

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1836 of 2016
IN
Civil Writ Jurisdiction Case No. 14791 of 2012**

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1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
 2. The Principal Secretary, Human Resources Development Department, Government of Bihar, Patna.
 3. The Director, Primary Education, Human Resources Development Department, Government of Bihar, Patna.
 4. The District Education Officer, Bhojpur at Arrah.
 5. The District Programme Officer, (Establishment), Bhojpur at Arrah.
 6. The Block Education Extension Officer, Block Sandesh, District Bhojpur.
 7. The Block Development Officer, Block Sandesh, District- Bhojpur.

.... Appellants

Versus

1. Smt. Sneha Srivastava, Daughter of Sri Pusupatinath Sinha, Resident of Professor Colony, Arrah, District- Bhojpur.
2. Mahesh Kumar, S/o Yamuna Singh, Village+Post- Kori Sandesh, District- Bhojpur.
3. Umesh Kumar, S/o Annant Choudhary, Village+ Post- Jagdishpur, District- Bhojpur.
4. Raj Kumar Singh, S/o Kunj Bihari Singh, Village+ Post- Jagdishpur, District- Bhojpur.
5. Md. Islamul Haq, S/o Md. Iliyas Khan, Village+ Post- Piro, District- Bhojpur.
6. Md. Sarfars Ahmed, S/o Sri Surjuddin Khan, Village+ Post- Milki Piro, District- Bhojpur.
7. Deepak Kumar, S/o Surendra Singh, Village+ Post- Baruli, Piro, District- Bhojpur.
8. Smt. Asha Kumari, D/o Vijay Prasad, Village+ Post- Bikramganj, District- Bhojpur.
9. Smt. Rambha Devi, W/o Arbind Kumar, Village+ Post- Jamuaw, Piro, District- Bhojpur.
10. Mamta Devi, D/o Kanhaiya Lalji Sahay, Village+ Post- Charpokri, District- Bhojpur.
11. Nitu Kumari, D/o Chote Lal Prasad, Village+ Post- Rajabazar, Bihiya, District- Bhojpur.
12. Sunaina Kumari, D/o Ram Kishun Yadav, Village+ Post- Churamanpur, District- Buxar.
13. Sujit Kumar, S/o Rajendra Singh, Village+ Post- Mushitola Daba, District- Jagdishpur.
14. Rakha Kumari, D/o Deenath Sharma, Village+ Post- Arrah, District- Jagdishpur.
15. Bimal Kumar, S/o Dawarika Singh, Village+ Post- Kurmuri Tarari, District- Bhojpur.

.... Respondents

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Appearance :

For the Appellants : Mr. Bishnu Kant Dubey
Mr. Maya Shankar Mishra
Mr. Lal Muni Sharma, Advocates.



For the Respondents : Mr. Anjani Kumar, AAG 4
Mr. Shailendra Kr. Singh, AC to AAG 4

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date: 05-12-2016

Re: I.A. No. 7575 of 2016.

The application has been filed for condonation the delay of 1478 days in filing the present appeal. It is pointed out that learned Single Bench passed an order dated 20th of September, 2012 in CWJC No. 14791 of 2012 directing the appellants to pay arrears of salary to the writ applicants from the date of their joining i.e. on 3rd of January, 2011. Such order was passed when the appellants had not filed any counter affidavit and the writ application was allowed on the second date of hearing. It is pointed out that from the records of Block Teacher Employment Unit, Sandesh, it transpired that the writ applicants had never participated in the selection process nor any order in favour of the writ applicants has been issued on 28th of December, 2010 and that no request has been made for providing allotment for the purpose of payment to the petitioners by Block Education Officer, Sandesh. It is pointed out that earlier the appellants filed a review petition before the learned Single Bench but the same was dismissed for the reason that a contempt petition was filed alleging disobedience of the orders passed by this Court. On



20.09.2012 an appeal was filed against the order passed by the contempt Court for the reason that no writ is maintainable against the interim order passed by the contempt Court. Subsequently, the appellants were advised to file an appeal against the order passed by the learned Single Bench and thus, the appeal has been preferred. All the processes for filing of the review petition and defending the contempt petition subsequently have taken a considerable time. It is thus contended that the appellants have been prosecuting remedies in accordance with law, therefore, delay of 1478 days in filing of the appeal before this Court occurred for which sufficient cause has been shown. More so, the entire claim of the writ applicants is not based upon forged and fabricated documents.

