

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

**Letters Patent Appeal No.1217 of 2014**

**IN**

**Civil Writ Jurisdiction Case No. 19425 of 2011**

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1. Md. Noman Raghieb @ Noman Raghieb Son of Taiyab Alam, Resident of Village- Kamati, P.O.- Jhala, P.S.- Terhagachh Post Office Jhala, District Kishanganj.

.... .... Appellant/s

Versus

1. The State of Bihar through the Secretary, Primary AND Adult Education Department, New Secretariat, Patna  
2. The Collector-Cum-District Magistrate, Kishanganj.  
3. The District Teachers Appointment Appellate Authority, Kishanganj through its Chairman  
4. The Member District Teacher Appointment Authorities, Kishanganj, District Kishanganj.  
5. The District Superintendent of Education, District Kishanganj.  
6. The Block Development Officer, Terhagachh, District Kishanganj.  
7. The Block Education Extension Officer, Terhagachh, P.S.- Terhagachh, Distt. Kishanganj.  
8. The Pramukh Block Terhagachh, P.S. Terhagachh, Kishanganj.  
9. Md. Sharfaraz Alam son of Faizur Rahman, Resident of Village Baiguna, P.O. Baiguna, P.S. Teragachh, District Kishanganj

.... .... Respondent/s

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**Appearance :**

For the Appellant/s : Mr. Firoz Ahmad

For the Respondent/s : Mr. KUNDAN BHADUR SINGH

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**CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH**

**and**

**HONOURABLE JUSTICE SMT. NILU AGRAWAL**

ORAL JUDGMENT

**(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)**

**Date: 05-02-2016**

The appellant was respondent no.9 in the writ proceedings. He is aggrieved by the judgment and order of the learned Single Judge dated 19-6-2014 passed in C.W.J.C.No. 19425 of 2011. The writ petitioner is respondent no.9 in the present Appeal. The writ petition was allowed challenging the order of the District Teachers



Employment Appellate Tribunal, which was set aside by the learned Single Judge . By the said order of the Tribunal the appellant was directed to be brought in as a Block Teacher in place of the writ petitioner. The Tribunal noticed that apparently the order and records, showing that the appellant was not present in counselling was wrong, rather it noticed that the writ petitioner's selection appeared to be fraudulent. It is against that the writ petition was filed. The learned Single Judge allowed the writ petition merely on the ground that there being no counter-affidavit either by the State or by the contesting respondent no.9 ,on the basis of principle of non-traverse, all that was said in the writ petition has to be accepted. One of the averments in the writ petition was that the Tribunal was wrong in finding that respondent no.9-appellant had appeared for counselling.

2. We are unable to sustain the order of the learned Single Judge. The principle of non-traverse would apply when there is no conflicting fact and the averments are singular without controversy. In the writ petition itself the findings arrived at by the Tribunal were being challenged. Thus, the finding of the Tribunal was in variance to the pleading in the writ petition. Merely because the counter-affidavit has not been filed by the respondents does not lead to the inference that the averments in the writ petition are to be taken as gospel truth, for the Court had to resolve the findings, as recorded by the Tribunal

on the basis of various documents and report and the averments, as made in the writ petition. There had to be reconciliation or study of the facts, which were at variance with the pleadings. Thus, applying the principle of non-traverse in such a situation was not entirely correct.

4. We, therefore, have no hesitation in setting aside the order of the learned Single Judge and remanding the matter for de-novo consideration. Parties would be at liberty to file affidavits/counter-affidavits, as they may be advised.

5. This Appeal is, accordingly, allowed and the judgment and order dated 19-6-2014 passed in C.W.J.C.No. 19425 of 2011 is, thus, set aside and the matter is remanded to the learned Single Judge for fresh consideration.

**(Navaniti Prasad Singh, J)**

B.K.Roy/-

**(Nilu Agrawal, J)**

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