

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1058 of 2013
IN
Civil Writ Jurisdiction Case No. 2365 of 2011

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Kumkum Kumari, Daughter of Sri Chandra Bhushan Singh, Resident of Village-
Simra, P.O.- Barail, P.S. + Dist- Supaul

.... Appellant/s

Versus

1. The State Of Bihar through its Commissioner-Cum-Secretary to the Govt. in the Department Of Human Resources Development, New Secretariat Building, Bihar, Patna
2. The Director, Primary Education, Bihar, Patna, New Secretariat Building, Patna
3. The District Teachers Employment Appellate Authority, Supaul District- Supaul Through Its Member Of Appellate Authority
4. The Divisional Commissioner, Koshi Division, Supaul
5. The District Magistrate-Cum-Collector, Supaul
6. The Deputy Development Commissioner, Supaul
7. The District Superintendent of Education, Supaul
8. The Block Development Officer, Supaul, District- Supaul
9. The Block Education Extension Officer, Supaul
10. The Panchayat Secretary, Gram Panchayat Malhani, P.O.- Sukhopur, P.S. And District- Supaul
11. The Mukhiya, Malhani Gram Panchayat, At And P.O.- Sukhpur, P.S.- Supaul, District- Supaul
12. Babita Kumari, W/O Sri Ganesh Singh (Mukhiya), R/V- Malhani, P.O.- Sukhpur, P.S.+District- Supaul

.... Respondent/s

With

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Letters Patent Appeal No. 1101 of 2015
IN
Civil Writ Jurisdiction Case No. 1214 of 2011

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Kumkum Kumari, Daughter of Sri Chandra Bhushan Singh, Resident of Village -
Simra, P.O. - Barail, P.S. + District - Supaul.

.... Appellant/s

Versus

1. The State of Bihar through its Commissioner - cum - Secretary to the Govt. in the Department of Human Resources Development, New Secretariat Building, Bihar, Patna.
2. The Director, Primary Education, Bihar, Patna, New Secretariat Building, Patna.
3. The District Teacher Employment Appellate Authority, Supaul District - Supaul through its Member of Appellate Authority.
4. The Divisional Commissioner, Koshi Division, Supaul.
5. The District Magistrate-cum-Collector, Supaul.

6. The Deputy Development Commissioner, Supaul.
7. The District Superintendent of Education, Supaul.
8. The Block Development Officer, Supaul, District - Supaul.
9. The Block Education Extension Officer, Supaul.
10. The Panchayat Secretary, Gram Panchayat Malhani P.O. - Sukhpur, P.S. & District - Supaul.
11. The Mukhiya, Malhani Gram Panchayat, At and P.O. - Sukhpur, P.S. - Supaul, District - Supaul.
12. Babita Kumari, W/o Sri Ganesh Singh (Mukhiya), R/V - Malhani, P.O. - Sukhpur, P.S. + District - Supaul.

.... Respondent/s

Appearance :

For the Appellant : Mr. Lalan Kumar Singh, Advocate
For Respondent 11 : Mr. Avanindra Kr. Jha, Advocate
For Respondent 12 : Mr. Tej Bahadur Singh, Sr. Advocate
Mr. Amrit Abhijat, Advocate
For the State : Mr. Kameshwar Pd. Gupta, Advocate

CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 20-09-2016

Delay in filing L.P.A. No. 1101 of 2015 is
condoned.

I.A. No. 4687 of 2015 is, accordingly,
disposed of.

Heard the parties.

These two intra-court appeals have been
preferred by one Kumkum Kumari. So far as L.P.A. No. 1058 of
2013 is concerned, it arises out of C.W.J.C. No. 2365 of
2011(Kumkum Kumari Vs. The State of Bihar and others), which
writ petition was filed by the appellant, challenging her non-



selection to the post of Panchayat Teacher of Malhani Gram Panchayat, district Supaul. L.P.A. No. 1101 of 2015 has also been preferred by the same appellant against the judgment and order of the learned Single Judge in C.W.J.C. No. 1214 of 2011 (Babita Kumari Vs. The State of Bihar and others). The writ petition filed by the appellant being C.W.J.C. No. 2365 of 2011 was dismissed, whereas C.W.J.C. No. 1214 of 2011 filed by one Babita Kumari, in which this appellant was respondent no. 11, was allowed. Both these writ petitions dealt with the appointment process that was taken up in the year 2006 for appointment of panchayat teachers.

Pursuant to notices issued, private respondent Babita Kumari has appeared, and also Mukhiya of Malhani Gram Panchayat appears. It may be relevant to note, that at the time when the dispute arose in the year 2006, the Mukhiya of the gram panchayat was the husband of Babita Kumari, namely, Sri Ganesh Singh and at present Mukhiya is the mother-in-law of Babita Kumari. The Mukhiya seeks to support and justify selection of Babita Kumari to the post of panchayat teacher and opposes the claim of the appellant Kumkum Kumari for the said post.

