

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.183 of 2014

Arising out of

Civil Writ Jurisdiction Case No. 8844 of 2011

Rajeev Kumar, Son of Sri Uma Shankar Singh, Resident of Village - Kothiya,
Police Station - Madhuban, District - East Champaran at Motihari

.... Appellant/s

Versus

1. The State of Bihar, through the Principal Secretary, Human Resources Development Department, Government of Bihar, Patna
2. The District Teacher Appointment Appellate Authority, East Champaran at Motihari, Distt. East Champaran through its Member
3. The Member of the District Teacher Appointment Appellate Authority, East Champaran at Motihari, Distt. - East Champaran
4. The District Superintendent of Education, East Champaran at Motihari
5. The Block Education Officer, Tetariya, P.S. Madhuban, Distt.- East Champaran
6. The Mukhiya of the Gram Panchayat Raj Kothiya, Block Tetariya, P.S. Madhuban, Distt.-East Champaran
7. The Panchayat Secretary of the Gram Panchayat Raj Kothiya, Block Tetariya, P.S. Madhuban, Distt. East Champaran at Motihari.
8. Jaymangal Prasad Son of Sri Banarsi Prasad Resident Of Village - Bhagwanpur, P.O. Gheghwa, P.S. Madhuban, District - East Champaran at Motihari.

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Sanjeev Kumar Singh, Advocate
For the Respondent no. 8 : Mr. Nawal Kishore Singh, Advocate.
For the State : Mr. Uma Shankar, G.P.-4

CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH)

Date: 23-06-2016

Heard learned counsel for the parties.

The present appeal under Clause-X of the Letters Patent of Patna High Court is directed against the order dated 23rd August, 2013 by which C.W.J.C. No. 8844 of 2011 filed by the respondent no. 8 has been allowed.



The appellant and the respondent no. 8 had applied for the post of Panchayat Shiksha Mitra in the year 2005. However, the appellant having 72% marks was not appointed whereas the respondent no. 8 having 62% marks was selected. The appellant thereafter made a complaint before the Block Development Officer, Tetariya, East Champaran on 19.05.2015, but no action was taken. The appellant, thus, moved before this Court in C.W.J.C. No. 9797 of 2007, which was disposed off by order dated 15th March, 2010 giving liberty to the appellant to file an appropriate application before the concerned Appellate Authority, if not already filed, for redressal of his grievances. The Government also issued directions to the District Teachers Employment Appellate Tribunal (hereinafter referred to as the 'Tribunal') on 14.05.2009 directing that disputes with regard to employment of Shiksha Mitra would also be decided by the Tribunal. Accordingly, the case filed by the appellant before the Tribunal, being Case No. 528 of 2009, was finally heard and disposed off by order dated 04.05.2011 in which there was a definite finding that the respondent no. 8 had obtained the appointment fraudulently and the same was cancelled. The respondent no. 8, being aggrieved by the said decision of the Tribunal preferred C.W.J.C. No. 8844 of 2011, which was allowed leading to filing of the present appeal.

Learned counsel for the appellant submits that the Tribunal, after hearing all the parties, had, *inter alia*, come to a definite



conclusion that the respondent no. 8 had obtained his appointment fraudulently as there were many persons having better merit and qualification as compared to the respondent no. 8 who were ignored and further, that the own uncle of the respondent no. 8 was the Chairman of the Selection Committee being the Mukhiya of the Panchayat at the relevant time. It is submitted that this clearly indicated fraud and the order of the Tribunal ought not to have been interfered with by the learned Single Bench. It is further submitted that the decisions relied upon by the learned Single Bench, where it has been held that the Tribunal has no jurisdiction to entertain or decide dispute relating to the matter of Panchayat Shiksha Mitra are of no help to the respondent no. 8 for the reason that in the case of the appellant, a Bench of this Court directed the Tribunal to look into the matter and respondent no. 8 had appeared in the said proceeding without challenging either the authority of the Tribunal or assailing the order dated 15.03.2010 passed in C.W.J.C. No. 9797 of 2007. Learned counsel further submits that the employment obtained by the respondent no. 8 fraudulently, should not be allowed to continue.

