

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1204 of 2015
Arising out of
Civil Writ Jurisdiction Case No. 20907 of 2013**

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1. Md. Moinuddin, son of Md. Suleman, R/o at + P.O.- Bishwambharpur Ailoth, P.S. Musarigharai, District- Samastipur
 2. Desh Raj Raman, son of Mauje Lal Mahto, R/o at + P.O.- Bishwambharpur Ailoth, P.S. Musarigharai, District- Samastipur
 3. Kumari Meena, W/o Ramesh Kumar Raman, R/o at + P.O.- Bishwambharpur Ailoth, P.S. Musarigharai, District- Samastipur
 4. Sarita Kumari, d/o Sri Ram Janak Mahto, R/o Village Bejhadeesh, P.S. Samastipur, District- Samastipur
 5. Kalpna Kumari, W/o Sri Satyendra Prasad, R/o at + P.O.- Bishwambharpur Ailoth, P.S. Musarigharai, District- Samastipur

.... Appellant/s

Versus

1. The State of Bihar through Principal Secretary, Education Department, Govt. of Bihar, Patna
2. The Director, Primary Education, Government of Bihar, Patna
3. The Member District Teacher Employment Appellate Authority, Samastipur, District- Samastipur
4. The District Magistrate, Samastipur, District- Samastipur
5. The District Education Officer, Samastipur, District Samastipur.
6. The District Programme Officer Establishment, Samastipur, District- Samastipur
7. The Block Development Officer, Samastipur, District- Samastipur
8. The Block Education Officer, Sarairanjan, District- Samastipur
9. The Panchayat Secretary, Gram Panchayat Raj Bishwambharpur Allauth (B. Allauth), Block- Sarairanjan, District- Samastipur
10. The Mukhiya, Gram Panchayat Raj Bishwambharpur Allauth Block- Sarairanjan, District- Samastipur
11. Sanjeev Kumar S/o Basudeo Prasad R/o At + P.O.- Bishwambharpur Ailoth, P.S.- Musarigharai, Distt. Samastipur
12. Additional Director of Police, Vigilance, Patna.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Amit Prakash, Advocate

For the Respondent/s : Mr. Lalan Kumar, AC to GP 23

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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: 26-04-2016



The order dated 28th January, 2015 passed by the learned Single Judge in CWJC No. 20907 of 2013 is the subject matter of challenge in the present Letters Patent Appeal. The learned Single Bench has rejected the writ petition filed by the appellants challenging their termination of service vide order dated 04.09.2013.

The appellants were appointed as Panchayat Teachers in the year 2007. A vigilance enquiry was ordered as to the manner of appointment on the complaint that the candidates meritorious and higher in marks were ignored in the process of selection of appointment, whereas the appellants were appointed. In the enquiry report vide Annexure-12, it was found that there are glaring instances of misconduct in the process of selection. In view of the said report of the Vigilance Department, a direction was issued by the Director, Primary Education, to remove the appellants from the posts of Panchayat Teachers and thereafter the impugned order was passed.

Learned counsel for the appellants has vehemently argued that no notice was issued before termination of their services as they have worked for more than seven years on the posts of Panchayat Teacher and that the appointing authority of the appellants have acted at the instance of the higher authority. Therefore, the order of termination of service is not tenable.



We do not find any merit in any of the arguments raised by learned counsel for the appellants. The process of selection has been found to be vitiated in an enquiry conducted by the Vigilance Department. As per the report, candidates with higher marks have been ignored during the process of appointment. Though the vigilance enquiry will lead to criminal trial against the officers guilty of misconduct but such vigilance enquiry may be made reasonable basis for taking action against the beneficiaries of illegal appointments. Once the candidates higher in marks have been ignored from appointment, the appellants cannot be permitted to take benefits of that illegal appointment. It was a fraud in the name of appointment which has been set at naught by the Department though belatedly.

Still further, Panchayat Teachers are appointed on contractual basis and not holders of the civil post. In view of the said fact, contract of the contractual employees can be terminated as they do not enjoy the protection in the line of Article 31 of the Constitution of India.

The argument that the order of termination has been passed at the asking of the higher officers cannot be faulted in any manner. There is no illegality in issuance of a direction by a higher authority to act in accordance with law. There is no prohibition in law that

higher authority cannot interfere in the matter of termination of illegal appointments.

In view thereof, we do not find any merit in the present Letters Patent Appeal. The appeal is accordingly dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

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