

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.176 of 2016

Arising out of

Civil Writ Jurisdiction Case No. 10558 of 2015

Along with

Interlocutory Application No.650 of 2016

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Smt. Kiran Sinha, daughter of Sri Dhanusdhari Prasad, resident of village-
Permanandpur, P.O.- Patauna, P.S.- Katrisarai, District- Nalanda.

.... Petitioner-Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department,
Government of Bihar, New Secretariat, Patna.
2. The Director, Primary Education, Education Department, Government of Bihar,
New Secretariat, Patna.
3. The District Education Officer, Nawada.
4. The District Education Appointment Appellate Tribunal, Nawada.
5. Kumari Pushpa daughter of Sri Ashok Kumar, resident of village- Samay, P.S.-
Akauna, District- Nawada.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Alok Kumar Sinha, Senior Advocate
Mr. Bhola Kumar, Advocate

For the Respondent/s :

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date: 02-12-2016

Re.: Interlocutory Application No.650 of 2016

The application is for condonation of delay of 46 days in
filing of the present Letters Patent Appeal.



For the reasons mentioned in the application, we find that sufficient cause is made out for condonation of delay. Consequently, we condone the delay in filing of the present Letters Patent Appeal.

Interlocutory Application stands allowed accordingly.

Re.: Letters Patent Appeal No.176 of 2016

The present Letters Patent Appeal is directed against an order passed by the learned Single Bench of this Court on 31st July, 2015 whereby, the challenge to the order passed by the District Teachers Employment Appellate Tribunal (hereinafter referred to as 'the Tribunal') on 05.06.2015 remained unsuccessful.

The appellant and the respondent no.5 were candidates for appointment as Panchayat Teacher in terms of the Bihar Panchayat Elementary Teacher (Employment & Service Conditions) Rules, 2006. The interview was fixed for 26th July, 2014. On the said date, the counselling is said to have been closed at 1:07 noon. As per the appellant, the respondent No.5 did not appear for counselling before closing of the counselling time. On the basis of the candidates present during the counselling, the appellant was offered letter of appointment on 26th July, 2014, but on the same day, the respondent no.5 appeared before the Counselling Board at 1:45 P.M., which was not accepted for the reason that the counselling stands closed.

Aggrieved against the action of not permitting counselling



of the respondent no.5, she invoked the jurisdiction of the Tribunal, which allowed her appeal on 5th June, 2015. The Tribunal found that entire counselling process is suspicious which does not inspire confidence and the presence of the respondent no.5 marked at 1:45 P.M. cannot be accepted to be correct. In view of the said fact, since the respondent no.5 was more meritorious than the appellant, the appeal was allowed and the appointment of the appellant was set aside.

The question, as to whether the respondent no.5 was present during the course of counselling, is a question of fact. The Tribunal has recorded a finding of fact that she was present, but the proceedings have been conducted in such a manner so as to show that she was not present at the time of counselling to appear before the authorities after the close of the time of the counselling. It is the said finding which has not been interfered with by the learned Single Bench of this Court.

We do not find any justifiable reason as to why the respondent no.5, who has got more marks than the present appellant, will not appear for counselling. The argument that she appeared for counselling in other *Panchayat*, has not been substantiated in any manner. Consequently, we do not find any error in the order of the learned Tribunal issuing fresh counselling which order has not been interfered with by the learned Single Bench of this Court.



In view thereof, we do not find any error in the order passed by the learned Single Bench of this Court which may warrant interference in the present Letters Patent Appeal. The same is, therefore, dismissed.

(Hemant Gupta, ACJ)

(Vikash Jain, J)

Sunil

AFR/NAFR	N. A. F. R.
CAV DATE	N. A.
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