

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No 1742 of 2012

IN

Civil Writ Jurisdiction Case No 10177 of 2012

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Md Shakil Ahmad Son Of Hanif Sani Resident Of Village- Rahmatganj, Police
Station- Srinagar, District- Madhepura

.... Appellant/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Human Resources Development Department,
Government of Bihar, Patna
3. The District Magistrate, Madhepura
4. The District Education Officer, Madhepura
5. The Sub Divisional Officer, Madhepura
6. The District Teachers Appointment Appellate Authority, Madhepura through Its
Member

.... Respondent/s

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Appearance :

For the Appellant/s : Mr Ram Sagar Singh, Advocate

For the Respondent/s : Mr Kumar Alok, SC VII with
Mr Satyeshwar Prasad, AC to SC VII

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CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH

And

HON'BLE JUSTICE SMT NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE NAVANITI PRASAD SINGH)

Date: 30-08-2016

Heard learned counsel for the appellant and learned
counsel for the State.

2 This is an unfortunate case where justice has been
totally denied to the appellant, not for any fault of his but for fault of
the State and its instrumentality, and the denial of relief by this Court.

3 The appellant, who was the writ petitioner, had filed

CWJC No 10177 of 2012 which was dismissed in limine by the learned Single Judge on 20.06.2012, against which this appeal has been filed. The facts are not in dispute.

4 In 2006, an advertisement was issued for recruitment of Secondary Teachers in the Zila Parishad in accordance with the Zila Parishad Secondary & Senior Secondary Teachers (Appointment and Service Condition) Regulation, 2006. The petitioner-appellant applied. A provisional panel was made wherein, even though the petitioner-appellant had the highest marks in the subject of Urdu for which he had applied, he was wrongly relegated to the bottom of the list. He immediately moved this Court by filing CWJC No 4639 of 2008. This Court, seeing the urgency of the matter, ought to have interfered, but after keeping the writ petition pending for three years, the same was disposed of with a direction to go and seek alternative remedy which lay before the District Teachers Appointment Appellate Tribunal, Madhepura (for brevity, the *Tribunal*). Accordingly, the petitioner-appellant filed appeal before the Tribunal being Appeal No 133 of 2011. The Tribunal rejected the claim on 03.02.2012 primarily on the ground that the 2006 appointment process had been completed. The remaining vacancies were clubbed in the 2008 advertisement which process had also been completed. In other words, what the Tribunal held, that the petitioner had missed his bus. The petitioner-



appellant then came to this Court in the writ petition, as noticed above. Learned Single Judge held that mere empanelment does not give a right of selection, well established principle of law. As such, when the panel was not acted upon finally, petitioner had no right, and if the panel was then dissolved, petitioner's right, not having been crystallized, he cannot make any grievance thereof. We are surprised. To us, the answer to the problem is Articles 14 and 16 of the Constitution. This Court ought to have asked the State as to why the provisional panel was not finalized. State has a right to scrap the selection process but that decision had to be taken on valid grounds and not on any ipse dixit or whims and fancies of anybody. If the view, which prevailed with the learned Single Judge, is to be accepted then it would be putting a premium on the actions of the administration. The right of the petitioner-appellant to seek remedy from this Court, as to why having been empanelled, why the finalization was not done? There is no explanation for the same. Can, by not finalizing the panel or taking it to logical end, right of being considered for appointment, be defeated? It can be, but for valid grounds only, and in absence of valid grounds, it would be held that it would be mala fide in law, if not on fact and if there is mala fide, Articles 14 and 16 comes into play to give remedy by way of right to the petitioner.

5 We, therefore, cannot subscribe the view of the learned Single Judge. All we can say is what Chief Justice **Chagla** said sixty years ago in the case of ***All India Groundnut Syndicate Limited - Versus- Commissioner of Income Tax, Bombay City, AIR 1954 Bombay 232 :***

“But the most surprising contention is put forward by the Department that because their own officer failed to discharge his statutory duty, the assessee is deprived of his right which the law has given to him under sub-section (2) of S 24. In other words, the Department wants to benefit from and wants to take advantage of its own default. It is an elementary principle of law that no person - we take it that the Income-tax Department is included in that definition - can put forward his own default in defence to a right asserted by the other party. A person cannot say that the party claiming the right is deprived of that right because “I have committed a default and the right is lost because of that default.”

6 Learned Single Judge of this Court, in our opinion, reversed the well settled law or at least applied the same in the wrong direction. We, therefore, have no option but to set aside the judgment and order of the learned Single Judge, but the question is to what relief ultimately the petitioner-appellant would be entitled? The recruitment process undoubtedly was of the year 2006. That having not been concluded successfully, the process was reinitiated in 2008 with vacancies carried over and added. That process also ended several years back. It is unfortunate that though we are of the view

that injustice has been meted out to the petitioner-appellant, he cannot be granted any relief now after such a long lapse of time.

7 This appeal, accordingly, stands disposed of.

(Navaniti Prasad Singh, J)

(Nilu Agrawal, J)

M.E.H./-

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