

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No. 645 of 2014

Arising out of

Civil Writ Jurisdiction Case No. 19552 of 2013

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Deepak Kumar Singh S/o Bijay Singh resident of Village and P.O- Nagraon, P.S-
Charpokhari, District- Bhojpur.

....Petitioner/s / Appellant/s

Versus

1. The State of Bihar.
2. The District Education Officer, Bhojpur.
3. The Member District Teacher Employment Appellate Authority, Bhojpur.
4. The Block Education Officer, Charpokhari, P.O and P.S- Charpokhari, District-
Bhojpur.
5. The Mukhiya, Gram Panchayat Raj, Thakuri, P.O and P.S Charpokhari,
District- Bhojpur.
6. The Panchayat Secretary, Gram Panchayat Raj, Thakuri, P.O and P.S
Charpokhari, District- Bhojpur.
7. The Headmaster, Up- graded Middle school, Thakuri, Anchal Charpokhari,
District- Bhojpur.
8. Chandeshwar Singh S/o Lakshman Singh, Resident of Village Ibrahimpur, P.O
and P.S. Piro, District- Bhojpur.

....Respondent/s / Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Radha Mohan Pandey, Advocate.
For the respondent no. 5	:	Mr. Chandra Shekhar Azad, Advocate.
For the State	:	Ms. Kumari Amrita, GP-3.

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CORAM:

HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH)

Date: 16-11-2016

Heard learned counsel for the parties.

2. The challenge in the present intra-Court appeal is to the order dated 09.12.2013 by which C.W.J.C. No. 19552 of 2013 filed by the appellant has been dismissed by the learned Single Bench.

3. The appellant and respondent no. 8 were applicants for the post of Panchayat Teacher in the Backward Class category under the Gram Panchayat Raj, Thakuri in Charpokhari Block of Bhojpur District. Initially, the date of counselling fixed by the State Government was 27.01.2009. A dispute arose as to whether the counselling was actually held on the said date and accordingly, the Government also came out with a fresh date, fixing 28.02.2009 for counselling, which was also reported in the newspaper.

4. The appellant claimed to have appeared in the counselling on 27.01.2009 whereas the respondent no. 8 claimed that though he had appeared for counselling on 28.02.2009, but the same was not held and, thus, he moved before various authorities alleging fraud against the Selection Committee which had shown counselling to be held on 27.01.2009, in which the appellant was placed at serial no. 1 in the Backward Class category. The respondent no. 8 filed Appeal No. 830 of 2009 before the District Teachers Employment Appellate Authority, Bhojpur (hereinafter referred to as the



‘Authority’) which passed order dated 14.07.2009, directing the Selection Committee to hold counselling of the respondent no. 8 and prepare final merit list. The Selection Committee was represented before the Authority at the time of passing of order dated 14.07.2009. The said order was also formally communicated to the Selection Committee under Memo No. 73 dated 19.08.2009. However, without compliance of the order dated 14.07.2009, appointment letter was issued in favour of the appellant on 14.08.2010. The respondent no. 8, again filed Appeal No. 16 of 2010 against issuance of the appointment letter to the appellant before the Authority in which, by order dated 07.12.2010, the employment was stayed, directing for compliance of the order passed in Appeal No. 830 of 2009. In the meantime, the respondent no. 8 approached this Court in C.W.J.C. No. 11006 of 2011, which was disposed off by order dated 13.07.2011 directing the concerned respondents to implement the order of the Authority dated 07.12.2010. In compliance thereof, the Selection Committee held counselling on 26.04.2012 and the respondent no. 8, having 56% marks compared to the appellant, who had 48%, was appointed on 20.09.2012 whereas the appointment of the appellant was cancelled.

5. The appellant had also moved this Court in C.W.J.C. No. 11456 of 2012, which was disposed off on 06.07.2012 in which



the order of the Authority in Appeal No. 16 of 2010, was modified to the extent that any appointment made in the meantime shall be subject to the result of the appeal and liberty was given to the appellant to intervene in the said case before the Authority. Pursuant to the same, the Authority, after hearing the parties, including the appellant and respondent no. 8, disposed off Appeal Cases No. 16 of 2010, 44 of 2010 and 100 of 2012, by order dated 12.12.2012 with a finding that the appointment of respondent no. 8, was proper as he had 56.7% marks compared to 48% of the appellant. The appellant assailed the order of the Authority dated 12.12.2012 in C.W.J.C. No. 19552 of 2013 and dismissal of the writ petition by the learned Single Bench on 09.12.2013 has given rise to the present Letters Patent Appeal. Subsequently, the appellant also filed L.P.A. No. 1354 of 2014 against the order dated 13.07.2011 passed in C.W.J.C. No. 11006 of 2011 and the same was dismissed by order dated 16.01.2015 with the observation that the implementation of the order of the Authority shall be subject to the outcome of the proceedings, if any, wherein the said order is challenged.

