

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No. 51 of 2014

Arising out of

Civil Writ Jurisdiction Case No. 19234 of 2013

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Mohammad Khurshid Alam S/O Mohammad Sarfuddin Resident of Village-
Phulwaria, Block- Dhaka, P.S.- Dhaka, Motihari, District- East Champaran.

.... Appellant/s

Versus

1. The State of Bihar
2. The Principal Secretary, Ministry of Human Resources Development, Govt. of Bihar, Patna.
3. The District Magistrate, East Champaran, Motihari.
4. The District Superintendent of Education, Motihari.
5. The Block Development Officer, Dhaka, East Champaran.
6. The Mukhiya, Gram Panchaity Raj, Gowandri Kundwa, Chainpur, Dist.- East Champaran.
7. The Panchayat Secretary, Gram Panchyaty Raj, Gawandria Kunda, Chainpur, District- East Champaran.
8. The District Appointment Appellate Tribunal, East Champaran, through its Members.
9. Mohammad Khurshid Alam, S/o Mohammad Ainul Haque, Resident of Bajraho, Block- Dhaka, P.O. and P.S.- Khundwa Chainpur, District- East Champaran.
10. Nazara Khatoon W/o Umesh Azad, Village And P.O.- Kusmaha Chandan Bara, District- East Champaran, Working Female Teacher.
11. Md. Nazir Hussain Ansari, S/o Aziz Ansari, Village- Chand Mohan, P.S. Kundwa Chainpur, Motihari, District- East Champaran, Working Teacher.
12. Md. Firdaus Alam S/o Rahamtulla Village- Masaurha, P.S.- Khundwa, Chainpur, Motihari, District- East Champaran.
13. Tarannum Akhtar W/o Sagir Ahmad, Resident of Village- Chainpur, Dhaka, P.S.- Dhaka, Motihari, District- East Champaran, Working Female Teacher.
14. Pushp Lata Singh, W/o Basisth Narayan Singh, Resident of Village- Gawandi, P.S.- Kunda Chainpur, Motihair, District- East Champaran, Working Female Teacher.
15. Vibhu Ranjan, W/o Arun Kumar Ranjan, Resident of Village- Sahan, Bakas, P.S.- Dhaka, District- East Champaran.
16. Md. Mahi Bullah, S/o Abdul Rajak, Resident of Village- Baluwa, P.S.- Khunda Chainpur, District- East Champaran, Working Teacher.
17. Sumista Khatoon, D/o Saleem Ansari, Resident of Village- Mahuvah, Phulwaria, P.S.- Dhaka, Dist.- East Champaran, Female Teacher.
18. Md. Abdul Hayat Chand, Son of Md. Muniff Syed, Resident of Village- Gawandari, P.S.- Khundachainpur, District- East Champaran, Working Teacher.
19. Chandra Kala Kumari, D/o Budh Ram Resident of Village- Gawandri, P.S.- Dhaka, District- East Champaran, Female Teacher.
20. Anju Khatoon, D/o Bhagwan Pd. Resident of Village- Amawaria, P.O.- Rupahara Shiklarang, District- East Champaran, Female Teacher.
21. Md. Sabir Hussain Ansari, S/o Usman Ansari, Resident of Village- Chand Mohan, P.S.- Kunda Bazar, District- East Champaran, Working Teacher.
22. Kulsum Khatoon, D/o Khaleed Ansari, Resident of Village- Borhartak, Fateh Ahmad, P.S.- Khunda Chainpur, District- East Champaran, Female Teacher.
23. Ramnaresh Kumar Singh, Resident of Village- Chandan Mohan, P.S.- Khunda

- Chainpur, District- East Champaran, Working Teacher.
24. Mohammad Zaklir Ansari, S/o Nathuni Ansari, Resident of Village- Mahuvha, P.S.- Dhaka, District- East Champaran, Working Teacher.
25. Khilat Hina, W/o Mustaque Alam, Resident of Gawandri, P.S.- Khunda Chainpur, District- East Champaran, Female Teacher.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Aditya Sharan,
Mr. P. K. Sharan,
Mr. H. K. Sharan &
Mr. Rajani Gandha, Advocates.
For the Respondent No. 9 : Mr. Anis Akhtar,
Mr. Arif Daula Siddiqui &
Mr. Mahtab Alam, Advocate.
For the State : Mr. Alok Ranjan, A.C. to G.A. 13.

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA
and
HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH)

Date: 18-05-2016

Heard learned counsel for the parties.

The present appeal under Clause X of the Letters Patent of Patna High Court has been filed by the appellant against the order dated 25.11.2013 passed by the learned Single Bench by which C.W.J.C. No. 19234 of 2013 filed by him has been dismissed.

