

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.773 of 2014

Arising out of

Civil Writ Jurisdiction Case No. 15857 of 2010

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Sudhir Kumar, son of Shri Ram Lakhan Prasad, Resident of village- Mirjapur,
Police Station- Patahi, District- East Champaran

.... Appellant/s

Versus

1. The State of Bihar through the Secretary, Human Resources Department,
Government of Bihar, Patna
2. Director, Primary Education, Bihar, Patna
3. District Magistrate, East Champaran, Motihari
4. The S.D.M., Pakaridayal Sub-Division, East Champaran
5. The Block Development Officer, Block Patahi, East Champaran
6. The Block Education Extension Officer, Block Patahi, East Champaran
7. The Mukhiya, Gram Panchayat Belahi Ram, P.S. Patahi, District East
Champaran
8. Manoj Kumar Pandey, S/O Prem Kumar Pandey, R/O Vill.- Kodariya, P.S.-
Patahi, District- East Champaran, at present relinquished Shiksha Mitra of State
Middle School, Kodariya, Block Patahi, District- East Champaran.

.... Respondent/s

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Appearance :

For the Appellant	:	Mr. Sanjeev Kumar Singh, Advocate
For the State	:	Mrs. Shilpa Singh, GA 12 with Mr. Sunil Kumar, AC to GA 12
For the Respondent No. 7	:	Mr. Bhagya Narayan Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH)

Date: 04-10-2016

Heard learned counsel for the parties.

2. The present appeal under Clause X of the Letters
Patent of Patna High Court is directed against the order dated



13.05.2013 by which C.W.J.C. No. 15857 of 2010 filed by the respondent no. 8 has been allowed.

3. The appellant and the respondent no. 8 had applied for the post of Panchayat Shikshak in the year 2005. The respondent no. 8 was selected on 03.05.2005. The appellant objected to the same by filing representation before the Block Development Officer, Patahi on 24.05.2005 as well as the District Superintendent of Education. Representations were given to the District Magistrate, West Champaran also on 11.05.2005, 06.06.2005, 28.12.2005 and 07.02.2006 whereupon the S.D.O., Pakaridayal was directed to conduct enquiry. When no progress was made, the appellant again filed representation before the authorities on 27.07.2006, 30.11.2006 and 13.07.2007. In the information sought under the R.T.I. Act, the appellant was informed by letter dated 03.11.2009 to approach the District Teachers Employment Appellate Authority (hereinafter referred to as the 'Authority'). The appellant filed Case No. 458 of 2009 and by order dated 19.04.2010, the non-appointment of the appellant was held to be bad and a finding was given that the appellant had more weightage points compared to respondent no. 8 and wrongly it was shown that the appellant had not submitted his certificate with regard to date of birth and further that undue advantage was given to the respondent no. 8 as the Selection



Committee was headed by the then Mukhiya who was uncle of respondent no. 8. The Authority also directed for fresh consideration and appointment of the appellant. The respondent no. 8 being aggrieved by the same filed C.W.J.C. No. 15857 of 2010 which was allowed by the learned Single Bench by order dated 13.05.2013, which is the subject matter of the present Letters Patent Appeal.

4. Learned counsel for the appellant submitted that the Authority has gone into all aspects of the matter and the same was also verified from the relevant records and had come to the definite finding that the meeting of the *Sukh Suvidha Samiti* on the relevant date was held at the residence of the then Mukhiya and respondent no. 8 was selected, though he had less merit points compared to the appellant and it has recorded the finding that the respondent no. 8 was the nephew of the Mukhiya. It was further submitted that the Authority also gave a finding that in the receipt of the application, the documents which were attached with the application included the matriculation certificate and the date of birth being reflected in the same, the ground that the appellant had not submitted certificate relating to his date of birth was untenable. It was submitted that such facts having been established from the records, and not denied by the respondent no. 8, there was no occasion for the learned Single Bench to set aside the said order. It was further submitted that just because



there cannot be any fresh appointment on the post of Shiksha Mitra, would not preclude the Authority from interfering in a matter where fraud has been established.