6. Learned counsel for the appellant submitted that the Government had fixed the date of counselling uniformly for the State of Bihar for the employment of Panchayat Teacher on 27.01.2009 and in the concerned Panchayat also. The counselling was held on



27.01.2009 but the respondent no. 8 did not choose to appear and, thus, he was not selected. It was submitted that before the Authority in Appeal No. 830 of 2009, he was not heard before the order dated 14.07.2009 was passed and likewise he was also not heard before the order dated 07.12.2010 was passed by the Authority in Appeal No. 16 of 2010. It was submitted that once the appellant had been appointed, the said could be cancelled only in accordance with law as has been held in order dated 06.07.2012 passed in C.W.J.C. No. 11456 of 2012. It was submitted that even as per the order of the Court in C.W.J.C. No. 11006 of 2011 dated 13.07.2011, though the direction was for implementing the order of the Authority dated 07.12.2010 passed in Appeal No. 16 of 2010, but the Court had also observed that before taking any final decision in the matter, all the parties, including the appellant, were required to be heard. It was submitted that the same has not been complied with by the authorities. Learned counsel submitted that the appointment of the appellant has been cancelled despite him having been appointed after following the procedure prescribed.

7. Learned counsel for the respondents submitted that the submissions of learned counsel for the appellant are incorrect, as he was aware of all the orders being passed either by the Court or the Authority and, thus, him having not taken appropriate steps, if he had



any grievance, would not vitiate the action taken by the authorities, which is not only in accordance with law and the prescribed procedure, but also just, fair and equitable, since respondent no. 8 had applied in time and also possessed better marks compared to the appellant. It was submitted that the date of fresh counselling on 12.04.2006 was duly communicated to the appellant and still he did not choose to assail the same and even in C.W.J.C. No. 11456 of 2012, he had suppressed the fact that there was already a direction in C.W.J.C. No. 11006 of 2011, which, in effect, was to hold fresh counselling. It was submitted that the sole ground of the appellant of having appeared in the counselling on 27.01.2009 and the respondent no. 8 not having appeared is falsified by the initial communication of the Block Development Officer and the S.D.O. in which there was a clear finding that no counselling was held on 27.01.2009 in the entire Charpokhari Block, in which the concerned Thakuri Gram Panchayat is also situated.

8. Having considered the rival contentions, we do not find any merit in the present appeal. Learned counsel for the respondents have rightly submitted that the sole ground available to the appellant is that the counselling was held on 27.01.2009, in which he appeared whereas the respondent no. 8 did not appear. Such fact stands negated by the official communication of the concerned Block



Development Officer and Sub Divisional Officer which cannot be doubted and clearly establish that no such counselling was held on that date. Further, the appellant also having assailed the order dated 13.07.2011 passed in C.W.J.C. No. 11006 of 2011, without success in L.P.A. No. 1354 of 2014, coupled with the fact that he was aware of the fresh counselling to be held on 26.04.2012, cannot now contend that the same was without justification, moreso when the Authority in Appeal No. 830 of 2009 had clearly directed, by order dated 14.07.2009, to include the name for counselling of respondent no. 8 and then preparation of the final merit list and the said order being passed in presence of the Selection Committee, the subsequent letter of appointment dated 14.08.2010 in favour of the appellant itself was illegal as the order of the Authority has the sanction of law and till the time it is not withdrawn or overturned, has to be implemented, especially by the Panchayat Secretary and the Selection Committee. Thus, the appointment letter of the appellant dated 14.08.2010 is not of much consequence from a legal point of view. In view thereof, the order of the Authority dated 12.12.2012 cannot be said to be bad in law. Further, the reasoning given by the learned Single Bench in order dated 09.12.2013, while dismissing the writ application, is sound and does not warrant any interference.

9. For the reasons aforesaid, the present Letters Patent

Appeal, being devoid of merit, stands dismissed.

(Ahsanuddin Amanullah, J)

Hemant Gupta, ACJ *I agree*

(Hemant Gupta, ACJ)

P. Kumar

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