

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1604 of 2012

IN

Civil Writ Jurisdiction Case No. 13346 of 2012

Jhabru Mandal Son Of Late Sukdeo Mandal Resident Of Village- Ramchandra
Tola. Post- Durgapur, P.S. Amdabad, District- Katihar

.... Appellant

Versus

1. The State of Bihar
2. The Secretary, Human Resource Development Department, Government of Bihar, Patna
3. The Director, Primary Education, Government of Bihar, Patna
4. The District Education Officer, Katihar
5. The Block Education Officer, Amdabad, Katihar
6. The Secretary, Block Teachers Employment Committee, Amdabad, District- Katihar
7. The Panchayat Secretary, Gram Panchayat Raj, Bhanipur Khatti, District- Katihar
8. The Mukhiya, Gram Panchayat Raj, Bhawanipur Khatti, Katihar
9. Pranav Kumar Saha Son of Chandan Kumar Saha Resident under Gram Panchayat Raj Bhawanipur Khatti, P.S. Amdabad, District- Katihar Presently Posted As Panchayat Teacher at Primary School, Raj Mahal Colony, Amdabad, District- Katihar
10. Chandan Kumar Datta Son of Shri Atul Kumar Datta Resident of Village- Kirti Tola, under Panchayat Bhawanipur Khatti, Katihar presently posted as Panchayat Teacher at New Primary School, Raj Mahal Colony, Amdabad, Katihar
11. Madan Kumar Mandal Son of Lal Mohan Mandal Resident of Badan Tola, P.S.- Ratwa, District- Malda, West Bengal, presently posted as Panchayat Teacher in the capacity of Incharge Head Master at New Primary School, Raj Mahal Colony, Amdabad, Katihar

.... Respondents

Appearance :

For the Appellant	:	Mr. Brisketu Sharan Pandey, Advocate
For the Respondent no.1 to 6	:	AC to GP-XI
For the Respondents no.7 & 8	:	Mr. Sandip Patil, Advocate
For the State	:	Mr. Jay Prakash Sharma, Advocate

CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

And

HONOURABLE JUSTICE SMT. NILU AGRAWAL

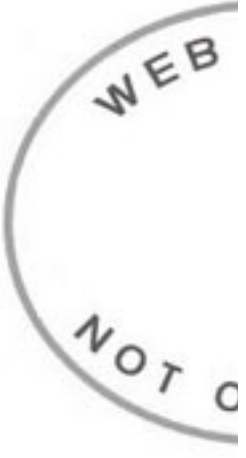
ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 18-03-2016

Notices were issued to the private contesting

respondent nos. 9, 10 & 11. So far as respondent no. 11 is



concerned, he, having tendered resignation, does not continue as Panchayat Teacher, therefore, he has been deleted from the array of the respondents. So far as respondent nos. 9 & 10 are concerned, they have been duly served and they have duly appeared through Vakalatnama, filed by Sri Rajendra Prasad Sah and Sri Ratnakar Ambastha, Advocates, whose names also appear on the daily cause list, but they are not present in the Court.

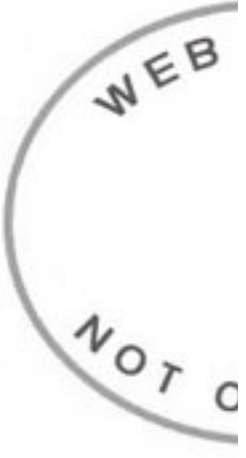
2. Heard learned counsel for the petitioner, State and learned counsel for the respondents. No. 7 & 8 i.e. the Panchayat Secretary and Mukhiya. We have heard the parties for final disposal of this appeal at this stage itself with their consent.

3. We have gone through the judgment and order dated 06.08.2012 passed in C.W.J.C. No. 13346 of 2012 by learned Single Judge and we are of the view that the order cannot be supported in fact or in law.

4. It appears that the writ petitioner/appellant was a candidate for the post of Panchayat Teacher. Upon selection process having been undertaken, although he participated. Three persons, who were selected, were respondent nos. 9, 10 & 11.

