

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.329 of 2016
Arising out of
C. REV. 373 of 2013
Along with
Interlocutory Application No. 1309 of 2016
In
Letters Patent Appeal No.329 of 2016

Sunita Kumari @ Sunita Devi, W/o Shambhu Kumar Rai, resident of village -
Dharha, P.S. Rosera, District Samastipur, Panchayat Teacher (Terminated),
Primary School Dharha Mushahari in Rosera Block, District - Samastipur

.... Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Human Resources Development Department, Government of Bihar, Patna
2. Principal Secretary, Human Resources Development Department, Government of Bihar, Patna
3. The Member, District Teachers Employment Appellate Tribunal, Samastipur
4. The District Education officer, District - Samastipur
5. The District Superintendent of Education, Samastipur
6. The Block Education Extension Officer, Rosera, District - Samastipur
7. The Mukhia, Gram Panchayat Raj Bhiraha South, Block Rosera, District - Samastipur
8. The Panchayat Secretary, Bhisha South, Gram Panchayat Raj, Block Rosera, District Samastipur
9. The Headmaster, Primary School, Dharha Mushahari in Bhirha South Gram Panchayat Rosera, District - Samastipur
10. Aarati Kumari W/o Ram Kumar Mahto, resident of village - Purani Bhirha, P.S. Rosera, District - Samastipur

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Suraj Narayan Yadav, Advocate.
Mr. Ranjit Kumar Yadav, Advocate.

For the State : Mr. Md. N. Hoda Khan, SC-1.
Mr. Md. Harun Quarershi, AC to SC-1.

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and
HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date: 08-11-2016

Re.: Interlocutory Application No. 1309 of 2016

The application is for condonation of delay of 13 days in filing of the appeal.

2. For the reasons mentioned in the application, we find that sufficient cause is made out for condonation of delay. Consequently, the delay of 13 days in filing of the appeal is condoned.

3. Interlocutory Application stands disposed off.

Re.: Letters Patent Appeal No. 329 of 2016

4. The challenge in the present Letters Patent Appeal is to an order passed by the learned Single Bench on 11th March, 2015 whereby the petition for review of the order dated 24th January, 2012 remained unsuccessful.

5. The appellant was appointed as Panchayat Teacher though she has got 70.55% marks. Arati Kumari, private respondent, had obtained 74.66% marks and was not appointed. She filed an appeal before the District Teachers Appointment Appellate Tribunal (hereinafter referred to as the 'Tribunal'). The Tribunal, vide order dated 8th September, 2010, cancelled the appointment of the appellant and directed for appointment of the private respondent. The writ



petition, against the said order, was dismissed on 24th January, 2012. It is, thereafter, the appellant filed a review application before the Tribunal pointing out that Arati Kumari was not entitled to weightage of 20 marks, as she did not possess the requisite teaching experience. Such claim was made on the basis of communication dated 14th May 2012 obtained by the appellant after the decision of the learned Single Bench. The Tribunal dismissed the said application on the ground that it had no power to review. Thereafter, the appellant invoked the review jurisdiction of this Court.

6. The appellant was party before the Tribunal but she did not take the plea that Arati Kumari was not entitled to weightage which has been granted to her. After the decision of the Tribunal setting aside her appointment and affirmance of the said order by the writ court, the appellant has produced some communication, allegedly obtained under the Right to Information Act, to assert that the private respondent was wrongly granted weightage, as she did not have the teaching experience of one year.

The appellant had to be vigilant to take up a plea before the Tribunal and having failed to take up the plea on the question to the fact at the relevant stage, the appellant cannot be permitted to assert a new fact in review.

7. We do not find any error in the order passed by the

learned Single Bench which may warrant interference. The Letters
Patent Appeal is, accordingly, dismissed.

(Hemant Gupta, ACJ)

(Ahsanuddin Amanullah, J)

Sujit/-

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