

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.984 of 2014

IN

Civil Writ Jurisdiction Case No. 956 of 2013

Manohar Prasad son of Shri Bhola Mahto resident of village and P.O. Bahchha,
Police Station- Lakhisarai, District- Lakhisarai. Respondent No.7/Appellant.

Versus

1. The State of Bihar through the Principal Secretary, Education Department,
Govt. of Bihar, Patna.
2. The Director, Primary Education, Govt. of Bihar, Patna.
3. The Member, District Teacher Appointment Appellate Tribunal, Lakhisarai.
4. The District Programme Officer (Establishment), Lakhisarai .
5. Gram Panchayat Raj Pratappur, P.O. and Block Halsi, District- Lakhisarai
through its Mukhiya.
6. Employment Committee, Gram Panchayat Raj Pratapur, P.O. and Block- Halsi,
District- Lakhisarai through its Panchayat Secretary.
... .. Respondents/Respondents.
7. Abhishek Kumar, son of Shri Chhotelal Mahato, resident of village- Rasoolpur,
Block- Suryagarha, Police Station- Medanichak, District- Lakhisarai.
.... Petitioner/Respondent.

Appearance :

For the Appellant : Mr. Umesh Kumar Mishra, Adv.

For the State : Mr. Raju Giri, GP-30.

For the Respondent No.7: Mr. Rajendra Prasad Singh, Sr. Adv.
Mr. Rishi Raj, Adv.

CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

And

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 06-01-2016

Re.:-I. A. No 5040 of 2014

Interlocutory Application No.5040 of 2014 has been
filed for condoning the delay in filing this appeal.

For the reasons stated in this interlocutory application,
the delay in filing the appeal is condoned.

Accordingly, I.A. No.5040 of 2014 stands disposed of.

The appellant was respondent no.7 in the writ



proceeding. He challenges the judgment and order dated 07.03.2014 passed in C.W.J.C. No.956 of 2013. The said writ petition was filed by the writ petitioner, who is respondent no.7 herein, challenging the order dated 21.09.2012 passed by the District Teacher's Appointment Appellate Tribunal (hereinafter referred to as the 'Tribunal'), which directed for terminating the service of the writ petitioner and appointing the respondent no.7/appellant instead, on the ground, that the appellant had higher merit than the writ petitioner.

As the private contesting respondent in this appeal, who was the writ petitioner, being respondent no.7 herein, has appeared, with consent of parties, we have taken up this matter and heard it for final disposal at this stage itself.

In the year 2006, the State Government formed the Panchayat Teachers (Recruitment of Service Conditions) Rules, 2006. Pursuant to the aforesaid rules, advertisements were issued for recruitment of panchayat teachers wherein minimum educational qualification was Intermediate. The writ petitioner/respondent no.7 herein and the appellant, apart from large number of persons applied. The writ petitioner was selected and appointed, which advertisement was done in the year, 2007 itself, when the rules were framed originally. Rule-18 provides that any dispute in relation to the appointment process would be dealt with and enquired by the Block



Development Officer (B.D.O.) having jurisdiction in the matter. Once the appointments were so made, which is commonly referred to as the appointments of panchayat teachers in the first phase, the vacancies were calculated phase-wise. The second phase advertisements were issued for appointment. This time, gaining from the past experience and seeing the number of litigations that was generated, the State constituted the Tribunal to replace the B.D.O. under Rule 18 of the Rules aforesaid. We have noticed this fact because we are in agreement with the learned Single Judge that essentially the B.D.O. was the appellate authority in respect of appointments made in the first phase. It was the Tribunal from second phase onwards, which exercised the jurisdiction, and, to which the cases pending before B.D.O stood transferred.

As the writ petitioner was selected and the appellant herein having not been selected, appellant submits that he had made representation before the B.D.O. raising his grievance. Nothing was done. He then represented to the Collector of the District. Nothing was done. Ultimately, he moved in the year 2011 before the Chief Minister's Janta Darbar from where instructions were sent to the Collector, who then forwarded the grievance of the appellant to the Tribunal. Thus, the appellant moved the Tribunal effectively for the first time for the redressal of his grievance in the year 2011, with

regard to the appointment of the writ petitioner in the year 2007, in the first phase of appointments. There is nothing on record to show and substantiate that the appellant had moved the B.D.O., while the B.D.O. was the appellate authority.

