

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.380 of 2014

Arising out of

Civil Writ Jurisdiction Case No. 17717 of 2013

Sanjiv Kumar Singh son of Chandradeo Singh, resident of Village Medini Chowki,
P.S. Medini Chowki, District Lakhisarai

.... Appellant/s

Versus

1. The State of Bihar through Principal Secretary, Department of Human Resources and Development, Government of Bihar, Patna.
2. The Director, Primary Education, Government of Bihar, Patna.
3. The District Superintendent of Education-cum-Public Information Officer, Lakhisarai.
4. District Education Officer, Lakhisarai.
5. Block Education Extension Officer, Ramgarh Chowk, Lakhisarai.
6. Mukhiya Gram Panchayat Raj, Nandhma, Ramgarh Chowk, Lakhisarai.
7. Panchayat Secretary, Gram Panchayat Raj, Nandnama, Ramgarh Chowk, Lakhisarai
8. Shambhu Kumar, son of Parshuram Singh, resident of Village Rampur, P.S. Surajgarha, District Lakhisarai.

.... Respondent/s

Appearance :

For the Appellant : Mr. Parmanand Pd. Nr. Sahi with
Mr. Birendra Kumar Tiwary, Advocates
For the State : Mr. Abul Kalam, AC to AAG 12

CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA
and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH)

Date: 03-10-2016

Heard learned counsel for the parties.

The appellant has filed the present Letters Patent Appeal
being aggrieved by the order dated 20.09.2013 passed by the learned
Single Bench by which C.W.J.C. No. 17717 of 2013 filed by him has

been dismissed upholding the orders of the District Teachers Employment Appellate Authority, Lakhisarai (hereinafter referred to as the 'Authority'), dated 11.07.2011 in Appeal Case No. 44 of 2010-11 and 25.07.2013 in Appeal Case No. 44 of 2010-11/28 of 2012-13, setting aside the appointment of the appellant as Panchayat Teacher.

Pursuant to the decision of the State Government contained in Letter No. 3376 dated 15.09.2008 by which time schedule was fixed for selection of Panchayat Teachers. As per the schedule, the applications were to be submitted from 29.10.2008 to 17.11.2008. The appellant, along with other eligible candidates, applied for the post of Panchayat Teacher in Gram Panchayat Raj Nandhama, Ramgarh Chowk in the district of Lakhisarai on 14.11.2008. He also filed an application that he was visually handicapped and would be submitting such certificate on 15.11.2008 by 5:00 P.M. failing which his candidature be considered in the general category and not in the reserved handicapped category. The appellant obtained medical certificate to the effect that he was 45% visually handicapped which was signed by the In-charge Medical Officer and two other members of the Medical Board. Since the appellant and the respondent no. 8 were the only two handicapped candidates and the appellant had 58.33% compared to 55.33% of the



respondent no. 8, he was selected and issued appointment letter in the reserved category of visually handicapped under Letter No. 3 dated 18.08.2010. He joined on the post of Panchayat Teacher on 26.08.2010 at Primary School, Balua Tola. The respondent no. 8, being aggrieved by his non-selection, filed Appeal No. 44/2010-11 before the Authority and the same, after hearing, was allowed by order dated 11.07.2011 setting aside the appointment of the appellant and two others and directing for fresh employment in accordance with law. Out of the three, one Janib Amin, who was the candidate for the post of Urdu Teacher, and his appointment was also cancelled, moved before this Court in C.W.J.C. No. 13922 of 2011 and the same was disposed off by order dated 12.02.2013 with a direction to the Authority to consider the case afresh. Thus, Case No. 28/2012-13 was instituted and by order dated 25.07.2013 once again it was ordered for removal of the appellant from his post and appointment of respondent no. 8. The appellant, thus, moved before this Court in C.W.J.C. No. 17717 of 2013 challenging both the orders of the Authority dated 11.07.2011 and 25.07.2013. The dismissal of the same by the learned Single Bench dated 20.09.2013 has given rise to the present appeal.

Learned counsel for the appellant contended that he had submitted the relevant papers which clearly indicated that he was



handicapped and since the last date of submission of application was 17.11.2008, such certificate was obtained and submitted on 15.11.2008. Learned counsel submitted that even the certificate which was produced by him before the authorities was genuine and fulfilling the requirement of law and rightly he had been appointed. Learned counsel further submitted that as per the merit list he was at a higher position than the respondent no. 8 in the handicapped category. Learned counsel submitted that the Government in the Departments of Health and Family Welfare as well as Social Welfare, under Letter No. 2478 dated 01.12.2011 had made the issuance of disability certificate simpler and in terms of the said letter the certificate issued to the appellant was proper.

Learned counsel for the State submitted that the orders impugned in the writ petition were well considered and need no interference.

Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, we do not find any merit in the present appeal. The mandatory requirement for taking advantage of a reserved category, handicapped in the present case, is furnishing of a certificate issued by the Competent Authority to show that the person belongs to such category. In the present case, perusal of the certificate, dated 15.11.2008 in favour of the appellant,



clearly indicates that it has been issued by the office of the Civil Surgeon-cum-Chief Medical Officer, Lakhisarai but in the format where the certificate has to be signed by the two Medical Board members and the Civil Surgeon-cum-Chief Medical Officer, Lakhisarai, the certificate is that of the In-charge Medical Officer, Surajgarha (Lakhisarai). The certificate, copy of which has been made Annexure 3 to the writ application, thus, cannot be said to be fulfilling the requirement of law inasmuch as the most important functionary empowered to issue such certificate, that is, the Civil Surgeon-cum-Chief Medical Officer, Lakhisarai, which is also indicated in the certificate itself, has not signed the said certificate and the In-charge Medical Officer who has signed has also not indicated as to whether he was the In-charge Civil Surgeon-cum-Chief Medical Officer. Thus, such certificate could not have been the basis of the appellant to be considered for appointment in the category of handicapped person. It is also pertinent to note the fact that the Authority has twice considered the matter, firstly, in its order dated 11.07.2011 and thereafter again in the order dated 25.07.2013 and has consistently come to the finding that the appointment of the appellant was not proper. The reasons given, based on findings of fact recorded after going through the original records connected with the selection process, cannot be said to be perverse. The appellant has

also not challenged such finding of fact and based his claim solely on the ground that the handicapped certificate was admissible. Further, such stand is erroneous inasmuch as the circular relied upon by the learned counsel for the appellant, was issued on 01.12.2011 whereas the appointment process in the present case had started in the year 2008 and was completed in the year 2010 i.e., more than one year prior to the issuance of that Government circular. Thus, no benefit can be derived by the appellant based on such Government circular.

For the reasons aforesaid, we do not find any error in the order passed by the learned Single Bench which may warrant interference in the present Letters Patent Appeal which, accordingly, stands dismissed.

(Ahsanuddin Amanullah, J)

Hemant Gupta, J *I agree.*

(Hemant Gupta, J)

Anjani/-

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