

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1100 of 2013

IN

Civil Writ Jurisdiction Case No. 16609 of 2011

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Shamiun Nisha, D/O Md. Khaiar Ahmad, R/O Village + P.O. - Rajpur, District - Rohtas

.... Appellant

Versus

1. The State of Bihar through Principal Secretary, Human Resources Development Department, Govt. of Bihar, Patna
2. The Principal Secretary, Human Resources Development Department, Government of Bihar, Patna
3. The Director, Primary Education, Govt. of Bihar, Patna
4. The District Magistrate, Rohtas, Sasaram
5. The District Education Officer, Rohtas, Sasaram
6. The Block Development Officer, Sanjhauli, Rohtas
7. The Block Education Officer, Sanjhauli, Rohtas
8. The Pramukh Panchayat Samiti, Sanjhauli, Rohtas
9. The District Teachers Appointment Appellate Tribunal, Rohtas, Sasaram
10. Sahajadi Khatoon, W/O Khurshid Alam, R/O Village + P.O. - Rajan Dih, P.S. - Rajpur, District - Rohtas

.... Respondents

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Appearance :

For the Appellant	:	Mr. Tej Bahadur Singh, Sr. Advocate Mr. Ashutosh Ranjan Pandey, Advocate
For Respondents 1 to 9	:	Mr. Ashok Kumar Keshri, AAG-XI Mr. Ujjwal Kumar Sinha, AC to AAG-XI
For Respondent 10	:	Mr. Yogendra Kumar, Advocate Mr. Dr. M.K. Gautam, Advocate Mr. Ram Naresh Rai, Advocate

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 15-07-2016

Heard Sri Tej Bahadur Singh, learned Senior

Counsel appearing in support of the appeal and Sri Yogendra Kumar,

learned counsel appearing on behalf of respondent No. 10, the

contesting respondent. The appellant is the unsuccessful writ petitioner.

Having heard learned counsel for the parties and having examined the records and with the consent of the parties, we are disposing of this appeal at this stage itself.

In the 2nd phase of appointments of Panchayat Teachers the writ petitioner- appellant and private respondent No. 10 both applied for the same post of Urdu Teacher under the category of Extremely Backward Class. It is not in dispute that in the merit list so prepared respondent No. 10 had 66.72% merit points and writ petitioner- appellant had only 63.41% merit points. Thereafter it is not in dispute that counselling was held in which both the writ petitioner- appellant and respondent No. 10 were present. In counselling the only thing that is done is that documents are verified and willingness to join is taken. Again, it is not in dispute that respondent No. 10 being more meritorious gave the undertaking and produced the documents for verification. However, letters of appointments were not issued by the Panchayat Samiti then and there, which normally ought to have been done. After almost 10 months appointment letters had been issued. The appointment letter was issued in favour of writ petitioner- appellant and respondent No. 10 was told that she was put on the waiting list. When she came to know that the less meritorious



petitioner has been appointed she filed an application before the District Teachers Appointment Appellate Authority challenging appointment of the writ petitioner. Notices were issued to the writ petitioner in those proceedings by registered post. Notices were also issued to the Panchayat Secretary and other officials of the Panchayat. Notice to the petitioner was sent at the address of the school in which she was working consequent to her appointment. Petitioner did not appear. The Authority having examined the records in detail came to a finding from the records that respondent No. 10 the applicant before it was more meritorious as per the merit list. She was admittedly present at the time of counselling. There was no explanation as to why appointment letter was not issued to respondent No. 10, but was issued much late to the writ petitioner. Considering the aforesaid facts and noticing the absence of writ petitioner in the proceedings in spite of notice, the application was allowed and appointment of the writ petitioner- appellant was set aside. This is what brought the writ petitioner to this Court. Learned Single Judge refused to interfere in the matter.

Having gone through the records and having heard the parties, we are not inclined to interfere.

Sri Tej Bahadur Singh, learned Senior Counsel urged that the proceedings were taken up behind the back of the writ



petitioner- appellant. We cannot agree. Notice was admittedly sent by registered post to the writ petitioner- appellant on the address of her school where she was appointed and was working. Therefore, the registered notice was sent on the correct address. Notice was not received back unserved. Thus, the presumption in law is that notice was duly served. If the writ petitioner- appellant contended that notice was not in fact served, it was upon her to displace the presumption in law. Except mere bald statement that no notice was ever received by her there is no further pleading in this regard. In view of the presumption the plea taken by the writ petitioner- appellant cannot be entertained.

Secondly, on behalf of the writ petitioner- appellant Sri Singh submitted that what is the fault of the writ petitioner if respondent No. 10 even though selected did not turn up to take the appointment letter. Being second in the list, it was then given to the writ petitioner- appellant. We cannot even accept this submission.

As noted above, respondent No. 10 was more meritorious as per the merit list. She had come for counselling also and, therefore, had already given her willingness to join. That being so, it does not stand to reason why she did not come to receive her appointment letter. Mr. Singh then submits that in fact counselling was done on 28.12.2010 and on the same day letter of appointment

was issued. In either case, the fact remains that respondent No. 10 undisputedly was present at the time of counselling. She was more meritorious. We see no reason why appointment letter was not handed over to her then and there.

Thus, we see no reason to interfere with the impugned judgment and order. The appeal is, accordingly, dismissed.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

Arjun/Rajesh

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