

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.439 of 2014

IN

Civil Writ Jurisdiction Case No. 13266 of 2013

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Lakhindra Kumar Nirmal, son of Jagdish Bhagat, resident of village and P.O. Chorma, P.S. Pakridayan, District- East Champaran, Motihari

.... Appellant

Versus

1. The State of Bihar through the Principal Secretary, Human Resources Development Department, Government of Bihar, Patna
2. The District Education Officer, East Champaran
3. The District Programme Officer (Establishment), East Champaran
4. The Block Education Officer, Pakridayal, East Champaran
5. The Mukhiya, Gram Panchayat Raj Sirha, East Champaran
6. The Panchayat Secretary, Gram Panchayat Raj Sirha, East Champaran
7. The Member District Teacher Employment Appellate Authority, East Champaran
8. Satyendra Kumar Son Of Ramchandra Thakur, Resident Of Village And P.O. Chorma, P.S. Pakridayan, District- East Champaran, Motihari

.... Respondents

With

Letters Patent Appeal No. 1501 of 2013

IN

Civil Writ Jurisdiction Case No. 13266 of 2013

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Satyendra Kumar S/O Sri Ramchandra Thakur resident of village and Post Chorawa, Police Station- Pakridayal, District- East Champaran at present posted as Panchayat at newly created Government Primary School, Sirha, Hata Tola, Under Sirha, Panchayat, District-East Champaran.

.... Appellant

Versus

1. The State of Bihar through the Principal Secretary, Human Resources Development Department, Government of Bihar, Patna.
2. The District Education Officer, East Champaran.
3. The District Programme Officer (Establishment), East Champaran.
4. The Block Education Officer, Pakaridayal, East Champaran.
5. The Mukhiya, Null Gram Panchayati Raj, Sirha, East Champaran.
6. The Panchayat Secretary Gram Panchayat Raj, Sirha, East Champaran.
7. The Member, District Teacher Employment Appellate Authority, East Champaran.
8. Lakhindra Kumar Nirmal S/O Jagdish Bhagat R/O Vill+ P.O- Chorma, P.S- Pakaridayal, District- East Champaran, posted at Government Primary School, Nonia Tola Under Semuapur Panchayat, District- East Champaran.

.... Respondents

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Appearance :

(In LPA No. 439 of 2014)

For the Appellants	:	Mr. Y.V. Giri, Sr. Advocate Mr. Vikas Ratan Bharti, Advocate
For the State	:	Mr. Prabhat Ranjan, AC to GP-12
For the Respondent no.8:	:	Mr. Sanjeev Kr. Singh, Advocate

(In LPA No. 1501 of 2013)

For the Appellants : Mr. Sanjeev Kumar Singh, Advocate
Mr. Umakant Prasad, Advocate

For the State : Mr. Prabhat Ranjan, AC to GP-12

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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: 08-03-2016

The two Intra-Court Appeals are directed against the judgment and order dated 20.09.2013 passed by learned Single Judge in C.W.J.C. No. 13266 of 2013.

2. Heard learned counsel for the parties, and with their consent, the matter has been heard at length for final disposal at this stage itself.

3. It appears that in the year 2010, steps were taken for appointment of Panchayat Teachers in Gram Panchayat Raj, Sirha in Pakridayal Block, District - East Champaran. Apart from others, appellant Lakhindra Kumar Nirmal and appellant Satyendra Kumar, being the two appellants in the two appeals, applied. It appears that appellant Lakhindra Kumar Nirmal was then selected on the basis of experience certificate furnished by him. Appellant Satyendra Kumar, being aggrieved by the selection process, filed an application before the District Teachers Appellate Authority, East Champaran at Motihari, which was



registered as case no. 357 of 2008. It may be noted that while complaint before the Tribunal was made, at the time of selection process itself, Satyendra Kumar was not enlisted in the merit list, though, final selections were made in the year 2012. The contention of Satyendra Kumar before the Tribunal was that the appellant Lakhindra Kumar Nirmal had used a false experience certificate to get 20 additional marks. The Tribunal found it correct, and accordingly, the Tribunal ordered for cancellation of selection of appellant Lakhindra Kumar Nirmal, but went one step forward and directed appointment of Satyendra Kumar as well.

4. Being aggrieved by this, Lakhindra Kumar Nirmal filed the present writ petition being C.W.J.C. No. 13266 of 2013, in which Satyendra Kumar was made respondent no. 8. The matter was heard by learned Single Judge and by order dated 20.09.2013, the learned Single Judge not only dismissed the writ petition of Lakhindra Kumar Nirmal but also set aside the order of the Tribunal, which was in favour of respondent no. 8, Satyendra Kumar, appointing him as primary teacher. Learned Single Judge directed that fresh selection process must be undertaken, but while doing so, apparently the learned Single Judge has



noted that the writ petitioner Lakhindra Kumar Nirmal would not be considered at that stage itself. We may note that what the learned Single Judge actually meant, as would be apparent from the facts, that experience certificate of the writ petitioner Lakhindra Kumar Nirmal could not be considered.

5. Having heard learned counsel for the parties, in our view, the order of the learned Single Judge requires no interference. The Tribunal and the learned Single Judge was clearly of the view that the certificate presented by the writ petitioner/appellant namely, Lakhindra Kumar Nirmal was false. We do not take a different view of the matter. The reason being that, firstly, the scheme for appointment of Non-Formal Teachers as produced by the Sri Y.V. Giri, learned Senior Counsel appearing for the appellant Lakhindra Kumar Nirmal, from which, it is apparent that a person could be recruited as a Non-Formal Instructor, the minimum eligibility was matriculation or its equivalent. It is not disputed by Sri Giri that at that time when appellant Lakhindra Kumar Nirmal is sought to be recruited as Non-Formal Instructor, he was still studying in matriculation and was minor of 14 years of age. On the face of it, we are of the



view that even if he was, in fact, recruited as a Non-Formal Instructor, the recruitment was void *ab initio*. Firstly, no minor could be recruited in any government service, secondly, he was ineligible. Thus, the certificate may not be forged but certainly it is a certificate which was void *ab initio*. Thus seen, the 20 points granted to him in the selection process based on his experience certificate has to be excluded, and if that was excluded then, there were large number of applicants who were far above him. Thus, the Tribunal and the learned Single Judge did not err in cancelling the selection of appellant, Lakhindra Kumar Nirmal.

6. We may now refer to appellant namely, Satyendra Kumar and the direction issued by the Tribunal to appoint him after cancelling the appointment of Lakhindra Kumar Nirmal. In our view, it is settled position of law that no such positive direction may be issued by any court or authority. All that could have been issued, as noted by the learned Single Judge, a direction to reconsider the matter. The selection process was necessarily to be revisited in the facts aforesaid. No direction can, thus, be issued. Thus, we are in agreement with the learned Single Judge that the

direction issued by the Tribunal for appointment of Satyendra Kumar was bad and could not be sustained.

7. The learned Single Judge, then, directed that the selection process be taken up afresh. In our view, that is the appropriate direction to be issued in the facts and circumstances of this case. Thus, in our view, there is no cause made out for interference to the judgment and order of the learned Single Judge.

8. In the result, the concerned authorities would re-initiate the selection process wherein the writ petitioner/appellant namely, Lakhindra Kumar Nirmal would also be allowed to participate, but he will not be allowed to use the experience certificate for any purpose.

9. Both these appeals are, accordingly, dismissed.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

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