It is not in dispute that the matter was then heard by the Tribunal, upon notice to the writ petitioner, on several days and, ultimately, orders were reserved but before final order could be passed the officer retired. The new officer was then appointed and he, without any notice to any party, finding that the matter had been finally heard by his predecessor, passed the order upholding the contention of the appellant and directed that the service of the writ petitioner be terminated and instead the appellant be appointed.

Being aggrieved by the order of the Tribunal, the writ petition was filed and, as noted earlier, was allowed by the learned Single Judge setting aside the order of the Tribunal. The learned Single Judge, we think rightly, allowed the writ petition on two counts. Firstly, there was gross violation of principle of natural justice inasmuch as the member of Tribunal, who heard the matter, did not decide the matter and the member who decided the matter never heard the matter. It is elementary principle of law that one who hears the matter must decide. We may also observe that normally in the adversarial and adjudicatory system that we have, parties have to be



heard before decisions are taken, and, therefore, merely pleadings and written submissions on record, does not take away the duty of the Tribunal newly constituted to hear the parties afresh before deciding. If any authority for the said proposition is required it would be the case of **Gullapalli Nageshwar Rao & Ors Vs. Andhra Pradesh State Road Transport Corporation and Anr.** since reported in **AIR 1959 Supreme Court 308** wherein at Para 31 it has been held:

“if one person hears and another person decides, then personal hearing becomes an empty formality. We therefore hold that the said procedure followed in this case also offends another basic principle of judicial procedure.”

Thus, the order of the Tribunal cannot be sustained. The learned Single Judge rightly set aside the order of the Tribunal and we are not inclined to interfere with the decision of the learned Single Judge.

The learned Single Judge further held, keeping in view the scheme of the rules and the manner in which the forum of appellate authority, the B.D.O., was replaced by the Tribunal and the time when it was done would show that the interference by the B.D.O. was in respect of first phase of the appointment process. When second phase appointment process started, the power of B.D.O. was taken away and vested in the Tribunal. All pending matters before the



B.D.O. were then transferred to the Tribunal. Therefore, the scheme rightly appreciated by the learned Single Judge was that the Tribunal was to interfere only with matters of second phase appointments and matters pending in relation to the first phase of appointments. In other words, Tribunal was not competent to entertain grievances for the first time in respect of the first phase of appointments which had been completed before the Tribunal was constituted. At that time, it was the B.D.O. who was the competent authority. This reason appeals to us and we accept that this ground for holding in favour of the writ petitioner and as against the appellant in this appeal can also be supported by another reason i.e. the selection process and the appointment took place in the year 2007 and the challenge to it was made before the Tribunal only in the year 2011, though the appellants pleads that he had immediately represented or protested before the B.D.O., the Collector and others. There are no materials contemporaneous to substantiate such submissions. If there was any matter pending before the B.D.O., then it would have been transferred to the Tribunal. The appellant has not been able to bring on record anything to show that anything was transferred from the B.D.O., the appellate authority, to the Tribunal as an appellate authority. Thus, the challenge to non-selection of the appellant or the selection of writ petitioner was a belated challenge. It was made four years after the

appointment. The challenge was not on the ground of ineligibility but challenge was solely on the ground of better suitability. Such a belated challenge ought not to have been entertained by the Tribunal. It is well settled that even if there is no period of limitation fixed, parties have to act within reasonable time as held in L.P.A. No. 375 of 2010 in the case of Panna Devi Vs. The State of Bihar & Ors decided on 01.07.2015 with another analogous appeal in which a recent judgment of the Apex Court has been relied and held that even suo motu power without limitation as to time could not be exercised after undue delay.

Thus, for the reasons aforesaid, we are not inclined to interfere with the judgment and order of the learned Single Judge and we find no merit in this appeal. Accordingly, this appeal is dismissed.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

Rajiv/AFR

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