

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No. 332 of 2014

Along with

Interlocutory Application No. 1609 of 2014

Arising out of

Civil Writ Jurisdiction Case No. 16887 of 2011

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Sunil Kumar S/o Sri Parmanand Yadav @ Parmanand Prasad Resident of Village and P.O. - Aaran, Block - Sattar Kataiya, P.S. - Simri Bakhtiyarpur, District – Saharsa.

.... Appellant/s

Versus

1. Sanjay Kumar S/o Late Sunil Kumar Yadav, Resident of Village - Belapur, P.S. - Simri Bakhtiyarpur, District – Saharsa.

.....Petitioner- Respondent 1st Set

2. The State of Bihar.

3. The Member, District Teacher Appointment and Appellate Tribunal, Saharsa.

4. The District Magistrate, Saharsa.

5. The District Education Officer, Saharsa.

6. The Block Development Officer, Sattar Kataiya, District – Saharsa.

7. The Panchayat Secretary, Gram Panchayat, Bishanpur, Block - Sattar Kataiya, District – Saharsa.

8. The Mukhiya, Gram Panchayat - Bishanpur, Block - Sattar Kataiya, District – Saharsa.

Respondents No. 1 to 7.... Respondents 2nd Set

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Appearance :

For the Appellant/s	:	Mr. Amit Shrivastava, Advocate Mr. Hemant Kumar Karan, Advocate Mr. Girish Pandey, Advocate.
For the Respondent/s	:	Mr. A. K. Keshri, AAG-11
For the Private respondent	:	Mr. Rajendra Prasad, Sr. Advocate. Mr. Rishi Raj, Advocate.

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH)

Date: 21-07-2016

Heard learned counsel for the parties.

Re.: Interlocutory Application No. 1609 of 2014

2. The Interlocutory Application has been filed seeking
condonation of 6 days delay in filing of the Letters Patent Appeal.

3. Upon hearing learned counsel for the parties and considering the averments made in the Interlocutory Application, we find that sufficient cause has been shown for delay in filing of the appeal. Consequently, the delay in filing of the Letters Patent Appeal is condoned.

4. Interlocutory Application No. 1609 of 2014 stands disposed off.

Re.: Letters Patent Appeal No. 332 of 2014

5. The challenge in the present appeal under Clause-X of the Letters Patent of Patna High Court is to the order dated 19.03.2012 passed by the learned Single Bench by which C.W.J.C. No. 16887 of 2011, filed by the respondent no. 1 has been allowed.

6. The appellant and the respondent no. 1, pursuant to advertisement published in the year 2006 had applied for the post of Panchayat Teacher under Gram Panchayat Bishanpur in Sattar Katiya Block of Saharsa district. Initially, out of 8 seats advertised, only 3 were filled up and 5 remained vacant. Thereafter, the District Education Officer directed the Employment Committee of the Panchayat to call 25 applicants for counselling for the remaining 5 seats. Both the appellant and the respondent no. 1 belonged to the Backward Class Category, but there was only one post available in that category. The Employment Committee, by letter dated



27.02.2007 sent notice to the candidates for appearing in the counselling on 28.03.2007. On the said date, 4 persons, including the respondent no. 1, appeared and all were selected for appointment as Panchayat Teachers. The appellant had not turned up for such counselling. Accordingly, the respondent no. 1, was issued appointment letter under Memo No. 16 dated 28.03.2007 issued by the Panchayat Secretary and he joined on the post on 02.04.2007. The appellant filed complaint before the District Magistrate on 30.04.2007 who in turn directed the Block Development Officer (BDO), Sattar Katiya for investigation. The BDO submitted his enquiry report dated 17.07.2007 with the finding that appointment of the respondent no. 1 was valid and legal. The appellant filed another complaint before the BDO on 22.02.2008 and upon enquiry it was again held that the appointment of respondent no. 1 was correct and that the appellant had not participated in the counselling held on 28.03.2007. A report to this effect dated 08.05.2008 was sent by the BDO to the Panchayat Secretary, Deputy Development Commissioner as well as the District Magistrate. The appellant then made a complaint to the Lokayukta, Bihar on 28.07.2009 and under letter No. 4354 dated 11.09.2009, the office of the Lokayukta, Bihar sought a report from the District Magistrate, Saharsa. The matter ultimately reached the District Teachers Employment Appellate



Tribunal, Saharsa (hereinafter referred to as the 'Tribunal'), which, after notice to the appellant and the respondent no. 1 and hearing the matter, submitted its report dated 18.05.2010 to the office of the Lokayukta, Bihar. The report clearly held the appointment of the respondent no. 1 to be valid. The appellant once again made complaint to the Lokayukta, Bihar on 23.06.2010 and the same was referred once again to the District Magistrate, Saharsa under letter dated 27.08.2010. The matter, thus, was once again sent to the Tribunal and finally resulted in its report dated 21.04.2011. This time, the Tribunal found the appointment of the respondent no. 1 to be illegal. The District Magistrate also directed the District Education Officer, Saharsa to act on the basis of the report of the Tribunal dated 21.04.2011, who in turn directed the Panchayat Secretary to act on the report and further appoint the appellant in place of the respondent no. 1. The BDO as well as the District Magistrate, Saharsa also directed the Panchayat Secretary to the same effect. The respondent no. 1 being aggrieved by the report of the Tribunal dated 21.04.2011, moved this Court in C.W.J.C. No. 16887 of 2011 and the same having been allowed by order dated 19.03.2012 by the learned Single Bench is the subject matter of challenge in the present appeal.