The appellant was appointed as Panchayat Teacher under Gram Panchayat Raj, Gawandri in the District of East Champaran on 30.11.2006. Such appointment was challenged by the respondent no. 9 in C.W.J.C. No. 23 of 2011, which was disposed off on 16.04.2012 to enable the respondent no. 9 to approach the District Teachers Employment Appellate

Authority (hereinafter referred to as the 'Authority') in the following terms :

“According to the petitioner, the impugned order, contained in Annexure-3, has been passed without hearing the parties in this regard. Since the order has civil consequences, therefore, such order passed behind the back cannot be sustained.”

“In view of the same, the impugned order in so far as it relates to the present petitioner is quashed, the matter is remanded back to the Appellate Authority for fresh adjudication after hearing all the parties.”

“Writ is allowed to the limited issued, provided the petitioner appears before the Tribunal within two weeks with a copy of this order.”

The respondent no. 9 accordingly filed Case No. 860 of 2012 before the authority which has been disposed off by order dated 21.08.2013 holding the appointment of the appellant in the general category to be invalid and the same has also been cancelled with a direction to appoint respondent no. 9 on the said post. The appellant being aggrieved by the said order had moved this Court in C.W.J.C. No. 19234 of 2013 which has been dismissed by order dated 25.11.2013, which is impugned in the present appeal.

Learned counsel for the appellant submitted that the ground for cancelling the appointment of the appellant by the Authority is that he secured lesser percentage of marks compared to respondent no. 9, which is erroneous as the Authority has misinterpreted the relevant provisions of the Bihar Panchayat Elementary Teachers (Employment and Service Condition) Rules,



2006 (hereinafter referred to as the 'Rules'). It was submitted that if the marks obtained by the appellant in the extra papers taken by him in the Intermediate Examination is taken into account, the percentage shall come to 67.22, whereas the respondent no. 9 has secured only 64.5 per cent marks in the Maulvi examination. It was further submitted that as the total marks of the respondent no. 9 have been taken for the purposes of determining his percentage, the total marks obtained by the appellant in all subjects in the Intermediate should be taken for arriving at the average. Learned counsel relied upon a decision of the Hon'ble Supreme Court in the case of **Bedanga Talukdar v. Saifudaullah Khan** reported in **(2011) 12 SCC 85**, for the proposition that once the selection process has started, relaxation of the condition in the advertisement is not permissible.

Learned counsel for the respondent no. 9 submitted that the view taken by the Authority is sound for the reason that the State itself has clarified the position, under Memo No. 1223 dated 08th August, 2006, that the computation of average should be done after excluding the marks obtained in the additional or optional papers. Thus, the same having been issued much prior to the process of selection, where counselling was held on 29/30.11.2006, the appellant was clearly below in the merit list compared to the respondent no. 9 and thus the Authority has rightly interfered in the matter holding the appointment of the appellant invalid and directing for



appointment of respondent no. 9. Learned counsel further drew the attention of the Court to an order dated 22.02.2012 passed by a Division Bench of this Court in **L.P.A. No. 844 of 2011 (Fatima Jabeen @ Fatma Jabee v. The State of Bihar and Ors.)** and its analogous case where it has been held that the circular dated 08th August, 2006 was issued in respect of Matric or Intermediate qualification and not in respect of any Maulvi qualification and that for passing the Maulvi examination the student has to take and pass examination in all papers and in that way all the papers were compulsory.

Having considered the submissions of learned counsel for the parties, we do not find any merit in the appeal. The appellant admittedly got 60.66 per cent marks (546/900) in the Intermediate examination excluding vocation and optional subjects, whereas the respondent no. 9 had 66.5 per cent marks. The clarification of the Government dated 08th August, 2006 is in terms of Rule 19 of the Rules, which gives power to the State Government to clarify any provision of the said Rules, if difficulty arises. We would like to add here that such clarification is also reasonable and cannot be said to be arbitrary and in any case has not led to substitution of the relevant provisions of the Rules but rather is supplemental to the same.

As far as the decision relied upon by learned counsel for the appellant in the case of **Bedanga Talukdar** (supra) is concerned, we do not find it relevant for the purposes of the

issue involved in the present case.

Accordingly, the order of the Authority dated 21.08.2013 as well as the order of the learned Single Bench dated 25.11.2013 do not warrant any interference and the Letters Patent Appeal stands dismissed.

(Ahsanuddin Amanullah, J.)

Hemant Gupta, J I agree

(Hemant Gupta, J.)

Anand Kr.

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CAV DATE	
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Transmission Date	