

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.158 of 2015
Arising out of
Civil Writ Jurisdiction Case No. 2070 of 2013
Along with
Interlocutory Application No. 715 of 2015
And
Interlocutory Application No. 3019 of 2015
And
Interlocutory Application No. 4209 of 2015

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1. Kiran Kumari, W/o Sri Ganaga Prasad Yadav, R/o Village- Chackhnoor, P.O.- Rahmatpur, P.S.- Muffassil, (Samastipur), District- Samastipur
 2. Jawahar Lal Mahto, Son of Sri Saryug Mahto, R/O At + P.O.- Kabirchak, P.S.- Sadar (Darbhanga), District- Darbhanga
 3. Nandan Kumari, W/O Sri Vishwanath Paswan, R/O Village- Gorair, P.o.- Balh, P.S.- Chakmehasi, District- Samastipur

.... Appellant/s

Versus

1. The State of Bihar, through the Principal Secretary, Education Department, Government of Bihar, Patna
2. The Director, Primary Education, Government of Bihar, Patna
3. The Member, District Teacher Employment Appellate Authority, Samastipur, District- Samastipur
4. The District Magistrate, Samastipur, District- Samastipur
5. The District Education Officer, Samastipur, District- Samastipur
6. The District Programme Officer(Establishment), Samastipur, District- Samastipur
7. The Block Development Officer, Samastipur, District- Samastipur
8. The Block Education Officer, Samastipur, District- Samastipur
9. The Panchayat Secretary, Gram Panchayat Raj- Pokhrai, Block- Samastipur, District- Samastipur
10. The Mukhiya, Gram Panchayat Raj- Pokhrai, Block- Samastipur, District- Samastipur
11. Savita Kumari W/o Sri Rupesh Kumar, R/O Village- Morsand (Bahadurpur), P.S.- Pusa, District- Samastipur
12. Anita Kumari D/o Sri Asharfi Singh R/O At + P.O.- Janakpur, P.S.- Ujiyarpur, District- Samastipur
13. Pramod Kumar, Son of Sri Bindeshwar Mahto, R/O Village- Singhia Khurd, P.S.- Muffasil (Samastipur), District- Samastipur

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Durga Nand Jha, Advocate.
Mr. Mrityunjay Kumar, Advocate.

For the State : Mrs. Nutan Sharma, AC to GA-9

For the Respondent/s : Mr. Binay Kumar, Advocate
Mr. Krishna Kant Singh, Advocate.

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH)

Date: 20-04-2016

Re.: Interlocutory Application No. 715 of 2015

The Interlocutory Application has been filed under Section 5 of the Limitation Act, 1963 seeking condonation of delay of 24 days in filing of the L.P.A.No. 158 of 2015.

In view of the averments made in the Interlocutory Application and submissions in support thereof, we find that sufficient cause has been shown to explain the delay in the filing the Appeal. Consequently, such delay is condoned.

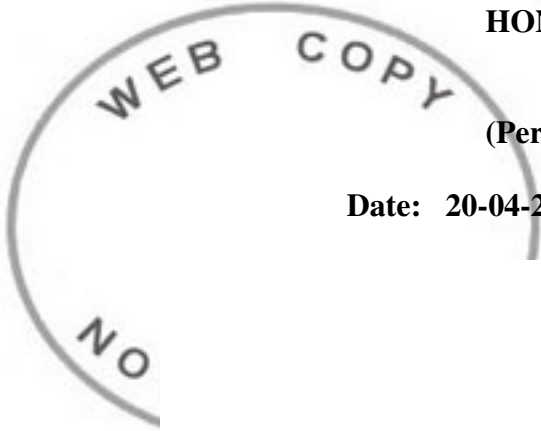
Interlocutory Application stands disposed off.

Re.: Interlocutory Application No. 3019 of 2015

The Interlocutory Application has been filed for staying of operation of order dated 28.03.2014 passed in CWJC No. 2070 of 2013, which is impugned in the Letters Patent Appeal No. 158 of 2015.

Since the appeal itself is being disposed off, we do not find the necessity to pass any order on the present Interlocutory Application and accordingly, the same stands disposed off.

Re.: Interlocutory Application No. 4209 of 2015



The Interlocutory Application has been filed seeking stay of the selection process against the posts, which have fallen vacant due to removal of the appellants, till the disposal of the appeal.

In view of the appeal itself being finally heard and disposed off, we do not feel the necessity to pass any separate order on the Interlocutory Application, which also stands disposed off.

Re.: Letters Patent Appeal No. 158 of 2015

The present intra-court appeal is directed against the order dated 28.03.2014 passed by the learned single Bench in CWJC No. 2070 of 2013 by which the writ petition has been dismissed.

The appellants were the writ petitioners and had moved the Court for quashing of order dated 04.12.2012 passed in Appeal No. 351 of 2009 and Appeal No. 503 of 2009 by the District Teachers Employment Appellate Tribunal, Samastipur (hereinafter referred to as the "Tribunal").