5. Learned counsel for the respondent no. 8 submitted that just because his uncle was the Mukhiya would not lead to the conclusion that fraud was committed and the appellant not having submitted the certificate relating to his date of birth, his non-selection was valid. It was further submitted that the learned Single Judge has rightly considered the matter that the appointment of Shiksha Mitra cannot, at this stage, be questioned or the matter enquired into.

6. Having considered the rival contentions, we find substance in the submissions of learned counsel for the appellant. The fact that the respondent no. 8 was the nephew of the Mukhiya, who was the Chairman of the Selection Committee, has not been denied. Further, the application itself discloses the date of birth of the appellant and in the list of documents attached, the first document was copy of the matriculation certificate, which is enough to prove that the ground taken that the appellant did not submit certificate relating to his date of birth is false. The matriculation certificate shows the date of birth and such document is universally accepted as a valid piece of evidence relating to the date of birth and even for the purposes of employment under the State, such certificate forms the basis.



Moreover, most importantly, the appellant having more merit points was clearly far above the respondent no. 8. Thus, we find no difficulty in holding that the selection of the respondent no. 8 is fraudulent and cannot be sustained. In view thereof, the order of the Authority giving such a finding against the respondent no. 8, in the background of admitted position, did not require any interference by the learned Single Bench. The decision relied upon by the learned Single Bench relates to a case where the matter related to appointment on the post of Shiksha Mitra which has been held to be untenable as after 01.07.2006, there cannot be any consideration for appointment on the post of Shiksha Mitra. In the present case, the moot issue being the fraud committed in the appointment of respondent no. 8 as Shiksha Mitra, cannot be lost sight of. The appellant had higher merit points compared to respondent no. 8 and the reason given of him not submitting certificate with regard to his date of birth, in view of the discussions made hereinabove, was a nonest and untenable ground.

7. Equally, in the considered opinion of the Court, the close relationship of uncle-nephew between the then Mukhiya, who was Chairman of the Selection Committee and the respondent no. 8, also gives rise to a *bona fide* presumption of bias, especially in the facts and circumstances of the present case. This, clearly, is an act of fraud and the law being settled that fraud vitiates all subsequent



actions, the appointment of the respondent no. 8 cannot be sustained. The fact that the respondent no. 8 may have continued for a long period is also of no help since we have come to a finding that such appointment was a result of fraud. Further, though the initial appointment was for 11 months, the respondent no. 8 has continued on the post only by way of extension and subsequently, after coming into force of the Bihar Panchayat Primary Teachers (Employment and Conditions of Services) Rules, 2006, has automatically become a Panchayat Teacher, without there being any selection process during the entire period, except for the initial selection in the year 2005 as Shiksha Mitra. Thus, the continuation of the respondent no. 8 on the post of Panchayat Teacher is in continuity of his appointment as Shiksha Mitra in the year 2005, which having been found to be fraudulent, cannot be allowed to continue.

8. For the reasons aforesaid, the order dated 13th May, 2013 passed by the learned Single Bench in C.W.J.C. No. 15857 of 2010 is set aside. The Letters Patent Appeal stands allowed and C.W.J.C. No. 15857 of 2010 stands dismissed.

9. However, it is made clear that the recommendation of the Tribunal in the order impugned before the writ Court dated 19.04.2010, for considering the appellant for appointment, also cannot be upheld for the reason that the post of Shiksha Mitra no longer



exists and, further, that after passage of so many years, the vacancy caused by disengagement of the respondent no. 8 needs to be filled up by a fresh selection process, in accordance with law, in which the appellant may also take part. Thus, the order of the Tribunal dated 19.04.2010, which was impugned in the writ petition, stands modified to such extent.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

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