2. We have heard learned counsel for the parties and find that the sufficient cause is made out for condoning the delay of 1478 days in filing of the appeal. The State has taken different steps to dispute the order passed by the learned Single Bench but had not succeeded. In view of the above, the delay is condoned. The interlocutory petition stands disposed of.

Re: LPA No. 1836 of 2016

The present Letters Patent Appeal is against an order passed by the learned Single Bench on 20th of September, 2012 in CWJC No. 14791 of 2012 wherein on the second date of hearing of



the writ application, the Court has passed an order with a direction the respondents to make payment of arrears of salary assuming that there is paucity of funds for making payment of salary.

2. In the memorandum of appeal there is a reference to an order passed in CWJC No. 17278 of 2012 (Raj Kishor Singh & Ors. Vs. The State of Bihar & Ors.) wherein this Court disposed of the writ application of the similarly situated candidates on 10th of October, 2012 directing the Principal Secretary, Primary Education, Human Resources Development Department to examine their grievances in accordance with law and pass appropriate orders. It is in pursuance of such order, the claim of the writ applicants and Raj Kishor Singh was examined and rejected on 30th of January, 2013. It was found that the claim of the petitioners is based on forged and fabricated documents for which an FIR bearing Sandesh P.S. Case No. 91 of 2013 was lodged. It is also pointed out in the affidavit dated 15th of September, 2016 filed in another writ application, it was stated that as per the report submitted by the Block Education Officer, Sandesh, no appointment of Block Teachers had been made on 28.12.2010 and that the letter said to be issued by the Block Education Officer for allotment of funds was never issued by the Block Education Officer.

3. On the other hand, the writ applicants have filed a



counter affidavit relying upon the documents received under the Right to Information Act to controvert the stand of the State and to assert that the appointment of the writ applicants was in fact made and, therefore, the writ applicants are entitled to salary from the date of their appointments.

4. We have heard counsel for the parties and find that there could not be any conclusive finding that the appointment of the writ applicants was genuine. Another writ petition filed by Raj Kishor Singh, namely, CWJC No. 17278 of 2012, filed by 18 similarly situated writ applicants as the writ applicants of the present case shows that there were 44 block teachers appointed at Sandesh. In the said case a counter affidavit was filed by District Education Officer, Bhojpur pointing out that in second phase only 34 Block Teachers were appointed and their salary were being paid salary regularly and no request for any payment of salary has been received in respect of the writ applicants. There was no information from the Block Teachers Appointment Committee with regard to the appointment of the writ applicants. Thus, it was asserted that only 34 appointments have been made. The Court observed that if such was the stand, it is for the District Education Officer to make further enquiry and then to file a proper counter affidavit enclosing necessary documentary evidence regarding the doubt with regard to the validity of



appointment itself. In view of the said fact, the writ application was disposed of with the following directions:

“ The Principal Secretary, Primary Education, Human Resources Development Department, shall himself examine grievances of the petitioners in accordance with law, grant them personal hearing and pass an appropriate order in accordance with law preferably within a maximum period of four weeks from the date of receipt and/or production of a copy of this order.

That issues of fundamental right to life and liberty under Article 21 along with Article 23 of the Constitution arise for consideration needs no further emphasis.

Needless to state that the Principal Secretary is also expected to examine the nature of the counter affidavit filed and whether it was appropriate or inappropriate. The matter is left to his subjective satisfaction. If his subjective satisfaction holds that the counter affidavit was not proper he shall consider the disciplinary aspect of the matter.”

5. It has been explained that pursuant to such direction, the State Government has passed an order on 30th of January, 2013 rejecting the claim of the writ applicants in the said case and an FIR was lodged against 15 including some of the writ applicants.

6. Once this Court in a similar matter passed an order to verify the claim of the writ applicants, we find that the similar order is required to be passed in the present case as the question of fact is



required to be decided as in the writ petition filed by Raj Kishor Singh and others. Therefore, the question of fact in the present case is also required to be decided by the same Officer in the same manner.

7. Consequently, the order passed by the learned Single Bench dated 20th of September, 2012 is set aside and the matter is remitted to the Principal Secretary, Primary Education, Human Resources Development Department to consider the documents filed by the writ applicants by way of a counter affidavit in the present Letters Patent Appeal and the documents of the Department and take an appropriate action after giving an opportunity of hearing to the writ applicants.

8. The Letters Patent Appeal stands disposed of.

(Hemant Gupta, ACJ)

(Vikash Jain, J)

B.T/-

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