there could not have been any objection before any authority except the Tribunal in such matters. Moreover, no supporting material has been annexed to even indicate that such objection was filed before the Selection Committee at the relevant time. Thus, the appellant not pursuing the

matter as far as preparation of the selection list was concerned, in which his name did not appear, and of which he admits to be aware of, is proof of the fact that there was no genuine ground to challenge the same. Moreover, the appellant, even after the order of the Tribunal dated 29.06.2011, not challenging the same for over two and a half years, makes matters worse for him.

For the reasons aforesaid and further, since no fraud has been indicated in the selection process, we find that the learned Single Judge has correctly dismissed the writ application both on merits as well as on the ground of delay and laches.

Accordingly, the Letters Patent Appeal, being devoid of merit, stands dismissed.

**(Hemant Gupta, J)**

**(Ahsanuddin Amanullah, J)**

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