

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1334 of 2016
Arising out of
Civil Writ Jurisdiction Case No.6705 of 2013**

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Kamlesh Kumar, son of Nand Kishore, resident of village- Baluwa Rampurwa,
Police Station- Bariya, District- East Champaran

.... Appellant/s

Versus

1. The State of Bihar
2. The District Magistrate, Bettiah, West Champaran
3. The Block Education Officer, West Champaran
4. District Education Officer, Bettiah, West Champaran
5. Mukhiya, Gram Raj Panchayat Miyapur Duwalia, Block Bariya, District-West Champaran
6. The Secretary, Gram Raj Panchayat Miyapur Duwalia, Block- Bariya, District West Champaran
7. Member, District Teacher Appointment Appellate Tribunal, West Champaran
8. Shyam Babu Rai, S/o Late Lal Babu Rai, resident of Fuliya Khada, P.O. Bayna, Police Station Nautan, District West Champaran

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ajay Kumar Singh, Advocate

For the Respondents/State : Mr. Rishi Raj Sinha, SC-19

Ms. Archana Prasad, AC to SC-19

For the Respondent No.8 : Mr. Dhananjay Kumar No.2, Advocate

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

&

HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date: 18-11-2016

The challenge in the present Letters Patent Appeal is to an order dated 2nd May, 2016, passed by the learned single Judge of this Court, whereby, the writ application filed by Shyam Babu Rai (Respondent No.8) was allowed and the appointment of Kamlesh Kumar, the present appellant, in pursuance of an order passed by the District Teachers Employment Appellate Tribunal, West Champaran, dated 21st June, 2012, was set aside.



2. Applications were invited for appointment of Panchayat Teacher in Miyapur Dubawalia Gram Panchayat in Bairiya Block. The present appellant as well as the writ applicant and one Santosh Kumar Saha were the applicants for the said appointment. Santosh Kumar Saha was selected for appointment. Two appeals were filed against his appointment i.e. one by Subodh Kumar Pandey and another by the present appellant. The challenge was on the ground that Santosh Kumar Saha has obtained appointment on the basis of forged and fabricated certificates. The appeals were allowed and the appointment of Santosh Kumar Saha was set aside. But in the case of Kamlesh Kumar, the Tribunal recorded its finding that there is no other claimant except Kamlesh Kumar, who had secured 71.66% marks, thus, a direction was issued to appoint Kamlesh Kumar in accordance with law. It is, therefore, the writ applicant challenged the order passed by the Tribunal before this Court on the ground that he ranks senior to Kamlesh Kumar in the merit list, therefore, Kamlesh Kumar could not have been appointed in preference to other candidates of the merit list.

3. In the counter affidavit filed by the appellant, there is no assertion that there was a counselling held in pursuance of the order passed by the Tribunal and that none appeared other than the appellant, whereas, in the Counter Affidavit filed by Respondent No.6 i.e. Panchayat Secretary of Miyapur Dubawalia Gram Panchayat in Bairiya Block, there was assertion that counselling was held on 2nd July, 2012,

in pursuance of the order passed by the Tribunal on 21st June, 2012. A notice was published on 26th June, 2012, calling upon the candidates to appear for counselling, but none appeared other than the appellant herein. Therefore, he was appointed. But the mode of publication of notice is not explained in the Counter Affidavit. However, it is admitted that notice was only displayed on the Notice Board of the Gram Panchayat.

4. We feel such limited notice without actually calling upon the other candidates of higher in merit list will not give preferential right of the appellant. The notice has to be actually served and not farcical facade.

5. Consequently, we do not find any illegality in the order passed by the learned single Judge, which may warrant interference by this Court in this Letters Patent Appeal.

6. Accordingly, this Letters Patent Appeal is dismissed.

(Hemant Gupta, ACJ)

(Vikash Jain, J)

JA/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	26.11.2016
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