5. Complaints were filed before the Block Development Officer and then the Block Education Officer. The Block Education Officer enquired into the matter of their appointments, which were made in the year 2009, and ultimately gave his report in the year 2011, holding that the appointments were wrongly made without proper procedures being followed. There is a letter on record of Mukhiya of Gram Panchayat also holding that respondent nos. 9 & 10 were wrongly selected. The letter is addressed to their respective schools not to allow them to work or mark their attendance or pay their remunerations. Having got the report of the Block Education Officer, the writ petitioner/appellant filed an application before the District Teacher Appellate Authority, Katihar. The District Teacher Appellate Authority, Katihar dismissed the application as barred by limitation being beyond the 30 days period as provided in law. It did not accept the explanation for the delay, as filed on behalf of the writ petitioner/appellant. The writ petitioner/appellant then filed the writ petition being C.W.J.C. No. 13346/2012, which has been dismissed by the learned Single Judge by judgment and order dated 06.08.2012, holding that the



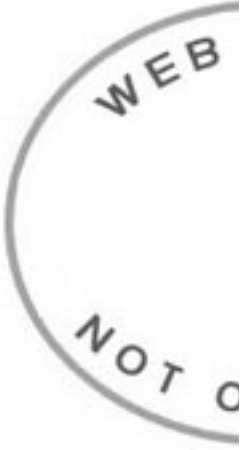


period of limitation being 30 days, the writ petitioner/appellant challenged the appointments, as made in the year 2009, in the year 2011. It was barred by limitation. It was pointed out to the learned Single Judge that the 30 days period, as stipulated in the Rules, was in relation to the period given to the Tribunal to dispose of the application. Learned Single Judge noted that there had been series of judgments holding that the period of limitation was 30 days and he would not change the long standing view taken by the Court.

6. We are afraid on both the counts, the learned Single was wrong. Firstly, the Rules upon amendment of Rule 18 by which District Teachers Appellate Tribunal was created and conferred power with the authority to hear the appeals of the persons who had grievance with the selection process, it was initially provided that the appeals would be heard and disposed of within 30 days, but this provision itself had been omitted in the year 2009 itself. When the application by the writ petitioner/appellant was filed before the Tribunal in the year 2011, even this 30 days period of disposal of the application was not there, and thus, there was absolutely no

period specified at all. The learned Single Judge, without referring to the statutory provisions, was clearly wrong in holding that there was a provision providing for the appeal to be filed within 30 days.

7. Secondly, the learned Single Judge held that there were series of judgments which have held the period to file applications before the Tribunal as a limitation of 30 days as accrual of cause of action. He further held that there being series of judgments which are of long period of time, he would not take a different view in the matter. We would like to observe that none of the counsels could place before us any decision muchless any binding precedent on us in this regard, nor are we aware of any such decision of this Court. This observation of the learned Single Judge, thus, has no basis. We would further add that the principle, that a judgment, which has stood the test of time for a long period, should not ordinarily be reversed for over the period of time. People have accepted the judgment and acted thereupon, This is the true principle. But, this does not mean that if the judgment was obviously wrong and based on no statutory provisions or contrary to the statutory provisions, it should not be



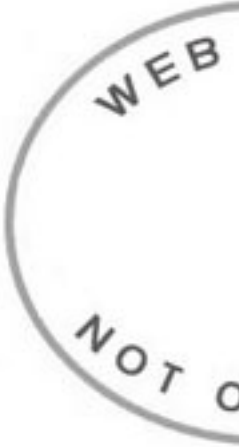
reversed.

8. In the present case, there is no occasion to hold that there were judgments of long standing inasmuch as the provisions itself were introduced in the year 2006 for the first time and the appellate provisions with regard to the conferment of jurisdiction on the District Teachers Appellate Authority in Rule 18 was enacted only in 2008, and further amended in 2009. The writ petition was filed in 2012. The period is even otherwise too short to apply the aforesaid principle.

9. The law is that the judgment has to be in consonance with statute. If the statute does not provide limitation, courts cannot impose the same. We can usefully quote from the judgment of the Apex Court in the case of ***Shri Mandir Sita Ramji Vs. Governor of Delhi and others*** since reported in ***AIR 1974 SC 1868***, which reads as follows: -

“6.....When a procedure is prescribed by the legislature, it is not for the court to substitute a different one according to its notion of justice. When the legislature has spoken, the judges cannot afford to be wiser.”

10. For the reasons aforesaid, we have found



that there is no period of limitation provided in Rule 18 of the Bihar Panchayat Primary Teachers (Appointment and Service Conditions) Rules, 2006. The order of the Tribunal as also the order of the learned Single Judge was clearly contrary to the statute, and is accordingly set aside. The matter would, thus, be remanded back to the Tribunal for hearing on merits after notice to all the parties. As the matter is old and there is undisputed necessity to have teachers, the Tribunal would take all necessary steps to conclude the hearing, if possible, within three months from the date of production of a copy of this order before it by the writ petitioner/appellant.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

Rajeev/A.F.R.

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