7. Learned counsel for the appellant submits that, though, from a purely legal point of view, the Lokayukta, Bihar may



not have any jurisdiction to entertain such a petition but in the face of glaring facts, the report of the Tribunal ought not to have been interfered with by the learned Single Bench. It is submitted that in the merit list, the appellant was clearly higher as he had obtained 75% whereas the respondent no. 1, had only 74 % and thus, the appointment of the respondent no. 1, was unsustainable. It is submitted that the power being vested with the Tribunal to look into the dispute cannot be disputed and, thus, the report of the Tribunal, holding the appointment of the respondent no. 1, to be illegal does not warrant any interference. It is further submitted that the appellant had also moved this Court in C.W.J.C. No. 8387 of 2007 against the selection/appointment of the respondent no. 1 and the same was disposed off, along with analogous cases, by a common order dated 13.07.2011, with liberty to the petitioners of those cases to approach the concerned Tribunal, which was directed to take a final decision within 6 months from the filing of the complaint. It is, thus, submitted that the Tribunal having considered the matter, was also in conformity with the order of the Court dated 13.07.2011 in C.W.J.C. No. 8387 of 2007 and analogous cases, and the same did not warrant any interference by the learned Single Bench.

8. Learned counsel for the respondents submits that the brazen interference by the office of the Lokayukta, Bihar in the



matter was totally beyond jurisdiction and, thus, the action taken by the Tribunal as well as its recommendations, are *non est* in the eyes of law. It is further submitted that a mockery has been made by the appellant of the due process of law, inasmuch as twice the matter was agitated before the BDO, who at the relevant time was the competent forum to agitate such matter and the appointment of the respondent no. 1 having been found to be valid, the appellant had then moved the Lokayukta, Bihar and initially, the matter having reached the Tribunal, it was found that there was no infirmity in the appointment of the respondent no. 1 but the appellant once again pursued the matter before the Lokayukta, Bihar and in the second round, the Tribunal has reversed its finding and submitted the enquiry report dated 21.04.2011 holding the appointment of the respondent no. 1 to be illegal, which was impugned before the learned Single Bench. It is submitted that all this was being done simultaneously when the appellant had also moved this Court challenging the appointment of the respondent no. 1 in C.W.J.C. No. 8387 of 2007. Learned counsel submits that the respondent no. 1 was appointed for the reason that among the candidates who had appeared for counselling on 28.03.2007, he was the person who was having the best merit in the Backward Class Category and as the appellant did not choose to appear, he could not be selected. Even on merit it is submitted that

the respondent no. 1 had 74% whereas the appellant had 75% i.e., a different of only 1% and, thus, it is submitted that by no stretch of imagination it can be held that merit has been compromised as both the persons are having almost the same marks.

9. Having considered the rival contentions, we do not find any merit in the present appeal. The appellant, after having moved before the concerned BDO, who was the proper authority to look into the matter of such appointment at the relevant point of time, any decision by him was required to be assailed by the appellant before the higher forum. Thus, the same not being done, the second round before the BDO itself was not valid. To make matters worse for the appellant, he approached the office of the Lokayukta, Bihar leading to the matter reaching the Tribunal, which gave an enquiry report, finding no infirmity in the appointment of the respondent no. 1 and the matter being again agitated before the Lokayukta, Bihar and in the second round, the Tribunal giving a report to the effect that the appointment of the respondent no. 1 was illegal, is nothing short of a blatant abuse of the process of law. The appellant, besides filing petition after petition before the BDO/Lokayukta, Bihar was also trying his luck before this Court by filing C.W.J.C. No. 8387 of 2007 for the same relief. It is apparent that the BDO in his first enquiry report dated 17.07.2007, followed by another report dated



08.05.2008, had upheld the validity of the appointment of the respondent no. 1 and had given a clear-cut finding that the appellant had not appeared at the counselling held on 28.03.2007. The same was also found by the Tribunal in its first report dated 18.05.2010. Thus, the matter once having been agitated at the level of the BDO had reached finality at that stage but the same was again re-agitated/reconsidered by the BDO which was impermissible. Thereafter, once the Tribunal has also considered the matter it could also not have reconsidered the matter again. The provision of the relevant rules not providing for any review, clearly indicates that such power does not exist either with the BDO or the Tribunal. While exercising statutory power, unless power to review is specifically conferred by the statute, the same cannot be exercised. The object behind the same is that matters should attain finality at every level without there being scope for it being revived again at that level itself. It is clear that the appellant has been persistent in his attempt to approach the same forum again and again and was satisfied only in the 4th round when he got a report in his favour by the Tribunal. It is further apparent that the appellant has tried to invoke all forums simultaneously, which is a classic example of forum hunting by a litigant. Such act besides being deplorable is also condemnable. We may note here that the learned counsel for the appellant was very fair and candid in

admitting that the Lokayukta, Bihar has no role or power to interfere in the matter. However, his only plea was that the appellant had higher marks than the respondent no. 1 and thus, should have been appointed. Such stand, of the appellant having higher marks, is of no help to the appellant since thrice the authorities concerned, after verifying the records have come to the conclusion that the appellant had not appeared for counselling which was fixed for 28.03.2007 and, thus, the appointment of the respondent no. 1 cannot be said to be illegal. Moreover, the appellant was not the candidate having the highest marks/merit as there was one more person above him, and him not questioning the appointment of respondent no. 1 clearly indicates that the allegations levelled by the appellant of there being no notice of the counselling to be held on 28.03.2007, is not correct. Further, we are in agreement with the reasoning given by the learned Single Bench in the order impugned dated 19.03.2012.

10. For the reasons aforesaid, the Letters Patent Appeal being devoid of merit, stands dismissed.

(Hemant Gupta, J.)

(Ahsanuddin Amanullah, J.)

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