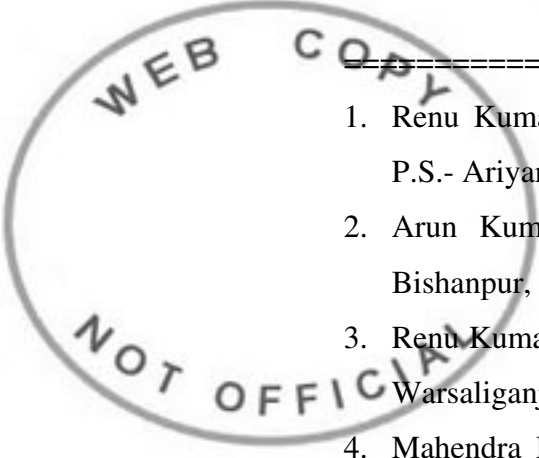


IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.63 of 2014

Arising out of

Civil Writ Jurisdiction Case No. 19201 of 2013

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1. Renu Kumari Wife Of Sri Mahesh Paswan Resident Of Village- Bishanpur, P.S.- Ariyari, District- Sheikhpura
 2. Arun Kumar Paswan Son Of Sri Sahdeo Paswan Resident Of Village- Bishanpur, P.S.- Ariyari, District- Sheikhpura
 3. Renu Kumari Wife Of Sri Abhishek Kumar Resident Of Village- Jiyapur, P.S.- Warsaliganj, District- Nawadah
 4. Mahendra Prasad Son Of Late Mathura Prasad Resident Of Village- Baghi, P.S.- Warsaliganj, District- Nawadah
 5. Rakesh Chandra Roshan Son Of Sri Ram Chandra Prasad Resident Of Village- Bishnathpur, P.S.- Kashichak, District- Nawadah
 6. Sulekha Kumari Wife Of Mahendra Prasad Resident Of Village- Baghi, P.S.- Warsaliganj, District- Nawadah

.... Appellant/s

Versus

1. The State Of Bihar through The Principal Secretary, Department Of Education, Government Of Bihar, Patna
2. The Director, Department Of Primary Education, Government Of Bihar, Patna
3. The District Magistrate, Sheikhpura
4. The Sub-Divisional Education Officer, Sheikhpura
5. The District Superintendent Of Education-Cum-Programme Coordinator, Sheikhpura
6. The Block Development Officer, Ariyari Block, Sheikhpura
7. The Block Education Extension Officer, Ariyari, Sheikhpura
8. Mukhiya, Aifni Panchayat, Block- Ariyari, District- Sheikhpura
9. Panchayat Secretary, Aifni Panchayat, Block- Ariyari, District- Sheikhpura
10. The District Teachers Appointment Appellate Tribunal, Sheikhpura through its Member
11. Jailendra Kumar Gupta, son of Fakira Sahoo, Resident of Afni, P.S.- Ariyari and District-Sheikhpura.
12. Raj Kumar Sao, son of Ramatar Sao, Resident of village and P.O. Afni, P.S.- Ariyari, District-Sheikhpura.

.... Respondent/s

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Appearance :

For the Appellants : Mr. Chitranjan Sinha, Sr. Advocate with
Mr. Pramod Mishra, Advocate

For the State : Mr. Raghvendra Kumar, SC 22

For the Respondents No. 11 and 12 : Mr. Lakshmi Kant Tiwary, Advocate

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA
and
HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 01-09-2016

The challenge in the present Letters Patent Appeal is to an order passed by the learned Single Bench on 26th November, 2013 whereby the writ petition filed by the appellants was dismissed.

The case has a chequered history. The appellants were appointed in the year 2006 as Panchayat Teacher from amongst 535 candidates which included 34 trained and 501 untrained candidates. As per the appellants, only 87 candidates turned up for verification of documents i.e., 13 trained and 74 untrained candidates. On the basis of counseling, the appellants were appointed on 15.11.2006.

Against the appointment of the appellants, one Jailendra Kumar Gupta filed an appeal before the Block Development Officer, Ariyari who was then the Appellate Authority under the Bihar Panchayat Primary Teacher (Appointment and Service Conditions) Rules, 2006. Such officer gave a report on 5th September, 2008 stating

that the entire selection process is not proper and consequently a direction was issued to the District Education Officer to fill up the vacant posts in accordance with law after setting aside the appointment of the present appellants though the appeal filed by Jailendra Kumar Gupta was dismissed.