The writ petition filed by the appellant was dismissed by the learned Single Judge and rightly so. The facts leading thereto are necessary to be noted. In the year 2006



advertisement was issued, inter alia, for appointment of panchayat teachers of Malhani Gram Panchayat. The appellant duly applied but was not selected, ostensibly, on the ground that on the date of counselling she did not turn up for counselling, instead, Babita Kumari, who was undisputedly less meritorious and the wife of the sitting Mukhiya, was selected and appointed by the Committee, the Chairman of whom was the Mukhiya itself. The appellant challenged this before the Block Development Officer, Supaul in terms of Rule 18 of the Bihar Primary Teachers (Employment and Service Condition) Rules, 2006. The Block Development Officer rejected the application filed by the appellant. It appears, in 2008, the 1st phase of appointment being over, the 2nd phase of appointment of panchayat teacher was taken up. This time State amended Rule 18 and provided for constitution of Appellate Tribunal where all pending matters as pending before the Block Development Officer and fresh matters arising out of 2nd phase appointment were to be taken up. The appellant moved the Tribunal. The Tribunal called for the records from the Mukhiya and perused the records in detail. The Tribunal then held that it cannot be an appellate authority over the decision of the Block Development Officer, who had earlier rejected the application of the appellant. The Tribunal had authority only in



respect of cases which had been transferred to it, as were pending before the Block Development Officer, and those to be filed for the first time in respect of 2nd phase of appointment. This view is the correct view of the Tribunal in view of the judgment of this Court in the case of Manohar Prasad Vs. The State of Bihar and others since reported in 2016(2) PLJR 474.

It is against this rejection of the appellant's application by the Tribunal that C.W.J.C. No. 2365 of 2011(Kumkum Kumari Vs. The State of Bihar and others) has been filed and, as noted above, the writ petition has been dismissed on the same very ground that the Tribunal could not sit as an appellate authority, but the Tribunal having called the records, examined the same, and came to some startling findings. It found that respondent Babita Kumari was, in fact, the wife of the then Mukhiya. With reference to the original merit-list that was prepared, it came to a finding that the name of Babita Kumari did not figure therein. Having examined the application register it came to a finding that it also did not contain the particulars of application made by Babita Kumari, yet ignoring the applicants with higher percentage and more meritorious, suddenly, in the 3rd round Babita Kumari was shown as an applicant and appointed.

In the counter affidavit filed earlier by the

Mukhiya it is not disputed that he was the husband of Babita Kumari. The plea that was taken was that he had sought a clarification whether he could be the Chairman of the Committee for selection wherein his wife was a candidate but having received no response, he continued and thus selected his wife for the post.

At this juncture, we may also notice that the plea taken by the appellant for not being present for counselling was that, in fact, no notice for counselling was issued. A Bala-Bala under certificate of posting was obtained by the Mukhiya from a post-office not close to the village, but far away and because of non-receipt of notice of counselling, the appellant could not appear, otherwise, there was no reason, being much more meritorious than the wife of Mukhiya, she would surely have come and would have been appointed.

Noticing the aforesaid facts, which substantially, are not in dispute today before us, the Tribunal set aside the appointment of Babita Kumari and it is that which has given rise to the second writ petition being C.W.J.C. No. 1214 of 2011 (Babita Kumari Vs. The State of Bihar and others). The learned Single Judge by a common order dated 03.07.2013 allowed this writ petition solely on the ground that Babita Kumari was not noticed before her appointment was set aside. In that writ

petition, the appellant was respondent no. 11 because it was at the instance of appellant's application that the appointment of Babita Kumari was set aside. Thus, the two appeals by the appellant against the two decisions in the two writ proceedings, one which was allowed and one which was dismissed.

We have earlier noted that so far as the writ petition of the appellant is concerned, it was rightly dismissed. The reason we have already indicated. But, when we come to the writ petition filed by Babita Kumari, we are of the view that the writ petition ought not to have been allowed in fact it ought to have been dismissed. The reasons are simple. Firstly, natural justice is not an unruly horse or a bull in China shop, as has been seen. It is principle of basic fairness, but it has its own exception and one of the exceptions, that has been noticed repeatedly, is as has been held in the case of S.L. Kapoor Vs. Jagmohan and others since reported in AIR 1981 SC 136, where non-compliance of principles of natural justice would not alter the situation in any manner. In this case, it is undeniable that the Mukhiya, who was the Chairman of the Selection Committee and participated in the selection process, was the husband of Babita Kumari herself. If this fact is kept in mind, which is not disputed even by the present Mukhiya, who has appeared to oppose the appeal being the



mother-in-law of Babita Kumari, the result can only be one, that is cancellation of appointment. It may be noted that before this Court in appeal, plea is being taken that in the application register the application of Babita Kumari is to be found. The appellant points out that this application register has been recently reconstructed as the original application register allegedly dropped on way from the cycle, while bringing it to the panchayat office. If anything, this itself shows that all was not well, but, however, we do not propose to proceed on that basis, for, in our view, the very participation of the husband as the Chairman of the selection committee vitiates the selection and even if the matter is to be remanded, there would be no other result. Thus, in our view, the learned Single Judge was not correct in allowing the writ petition being C.W.J.C. No. 1214 of 2011(Babita Kumari Vs. The State of Bihar and others). We, accordingly, allow L.P.A. No. 1101 of 2015, which arises out of C.W.J.C. No. 1214 of 2011 and set aside the order of the learned Single Judge dated 03.07.2013 and dismiss the aforesaid writ petition.

However, so far as L.P.A. No. 1058 of 2013 is concerned, which is also against the judgment and order dated 03.07.2013, passed in C.W.J.C. No. 2365 of 2011 (Kumkum Kumari Vs. The State of Bihar and others), it is dismissed and

consequently the dismissal of the writ petition is upheld.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

Arjun/Rajesh

AFR/NAFR	AFR
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