

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.854 of 2015
Arising out of
Civil Writ Jurisdiction Case No. 2310 of 2012**

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Mohan Kumar, S/o- Baleshwar Prasad, Resident of village- Chaudharain Chak,
P.O.- Mastuthu, P.S.- Barh, Dist.- Patna.

.... Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Human Resources Development Department Government of Bihar, New Secretariat Patna.
2. Director, (Primary Education) Human Resources Development Department Government of Bihar, New Secretariat Bailey Road Patna.
3. District Education Officer, Patna.
4. Block Education Extension Officer Barh.
5. District Teachers Appellate Authority, Patna through its member.
6. Secretary District Teachers Employment Appellate Authority, Patna. Computer Bhawan Government Girls Higher Secondary School Bankipur Gol Ghar, Patna.
7. Sudhir Kumar Sinha, son of Late Kedar Nath Sinha, resident of village- Chaudhrain Chak, P.O.- Mastuthu, P.S.- Barh, District- Patna.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Shailendra Kumar Tiwary, Advocate

For the Respondent/s :

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 31-08-2016

Re.:I.A. No. 3612 of 2015

The application is for condonation of delay of 3 years 9 days in filing the Letters Patent Appeal.

2. For the reasons mentioned in the Interlocutory Application, we are satisfied that the appellant has shown sufficient cause to seek condonation of delay of 3 years 9 days in filing the

present Letters Patent Appeal.

3. Consequently, Interlocutory Application No. 3612 of 2015 is allowed and delay of 3 years 9 days in filing the Letters Patent Appeal is condoned.

Re.: L.P.A. No. 854 of 2015

Heard learned counsel for the parties.

2. The challenge in the present Letters Patent Appeal is to an order passed by the learned Single Bench of this Court on 13th of February, 2012 in C.W.J.C. No. 2310 of 2012 whereby, a writ application filed by the appellant was dismissed.

3. The appellant challenged the order dated 15th of December, 2011 passed by the District Teachers Employment Appellate Authority, Patna whereby, appointment of the appellant as Shiksha Mitra was ordered to be cancelled.

4. In the year 2003, the respondents decided to appoint Shiksha Mitra in each Panchayat in the State of Bihar. Seven posts of Shiksha Mitra were made available in Gram Panchayat Raj, Ekdanga Block, Barh, Patna. Four out of the seven posts were to be filled up from General Category candidates and one each from Backward, Most Backward and Scheduled Caste Categories respectively. It is in pursuance of said selection process, the appellant was appointed as Shiksha Mitra for a period of one year in the year 2003. The contract

of the appellant was renewed from time to time. On commencement of Bihar Panchayat Primary Teachers (Appointment and Service Conditions) Rules, 2006 (hereinafter referred to as “the Rules”), the appellant continued as Panchayat Teacher.

5. One Sudhir Kumar Sinha filed a representation pointing out the irregularities committed while preparing the merit-list in appointment of Shiksha Mitra in the year 2003. It is on such representation, the appointment of the petitioner was set aside in an appeal at the instance of Sri Sinha by the District Teachers Employment Appellate Authority, Patna.

6. The learned District Teachers Employment Appellate Authority has found that the appellant was not fulfilling the basic eligibility condition of appointment i.e. 45 per cent marks in the Matriculation Examination. Since the appellant did not satisfy the minimum eligibility criteria, his appointment as Shiksha Mitra stands set aside. The learned Single Bench upheld the order passed by the District Teachers Employment Appellate Authority.

7. Before this Court, learned counsel for the appellant argued that in the year 2004, the minimum eligibility condition was Intermediate and that the appellant is eligible for appointment having possessed the Intermediate qualification. It is also contended that his contract was extended from time to time till the amended Rules came

into force and therefore, he is now a Panchayat Teacher and, thus, his appointment as Panchayat Teacher cannot be interfered with. He relies upon a Division Bench judgment of this Court reported as Shyam Murari Paswan & Ors. Vs. Arun Paswan & Ors., 2016 (2) PLJR 110.

8. We have heard learned counsel for the appellant and find no merit in the present Letters Patent Appeal.

9. The appellant before the Appellate Authority did not produce his marks-sheet but on the basis of verification from Bihar School Examination Board, it was found that the appellant has obtained 396 marks out of 900 marks. Thus, he has not obtained 45 per cent marks. Thus, the appellant does not possess the minimum eligibility qualifying marks for appointment as Shiksha Mitra. Once the appellant was not possessing the minimum eligibility marks for appointment as Shiksha Mitra, the subsequent extensions will not confer legality to an illegality committed at the time of appointment of the appellant. The appellant was not eligible for appointment as Shiksha Mitra in the year 2003 since he was not having 45 per cent marks in the Matriculation Examination.

10. The reliance of the appellant on the Division Bench judgment of this Court in Shyam Murari Paswan's case (Supra) is not tenable. The Division Bench was dealing with a situation where

appointment as Panchayat Teacher was sought for. The Bench has held that after commencement of the Rules, a candidate cannot seek appointment against the post of Panchayat Teacher merely because he was earlier applicant for the post of Shiksha Mitra. But in the present case, the appellant was appointed as Shiksha Mitra which appointment has been found to be illegal for the reason that he was not possessing the minimum eligibility marks. Such illegality will not be protected after commencement of the Rules, as it presupposes if a valid and legal appointment of Shiksha Mitra, which alone could be protected under the Rules.

11. In view thereof, 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. The Letters Patent Appeal is, thus, dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

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