CWJC No. 16360 of 2008 was preferred against the said order. The writ petition was allowed on 4th May, 2009, *inter alia*, on the ground that the Block Development Authority had no jurisdiction on the date when it passed the order to decide the appeal as the statutory authority to deal with the issue of appointment of Panchayat Teachers was the District Teachers Employment Appellate Authority. The writ petition was allowed when the following direction was issued:

“.....This Court, therefore, considers it proper to set aside the impugned order dated 5.9.2008 for the limited purpose of treating the present as a matter which stands transferred to the appellate authority for examination by him after hearing all concerned and making a fresh final pronouncement on the status of the petitioners.

Let the same be done within the statutory time fixed under Rule 2 of the notification creating the authority to be computed from the date that the petitioner files his application before the authority.

It is made clear that the setting aside of the order dated 5.9.2008 shall not result in the immediate

benefit of reinstatement of the petitioners.

In the facts and circumstances, to prevent creation of third party rights so that in the event of final success, the petitioners may not be prejudiced. Let no fresh regular appointments be made on the posts from which the petitioners have removed till the final adjudication of the matter.

The present order shall be operative only if the petitioners prefer an appropriate application before the appellate authority within three weeks from the date of receipt of the present order. In the event of their failure to do so, the interim order as aforesaid shall cease to have effect.

The writ application stands disposed off.”

Thereafter, the matter was considered by the Appellate Authority. The Appellate Authority passed an order on 30th November, 2009 to the effect that in absence of records, it is not possible to decide the appeal and, therefore, the appeal was dismissed. Against the said order of the Appellate Authority, the writ petition bearing CWJC No. 935 of 2010 was preferred which was disposed off on 21st February, 2013 when the following order was passed:

“The only reason why the District Teacher Employment Appellate Tribunal, Sheikhpura did not decide the lis was because a criminal case has already been filed, most of the records have been seized and are lying before the Judicial Magistrate for trial.

If the petitioners file all the relevant documents, which they have obtained as authentic copies under Right

to Information Act, and they satisfy the requirements of their authenticity as well as help in adjudication of the issue raised, the Tribunal may endeavour to re-look into the matter afresh and take a decision on the status of these petitioners. It is made clear that if any clarification is required on any document, that may always be got in from the court of concerned Judicial Magistrate.

Writ is disposed of with the above direction.”

In terms of the said direction, again the matter was considered by the Appellate Authority. The Appellate Authority vide decision dated 27th August, 2013 again returned a finding that in absence of documents, the Appellate Authority cannot take any decision and consequently dismissed the appeal. Aggrieved against the decision of the Appellate Authority dated 27th August, 2013, the writ petition was filed which was dismissed.

Learned counsel for the appellants argued that the appellants were appointed in the year 2006 but their services were terminated consequent to the order passed by the Block Development Officer which order has been set aside. It is thereafter none of the authorities have found any illegality in the order of appointment of the appellants. The enquiry into the appointment has not been completed because of lack of documents, therefore, for lack of documents; the appellants cannot be kept out of service.

The fact is that the services of the appellants were



terminated in pursuance of an order passed by the Block Development Officer on 5th September, 2008 which order was set aside by this Court with a rider that neither the appellants should be reinstated nor any fresh appointment made. Thereafter, the Appellate Authority has not found any illegality in the process of appointment of the appellants may be for the reason that the documents are not available. The fact remains that there is no finding in respect of illegal appointment of the appellants by the competent authority i.e., the District Teachers Employment Appellate Authority. In absence of any such finding, to keep the appellants out of job, seems to be harsh and unreasonable.

Though the learned Single Bench has found that no persons having lesser marks than the appellants are in employment but there is no factual basis to return such finding as the Appellate Authority has not given any such finding nor there is any fact to support such finding on record.

Therefore, we set aside the order passed by the Learned Single Judge dated 27th August, 2013 and direct the appellants to be reinstated expeditiously preferably within 15 days. They shall be paid wages from the date of their reinstatement. However, the reinstatement of the appellants shall not preclude the District Teachers Employment Appellate Authority to examine the records either by

way of reconstruction or other attending circumstances to find suitability of the candidates selected and appointed in the year 2006. The reinstatement of the appellants shall be subject to the decision of the Appellate Authority in accordance with law.

Accordingly, the Letters Patent Appeal stands allowed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

Anjani/P. Kumar

AFR/NAFR	NAFR
CAV DATE	N/A
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