

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.899 of 2013

IN

Civil Writ Jurisdiction Case No. 14738 of 2012

- =====
1. Maheru Shah Jabin, Daughter of Matiur Rahman, Wife of Safi Akhtar, Resident of Village- Mahisbathna, Police Station and Block- Bahadurganj, District- Kishanganj
 2. Safi Akhtar, Son of Late Md. Usman, Resident of Village- Mahisbathna, Police Station and Block- Bahadurganj, District- Kishanganj

.... Appellant/s

Versus

1. The State of Bihar
2. The Commissioner-cum-Secretary, Human Resources Development Department, Government of Bihar, Patna
3. The Director (Primary Education), Government of Bihar, Patna
4. The District Magistrate, Kishanganj
5. The District Teacher Appointment Appellate Tribunal, Kishanganj
6. The Deputy Development Commissioner, Kishanganj
7. The District Superintendent Of Education, Kishanganj
8. The District Education Officer, Kishanganj
9. The Block Development Officer, Terhgachh, District- Kishanganj
10. The Block Education Extension Officer, Terhgachh, Distt. Kishanganj
11. The Present Mukhiya, Gram Panchayat Chilhania Police Station and Block Terhgachh, District- Kishanganj
12. The Present Panchayat Secretary Gram Panchayat Chilhania Police Station and Block Terhgachh, District- Kishanganj
13. Surendra Kumar Choudhary Son of Anandi Prasad Chaudhary Resident of Village Balua Kaliganj, Police-Station Palasi, Distt. Araria
14. Khushnuma Begam, Daughter of Ashfaque Alam, Police-Station Terhgachh, Distt. Kishanganj

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Satish Chandra Mishra, Advocate
Mr. Md. Qumrul Hoda, Advocate

For the State : Mr. Shankar Kumar Thakur, AC to GP 27

For Respondent 14 : Mr. Ashok Kr. Choudhary, Advocate
Mr. Anjum Akhtar, Advocate
Mr. Akhashankh Ankit, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 20-09-2016

Heard learned counsel for the appellants and learned counsel for the respondents.

The present intra-court appeal is directed against the judgment and order dated 26.09.2012, passed by learned Single Judge of this Court in C.W.J.C. No. 14738 of 2012(Maheru Shah Jabin and another Vs. The State of Bihar and others). As apparent from the order of the learned Single Judge, the stand taken by the writ petitioner-appellant was that the alleged notices for counselling were sent under certificate of posting and were not delivered to the petitioner-appellant. Accordingly, persons having lesser merit as per the merit-list were selected. Learned Single Judge held that once it is shown that notices were sent under certificate of posting, it will be presumed that it was delivered and, thus, if petitioners do not turn up they cannot blame the authorities. We do not accept this position to be correct in law. There is distinction between certificate of posting and registered post. Certificate of posting is only a certificate that a letter or a postal article was posted, whether it was delivered or not, has to be proved and/ or ascertained. There is no presumption of delivery, whereas in respect of registered post both in terms of the General Clauses Act as well as the Indian Evidence Act it is proof of posting and if not returned within one month, a proof of delivery as well. It is because of this that Courts generally insist on registered post, rather

than this dubious certificate of posting where no records are maintained of receipt and dispatch and/or delivery.

Even though, we do not agree with the learned Single Judge on the aforesaid issue, we are not inclined to entertain this appeal for the simple reason that whether notices were validly issued or served, is not an issue in the present matter, for, in paragraphs 4 and 18 of the writ petition itself, the petitioners have accepted that they appeared for counselling. If that be so, then the plea being taken that they were not noticed and as such persons with lesser marks were appointed, is not a bonafide plea. The rest of the matters become error of record.

We are, thus, not inclined to interfere in the matter. The appeal is, accordingly, dismissed.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

Arjun/Rajesh

U			
---	--	--	--