

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1292 of 2015

In

Civil Writ Jurisdiction Case No. 5171 of 2015

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Shiv Shanker Jha son of late Rajeshwar Jha At present working as Teacher in other backward Class+2 girls residential High School , Kalyanpur Samastipur.

2. Raj karan Prasad son of late Gulab Prasad At present working as Teacher in other backward Class+2 girls residential High School , Kalyanpur Samastipur.

.... Appellant/s

Versus

1. The State of Bihar

2. The Principal Secretary, Backward and extreme Backward Class, welfare Department , Govt. of Bihar, Patna.

3. The Secretary, Backward and extreme Backward Class, welfare Department , Govt. of Bihar, Patna. null null

4. The Principal Secretary, General Administration Department , Govt. of Bihar, Patna.

5. The Deputy Secretary, Backward and extreme Backward Class, welfare Department , Govt. of Bihar, Patna.

6. The District welfare officer, Samastipur district samastipur.

7. Sri Sabahuddin Azeem son of late B.I. Azeem, At present working as Teacher in other Backward Class +2 Girls Residential High school , Kalyanpur, Samastipur.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Alok Kumar Alok
Mr. Dilip Kumar Roy
Mr. Santosh Kumar

For the Respondent/s : Mr. Lalan Kumar, A.C. to G.P.9

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

2 11-11-2016

I.A. No.5627 of 2015

The interlocutory application has been filed for condoning the delay of 21 days in filing the appeal.

In the facts and circumstances mentioned in the



application, the delay in filing the appeal is condoned.

I.A. No.5627 of 2015 is, accordingly, disposed of.

Heard learned counsel for the appellants and learned counsel for the State on the merits of the appeal.

The appeal has been filed for setting aside the order dated 17.04.2015 passed by a learned single Judge in C.W.J.C. No.5171 of 2015, by which the writ petition filed by the petitioner was dismissed with liberty to file a suit for appropriate damages for breach of contract, if any.

The admitted fact is that both the appellants are retired teachers and pursuant to an advertisement dated 14.11.2013 for contractual appointment of retired teachers they applied against the posts available in +2 Girls School of backward class and other backward class and were given employment on contract basis for a period of one year, although under the advertisement, the appointment was to be made for a period of two years subject to the person attaining the age of 65 years and there was provision for extension of contract for a further period of 11 months.

However, after the period of one year of the contractual service of the appellants was over, they have not been given any extension, whereas the grievance of the appellants is that three other persons, who had similarly been appointed along with the appellants, have been given extension.



It is, thus, submitted that the appellants have been discriminated against, as there are vacancies available in the school in question. No counter affidavit had been filed in the writ petition, as it appears that the writ petition had been disposed of on the very first date itself.

However, considering the fact that the post retiral employment on contractual basis for the contractual period of one year was over, the appellants cannot as of right claim further extension in the matter.

The mandamus can only be issued if the appellants can show a legal right to a legal remedy, which they do not have in the matter. However, if there were vacancies available in the school in question and three other persons had been granted extension, then the respondents ought to have considered the cases of the appellants also fairly in the matter and subject to the relevant criteria, their cases ought to have been considered for extension.

With the aforesaid observations, the appeal is dismissed.

(Ramesh Kumar Datta, J)

V.P.Sinha/-

(Rajendra Kumar Mishra, J)

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