

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No 1673 of 2012
IN
Civil Writ Jurisdiction Case No 12270 of 2012

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Surendra Kumar Yadav Son Of Late Kulanand Yadav Resident Of Village- Dath
Godam Tol, P.O.- Biraul, District- Darbhanga

.... Appellant/s

Versus

1. The State Of Bihar through the Principal Secretary Education Department, Govt. Of Bihar, Patna
2. The Principal Secretary Education Department, Govt. Of Bihar
3. The Director, Primary Education, Govt. Of Bihar, Patna
4. The District Magistrate-Cum-Collector, Darbhanga
5. The District Teachers Employment Appellate Authority, Darbhanga
6. The District Education Officer, Darbhanga
7. The District Superintendent of Education-Cum-District Programme Officer, Darbhanga
8. The Block Education Officer, Ghanshyampur, District- Darbhanga
9. Panchayat Secretary, Gram Panchayat Raj, Korthu Pashchimi, District- Darbhanga
10. Mukhia Gram Panchayat Raj Korthu Pashchimi, District- Darbhanga
11. Kamal Kumar Son Of Tanukdhari Yadav Resident Of Vill.- Maswasi, P.S.- Ghanshyampur, District- Darbhanga

.... Respondent/s

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Appearance :

For the Appellant/s : Mr Vasudeo Ram, Advocate

For the State : Mr Sanjay Kumar, AC to GA 5

For Respondent No 11 : Mr Sameer Ranjan, Advocate

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CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH

And

HON'BLE JUSTICE SMT NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE NAVANITI PRASAD SINGH)

Date: 23-06-2016

The appellant is the writ petitioner. This is an appeal
under Clause 10 of the Patna High Court Letters Patent.

2 The dispute relates to appointment of Panchayat



Teacher in respect of Korthu Pashchimi Panchayat in Ghanshyampur Block of District – Darbhanga. The contention of the writ petitioner-appellant has been that he had duly applied for the said post. A merit list was prepared in which he was above respondent No 11. For some reason, the counselling got postponed at the instance of the State Government. He kept making enquiries. He was told that he would be duly noticed when counselling is to be done.

3 Let it be noted that counseling is only for the purposes of verification of original documents and taking letter of consent.

4 Suddenly, petitioner-appellant came to know that respondent No 11, who was below in the merit list, had been appointed. He, accordingly, moved District Teachers Appointment Appellate Authority (for brevity, the Authority). He brought on record several communications by the authorities which would clearly indicate that on 14.08.2010, no appointment in respect of Korthu Pashchimi Panchayat in respect of Panchayat Teacher was made. Respondent No 11 contested the matter. The Authority dismissed his appeal. He filed writ petition in the High Court. The writ petition was dismissed without even looking into the facts and without even appreciating the facts. Hence, this appeal.

5 Pursuant to notice issued, respondent No 11, who claims to have been duly appointed on 14.08.2010, has appeared, filed counter affidavit and supplementary counter affidavit. Noticing the

submissions on behalf of petitioner-appellant and noticing that though the respondents had appeared several years back but had not filed counter affidavit, this is the order we passed on 24.02.2016:

“The categorical case of the appellant is that 14th August, 2010 was neither the date fixed nor notified for counselling. Therefore, the absence of the appellant cannot be taken as ground to non-suit him from the appointment process.

There is no counter affidavit either on behalf of the State or on behalf of Respondent No 11.

Let the counter affidavit be filed within two weeks.

List under the same heading on 09th of March, 2016.”

6 When the matter was next taken up on 09.03.2016, this is the order we passed:

“A counter affidavit has been filed on behalf of respondent No 11. Learned counsel for the appellant seeks some time.

Learned counsel for the respondents are directed to bring on record any document to show that 14.08.2010 was fixed for counselling in respect of all the seats including the seats in question and persons were notified for that. The respondents would also have to justify various annexures to the writ petition being Annexures 4, 8, 9 & 10 and reconcile the facts.

Learned counsel for the appellant may file reply to the counter affidavit. Put up this case on 28th of March, 2016 under the same heading.”

7 Again, on 28.03.2016, this is the order we passed:

“As prayed on behalf of the private respondent and the State, put up this matter on 11th April, 2016, under the same heading, retaining its position to enable them to file appropriate

counter-affidavit in view of the orders dated 24.02.2016 and 09.03.2016 passed by this Court.”

8 Lastly, on 19.04.2016, this is the order we passed:

“In spite of previous orders, no counter affidavit is being filed on behalf of the State.

As a matter of last indulgence, list this matter on 25.04.2016 under the same heading and if by that day, State does not file counter affidavit, as per orders passed earlier, respondent No 6, the District Education Officer, Darbhanga would be personally present before this Court to answer the rule of contempt.”

