

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1411 of 2014

IN

Civil Writ Jurisdiction Case No. 23183 of 2011

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1. Dharmshila Kumari Daughter of Late Radhe Shyam Singh Resident of Village - Chandinama, P.S. - Kashichak, District - Nawada.
 2. Pushpa Kumari Daughter of Shri Surendra Singh Resident of Village - Dedhgaon, P.S. Kashichak, District - Nawada.

.... Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Human Resource Department, Government of Bihar, Patna.
2. The Director, Primary Education, Human Resource Department, Government of Bihar, Patna.
3. The District Magistrate, Nawada.
4. The Deputy Development Commissioner, Nawada.
5. The District Teacher Employment Appellate Authority, Nawada, Bihar through its Member.
6. The District Superintendent of Education, Nawada through his successors-in-office a) District Education Officer, Nawada AND b) District Programme Officer (Estb.), Deptt. of Education, Nawada.
7. The Block Development Officer, Kashichak, Nawada.
8. The Block Education Extension Officer, Kashichak, Nawada now known as the Block Education Officer, Kashichak, Nawada.
9. The Mukhiya of Gram Panchayat - Khakhari Dedhgaon, P.S. - Kashichak, District - Nawada.
10. The Panchayat Secretary, Gram Panchayat - Khakhari Dedhgaon, P.S. - Kashichak, District - Nawada.
11. Dinesh Paswan, Former Panchayat Secretary, Gram Panchayat - Khakhari Dedhgaon, P.S. - Kashichak, District - Nawada at present Panchayat Secretary Gram Panchayat - Ghonghat, Sirdalla, Nawada.
12. Sunita Kumari Daughter of Shri Ramanuj Kumar Resident of Village - Awagila Chourasar, P.S. - Chandradip, District - Jamui.
13. Renu Kumari Wife of Vinod Kumar Singh Resident of Village - Nurichak, P.S. - Kashichak, District - Nawada.
14. Uttam Kumar Choudhary Son of Rajendra Choudhary Panchayat Teacher, Middle School, Lila Bigha, P.S. - Kashichak, District - Nawada.
15. Venkatesh Kumar Son of Raghubansh Singh Panchayat Teacher, Primary School, Madhopur, P.S. - Kashichak, District - Nawada.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr Rabindra Prasad Singh, Advocate

For the S t a t e : Mr Amit Kumar Anand, AC to GP 15

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CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH
And
HON'BLE JUSTICE SMT NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE NAVANITI PRASAD SINGH)

Date: 29-01-2016

IA No 635 of 2016 has been filed for stay of the judgment of the learned Single Judge in the writ proceedings from which this appeal arises.

2 Instead of dealing with the stay application, we have heard the learned counsel for the appellants and learned counsel for the State for final disposal of this appeal at this stage itself.

3 In the second phase for selection and appointment of Panchayat Teachers, these two appellants, who were respondents No 12 and 13 in the writ proceedings, and the writ petitioners, had applied. There were over 700 applicants. A merit list was prepared and 66% cut off marks were prescribed. The writ petitioners, being more meritorious, were included whereas the appellants, who were respondents No 12 and 13 in the writ proceedings, were not included because their marks were much below the cut off marks. Counselling was held and after almost a year in December 2010, appointment letters were issued. The writ petitioners were surprised that appointment letters were issued to respondents No 12 and 13 who have not even the above cut off marks in preference to the writ

petitioners. They immediately, in January 2011, filed appeal before the District Teachers Appointment Appellate Tribunal (for brevity, *the Tribunal*) challenging the action of selection and appointment of the said two respondents who are appellants herein. The Tribunal rejected the appeal. Hence, the writ petition was filed.

4 In the writ petition, Mukhiya, State and these respondents were noticed. Respondents appeared but none of the respondents chose, in spite of the opportunity being given, to file any counter affidavit contradicting the averments, as made in the writ petition. The Writ Court then proceeded to decide the matter upon the pleadings as available on record. Having found that the respondents had not made the mark, that is, had not secured more than the cut off marks, their selection could not be held to be valid and non-selection of the writ petitioner was also held not to be valid.

5 Thus, the writ petition was allowed and the appointment of respondents No 12 and 13, who are appellants before this Court, were set side. It is against this order that the appeal has been filed.

6 Having considered the matter, we are of the opinion that the case does not require any interference. In spite of notice, the appellants chose not to bring anything on record to contradict the pleadings. They had appeared through lawyer. Mukhiya had also

been noticed and he also did not file any counter affidavit. State also did not file any counter affidavit.

7 In such a situation, we cannot fault the learned Single Judge in coming to the issue, as found by him. Even, in this appeal, nothing tangible had been brought on record to show that the appellants were more meritorious in any manner than the writ petitioners. To the contrary, the fact otherwise, is not disputed. No reason is given why the appellants failed to bring on record documents in their favour, if any, in spite of notice.

8 In that view of the matter, we are not inclined to interfere. This appeal is dismissed.

(Navaniti Prasad Singh, J)

M.E.H./-

(Nilu Agrawal, J)

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