The appellants claim to have been appointed in a selection process done on 24.11.2006 pursuant to counselling done on 7th/8th October, 2006 by the Gram Panchayat Raj-Pokhrai in the district of Samastipur. The said appointment of the appellants and one another, who were untrained, was questioned before the authorities and upon report submitted before the District Magistrate, Samastipur, the same were cancelled by order dated 10.07.2007 by which the



concerned Block Development Officer was directed to make fresh appointment. In pursuance thereof, the Block Development Officer appointed respondents no. 11, 12 and 13 of the writ petition. When controversy arose with regard to payment of salary, the appellants as well as respondents no. 11, 12 and 13 moved before the Hon'ble Chief Minister of Bihar in his Janta Darbar, from where the matter was sent to the Tribunal and converted into Appeal No. 351 of 2009, as far as the appellants (writ petitioners) are concerned and Appeal No. 503 of 2009 with regard to respondents no. 11, 12 and 13. By order dated 11.11.2009, Appeal No. 351 of 2009 of the appellants was disposed off holding their appointment to be in accordance with law.

The Appeal No. 503 of 2009 of respondents no. 11, 12 and 13, by order dated 25.05.2010, was rejected. The respondent no. 13 then filed CWJC No. 12591 of 2010 for quashing of the said order in Appeal No. 503 of 2009, which was disposed off on 06.04.2011 with a direction to Mukhiya and Panchayat Secretary of the concerned Panchayat to make payment of wages to him for the period he had worked. Thereafter by order dated 21.07.2011, CWJC No. 14497 of 2007 filed by the appellants was dismissed as withdrawn.

The respondent no. 11 also preferred CWJC No. 10935 of 2012 against the order dated 25.05.2010 passed by the Tribunal in Appeal No. 503 of 2009. The learned single Bench by order dated



02.07.2012 disposed off the writ petition remitting the matter back to the Tribunal to pass a fresh order, since the order dated 25.05.2010 in Appeal No. 503 of 2009 was passed only on the ground that in Appeal No. 351 of 2009, which was filed by the appellants, their appointments were found to be valid which has not been found to be proper by the learned single Bench, since the respondent no. 11 was neither noticed nor made a party in Appeal No. 351 of 2009. The order impugned dated 04.12.2012 was passed as a consequence of such remand by the Court.

Learned counsel for the appellants submitted that once the Tribunal, by order dated 11.11.2009, had upheld the appointment of the appellants in Appeal No. 351 of 2009, the same not having been set aside, the Tribunal could not have passed the impugned order holding the appointment of the appellants to be bad, as there was no power of review vested in the Tribunal. It was further submitted that the appellants, though initially having challenged the order of the District Magistrate cancelling the appointment dated 10.10.2007 in CWJC No. 14497 of 2007, but since in their Appeal No. 351 of 2009, their appointments were held to be valid by order dated 11.11.2009, they had withdrawn the writ petition on 21.7.2011, and thus, the issue as far as their appointment is concerned stood concluded and could not have been reopened. It was submitted that the learned single

Bench has erred in dismissing the writ petition.

Learned counsel for the State countered the submissions of learned counsel for the appellants and submitted that the order impugned in the writ petition dated 04.12.2012 is reasoned and well discussed and that with regard to facts noted in the said order, there is no challenge to the same on the ground of them being contrary to the records. It was submitted that based on such facts, the inference drawn by the Tribunal cannot be said to be perverse or unjustified and thus, there was no occasion for the Court to substitute any other view emanating from the facts as narrated in the order of the Tribunal under challenge. It was further submitted that the plea of learned counsel for the appellants that the order passed in their Appeal No. 351 of 2009 could not be reviewed, is also erroneous for the reason that the learned single Bench, in CWJC No. 10935 of 2012, under its order dated 02.07.2012, while remitting the matter to the Tribunal, had taken note of the order dated 11.11.2009 passed in Appeal No. 351 of 2009, which was the reason for passing of order dated 25.05.2010 dismissing the Appeal No. 503 of 2009, and having noted the issue of validity of the appointment on the post on which the appellants claimed to have been validly appointed vis-à-vis respondents no. 11, 12 and 13, necessarily and obviously required hearing of both Appeal No. 503 of 2009 as well as Appeal No. 351 of 2009 together, as the



issue was one and the same relating to the validity of appointment of the appellants of both the cases against each other. It was submitted that in any view of the matter, once the appellants had appeared before the Tribunal and contested the case, they cannot now take the plea of the Tribunal not being justified in hearing their appeal once again moreso, in view of the fact that they had not moved before the Court for review/recall/modification of the order dated 02.07.2012 passed in CWJC No. 10935 of 2012.

Having considered the rival contentions, the Court does not find any substance in the contentions of learned counsel for the appellants. Once the facts, as discussed in the impugned order of the Tribunal dated 04.12.2012, have been noticed by the Court, which have not been challenged to be error of record, the entire process of selection of four untrained candidates, which is the subject matter of dispute, thus come under a cloud and in such a situation if the Tribunal has directed for fresh appointment in accordance with law, the same cannot be said to be perverse or arbitrary or not being based on any cogent reason. Enough doubt having been reflected from the facts, as narrated in the order impugned dated 04.12.2012, and keeping in mind the settled law that prescribed procedure for public employment should be transparent, open and without discrimination with full opportunity to all eligible persons, the Court does not find

any occasion to interfere in the order passed by the learned single Bench dated 28.03.2014 in CWJC No. 2070 of 2013 and accordingly, the present Letters Patent Appeal stands dismissed.

(Ahsanuddin Amanullah, J)

Hemant Gupta, J I agree.

(Hemant Gupta, J)

Sujit/-

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