9 The matter was then taken up on 25.04.2016. This is the order we passed:

“Learned counsel for the State states that though he has received instructions from the District Programme Officer (Establishment), it is not satisfactory because for the question posed by this Court as to by which supporting facts fixing the date 14.08.2010 as the date of counselling and its communication to the candidates concerned, there is no answer. This matter is being adjourned repeatedly for the affidavit specifically on this issue, the private respondent is also not bringing any such document on record.

As a matter of last indulgence, put up on 03.05.2016 under the same heading retaining its position.”

10 Now a supplementary counter affidavit has been filed by the State as well as private respondent No 11.

11 The case of the petitioner-appellant is that though he was higher in the merit list than respondent No 11, for mala fide reasons as stated in Annexure 5, surreptitiously and wrongly,



respondent No 11 was shown to be appointed pursuant to counselling allegedly held on 14.08.2010, when in fact, on 14.08.2010, no one was selected as actually no counselling had taken place. In support of this contention, petitioner-appellant has annexed Annexure 4, which is the letter of the Block Education Officer, Ghanshyampur Block to the District Superintendent of Education written on 23.08.2010 clearly stating that so far as Korthu Pashchimi Panchayat is concerned, pursuant to counselling held on 14.08.2010, no one was selected or appointed. Then he refers to Annexure 8, which is a newspaper report, which says that 30th December was being fixed for counselling in respect of Korthu Pashchimi Panchayat for appointment of Panchayat Teachers. Then he refers to Annexure 9 newspaper reports dated 29.12.2010 stating that verification of documents, inter alia, in relation to Korthu Pashchimi Panchayat could not be done. He then refers to Annexure 10, a notice issued by the Panchayat Secretary dated 29.12.2010 in which it is again informed that the documents have not been verified in respect of this Panchayat.

12 It is noticing these annexures specifically, we had earlier directed the State and private respondent No 11 to explain these because if what was being submitted by the State and private respondent No 11 that counselling was done on 14.08.2010 and all was over on that day, then surely there was something wrong in all these documents. We, therefore, gave repeated opportunities but



though counter affidavits have been filed by both the State and private respondent No 11, State has chosen to keep silent about this. The counter affidavit of the State only shows that the State Government had notified in the newspaper that the counselling, which had been postponed, would be held on the 13th and 14th of August, 2010. Accordingly, notices were issued on 05.08.2010 and counselling done on 14.08.2010 wherein the petitioner-appellant did not appear. Respondent No 11 appeared and was selected even though he was lower in the merit. State does not speak a single word about the earlier communications noticed in our earlier orders fully appreciated by the State Counsel. State has chosen to keep quiet. The only inference we can draw is an adverse inference. The documents, referred to above, clearly indicate that nothing, so far as this Panchayat is concerned, was done on 14.08.2010. If there was a mistake in any of the documents, surely there must have been corrective communications available on contemporaneous records. Nothing has been brought on record by the State. To the contrary, the newspaper advertisement, which the State refers, which is part of Annexure A to its supplementary counter affidavit filed on or about 02.05.2016, clearly states that the dates were merely recommended by the State Government. The dates had to be fixed by the local authorities and notified accordingly. From the Panchayat Teachers Recruitment Register, which is part of Annexure A, again shows that



the Panchayat deliberated the matter and clearly noted, on 02.08.2010, that notices be issued to the candidates fixing 13.08.2010 or 14.08.2010 as the date for counselling. Then is annexed the notice sent to the petitioner-appellant. As to the last document that is notice sent, what we would observe is how did the Panchayat Secretary got this. It is a pre-printed notice and the name of petitioner-appellant written thereon. This normally should not be with the State because such copies are not kept. Only names are filled up and dispatched. Petitioner-appellant has clearly asserted that no notice was in fact issued. How State gets this notice, which is impugned by the petitioner-appellant, is not explained. What is more important is how this notice was sent, either by hand, or by ordinary post or by registered post, there is not a whisper. The documents (Annexure 4), as referred to above, was a document signed by the Block Education Officer. This supplementary counter affidavit is also sworn by the present Block Education Officer. He does not choose to deny or explain Annexure 4. Annexure 4, as noted above, clearly states that there has been no appointment on 14.08.2010 in respect of the Panchayat in question. Then how does he now say that in fact respondent No 11 was appointed on that day.

13 To us, it is clear that all this was being manipulated. The reason is Annexure 5.

14 We, thus, have no option but to set aside the order of

the Authority as well as the learned Single Judge. We would allow the appeal and direct the authorities to make appointment in accordance with merit after due notice to the parties concerned.

15 Notice would have to go by registered process giving adequate time.

16 Till fresh appointments are made, respondent No 11 would continue as it is being alleged that he has been teaching and is drawing all remunerations. In case, respondent No 11 is not selected, even though we have held his appointment to be fictitious, the remuneration, paid to him would not be recovered as he has allegedly worked.

17 The process of appointment has to be now completed within one month from today and the responsibility would be on the District Programme Officer, Darbhanga.

(Navaniti Prasad Singh, J)

M.E.H./-

(Nilu Agrawal, J)

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