Learned counsel for the respondent no. 8 submits that the learned Single Bench has rightly relied on the decisions of this Court referred in the order impugned, to the effect that the Tribunal had no jurisdiction to entertain or decide the dispute relating to Panchayat Shiksha Mitra and, thus, the order of the Tribunal dated 04.05.2011 was

a nullity in the eyes of law. It is further submitted that the uncle of the respondent no. 8 was living separately and, thus, there is no infirmity in him having headed the Selection Committee. It is further submitted that the appellant having continued on the post since 2005, his employment at this stage does not deserve to be interfered with.

Having considered the rival contentions, we find merit in the submissions of learned counsel for the appellant. The respondent no. 8 having participated in the proceeding before the Tribunal without assailing the order dated 15.03.2010 passed in C.W.J.C. No. 9797 of 2007, cannot take the stand that the Tribunal had no jurisdiction, since the Court in the particular case had specifically directed that the matter be decided by the Tribunal. Thus, the decision relied upon by the learned Single Bench will not alter the situation, at least as far as it relates to the present case. Since the decision *in personam* having been passed, which remained unassailed or uninterfered with by the superior Court, the adjudication by the Tribunal cannot be said to be bad in law. Moreover, the moot issue about fraud committed in the appointment of respondent no. 8 as Shiksha Mitra cannot be lost sight of. A perusal of the merit list, copy of which is available in the pleadings, goes to show that among the 28 candidates who had applied for such employment, at least 9 persons, including the appellant, were above respondent no. 8 as far as merit is concerned. In fact, the appellant was having the highest percentage among all the candidates who had applied. Further, the fact



of the respondent no. 8 being the own nephew of the then Mukhiya, who was the Chairman of the Selection Committee at the relevant time, has also not been denied. The Court is not persuaded to accept the fact that 9 persons who were having better percentage than the respondent no. 8 would choose not to appear for the counselling even after having applied for the post. Equally, in the considered opinion of the Court, the close relationship of uncle-nephew between the then Mukhiya, who was Chairman of the Selection Committee and the respondent no. 8, also gives rise to a *bona fide* presumption of bias, specially in the facts and circumstances of the present case, where at least 9 more meritorious candidates have been overlooked and respondent no. 8 has been appointed. This, clearly, is an act of fraud and the law being settled that fraud vitiates all subsequent actions, the appointment of the respondent no. 8 cannot be sustained. The fact that the respondent no. 8 may have continued for a long period is also of no help since we have come to a finding that such appointment was a result of fraud. Further, though the initial appointment was for 11 months but the respondent no. 8 has continued on the post by way of extension and subsequently, after coming into force of the Bihar Panchayat Primary Teachers (Employment and Conditions of Services) Rules, 2006, has automatically become a Panchayat Teacher, without there being any selection process during the entire period, except for the initial selection in the year 2005 as Shiksha Mitra. Thus, the continuation of the

respondent no. 8 on the post of Panchayat Teacher is in continuity of his appointment as Shiksha Mitra in the year 2005, which having been found to be fraudulent, cannot be allowed to continue.

For the reasons aforesaid, the order dated 23rd August, 2013 passed by the learned Single Bench in C.W.J.C. No. 8844 of 2011 is set aside. The Letters Patent Appeal stands allowed and C.W.J.C. No. 8844 of 2011 stands dismissed.

However, it is made clear that the recommendation of the Tribunal in the order impugned before the writ Court dated 04.05.2011, for considering the appellant for appointment, also cannot be upheld for the reason that the post of Shiksha Mitra no longer exists and also that after passage of so many years, the vacancy caused by disengagement of the respondent no. 8 needs to be filled up by a fresh selection process in accordance with law in which the appellant may also take part. Thus, the order of the Tribunal dated 04.05.2011, which was impugned in the writ petition, stands modified to such extent.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

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