

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.565 of 2015
IN
Civil Writ Jurisdiction Case No. 18056 of 2010**

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Kaushal Kishore Tiwary, son of Shri Subhash Tiwary, resident of village Bishambharpur, P.O. Chanayan Bandh, Police Station- Majhoulia, District- West Champaran.

.... Appellant/s

Versus

1. The State of Bihar.
2. The District Teacher Appointment Appellate Tribunal, West Champaran through its Member.
3. The District Superintendent of Education, West Champaran.
4. The Mukhiya, Gram Panchayat Chanayan Bandh, Block Majhoulia, District- West Champaran.
5. The Panchayat Secretary, Gram Panchayat Chanayan Bandh, Block Majhoulia, District- West Champaran.
6. Manoj Kumar Ojha, son of Madan Mohan Ojha, resident of Village- Vishambharpur, Police Station- Majhoulia, District- West Champaran.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Bashishtha Narayan Mishra, Adv.
Mr. B.K. Mishra, Adv.
For the Respondent No.6: Mr. Rajendra Prasad Singh, Sr.Adv.
Mr. Rishi Raj, Adv.

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)
Date: 18-10-2017

Heard the parties.

2. The appellant, being aggrieved by the order dated 19.01.2015 passed in CWJC No.18056 of 2010 by a learned Single Judge of this Court, has filed this intra-court appeal for setting aside the impugned order allowing CWJC No.18056 of 2010 by setting aside the order dated 29.07.2010 passed by the District Teachers'



Employment Appellate Tribunal, West Champaran (hereinafter referred to as the 'Appellate Tribunal') by which the Appellate Tribunal had ordered cancellation of the appointment of the writ-petitioner (respondent no.6 in the present appeal) with immediate effect and also for lodging a criminal case against him and the Panchayat Secretary.

3. The facts in brief for purpose of the present appeal are as under:-

In the year 2003, the appellant as well as the respondent no.6 applied for their engagement against the post of Panchayat Siksha Mitra in Gram Panchayat Raj Chanayan Bandh in the District of West Chamapran. The appellant had passed the matriculation examination in 1st division obtained 583 marks out of total 900 marks in the examination held by the Bihar School Examination Board, Patna. He had also passed the intermediate examination in 2nd division. The respondent no.6 in the present appeal was appointed against the said post by virtue of a matriculation marksheet allegedly submitted by him showing 626 marks obtained by him out of total 900 marks. The appellant submitted representation dated 12.08.2005 before the District Magistrate, West Champaran at Bettiah raising his grievance against the appointment of respondent no.6. According to appellant, the respondent no.6 had got lesser



marks, but he was appointed as Panchayat Siksha Mitra by dint of a fake and forged marksheet showing his marks as 626 out of total 900 marks. The appellant has enclosed Annexure-4 series and Annexure-5 to the writ application to demonstrate that he was always approaching one authority or another and had even approached the Panchayat Secretary of the Gram Panchayat (respondent no.10 in the writ application) for supplying the marksheet produced by the respondent no.6, but the respondent no.10 vide his letter no.20 dated 24.09.2007 informed the appellant that no marksheet of respondent no.6 is available on the record.

4. The appellant approached the District Superintendent of Education-cum-Public Information Officer, West Champaran at Bettiah under Right to Information Act, 2005 and thereupon he was supplied a copy of the marksheet of respondent no.6. A copy of the marksheet obtained with the help of the provisions of the RTI Act has been enclosed as Annexure-6 series to the writ application. The appellant obtained the original marksheet procured by the respondent no.6 which he finally got showing that the respondent no.6 had obtained only 356 marks out of total 900 marks and had passed the matriculation examination in 3rd division. The marksheet produced for purpose of engagement as Panchayat Siksha Mitra by the respondent no.6 was a fake and forged marksheet which



was attested by the Panchayat Secretary and the respondent no.6 was appointed/engaged on that basis.

5. The appellant thereafter requested the District Magistrate, West Champaran (respondent no.4) to take appropriate action including lodging of FIR against the persons who were involved in the conspiracy to give engagement to the respondent no.6 on the basis of a forged marksheet and in the process they rejected the candidature of the appellant who was otherwise entitled to be engaged by virtue of the marks obtained by him in the matriculation examination. The appellant moved before the Appellate Tribunal against the engagement of the respondent no.6 giving rise to Case No.254 of 2009. The Appellate Tribunal called for a verification report from the Principal, R.N. High School, Kehuniya, Narkatiyaganj as regards the matriculation marksheet produced by the respondent no.6. The Principal of R.N. High School, Kehuniya through his letter no.46 dated 15.06.2010 informed the Appellate Tribunal that the respondent no.6 had passed the matriculation examination in 3rd division. In view of the apparent proof of fact that the respondent no.6 had obtained engagement as Panchayat Siksha Mitra on the basis of a forged marksheet and it is a case of ousting the meritorious candidates by fraudulent means and modes the Appellate Tribunal directed for cancellation of the engagement of the respondent no.6 as Panchayat



Siksha Mitra and to lodge a criminal case against the Panchayat Secretary and the respondent no.6. Here it is worth mentioning that by virtue of a policy decision taken by the Government of Bihar and by virtue of a scheme of employment of Panchayat Siksha Mitra at gram panchayat level, the post of Panchayat Siksha Mitra was abolished with effect from 01.07.2006 and by operation of Rule 20(iii) of the Bihar Panchayat Elementary Teacher (Employment and Service Conditions) Rules, 2006 the respondent no.6 came to be absorbed as Panchayat Teacher. A copy of the order passed by the Appellate Tribunal in Case No.254 of 2009 is Annexure-1 to the writ application.

6. The respondent no.6 being aggrieved by the order passed by the Appellate Tribunal filed a writ application being CWJC No.18056 of 2010. The learned Single Judge of this Court heard the said writ application on 04.11.2010 and while issuing notice to the present appellant who was respondent no.6 in the said writ application passed an interim order saying that until further order continuation of the petitioner on the post of Panchayat Teacher will be subject to the result of the writ petition.

7. The present appellant also moved this Court by filing CWJC No.18407 of 2010 with a prayer for issuance of a writ in the nature of mandamus commanding the respondent authorities to



appoint him on the post of Panchayat Teacher in pursuance of the order dated 29.07.2010 passed in Case No.254 of 2009 by the Appellate Tribunal (Annexure-9 to the writ application).

8. Both the writ applications were taken up together and have been disposed of by a common order. The learned Single Judge took note of the submissions made at the bar particularly the stand of the respondent no.6 (petitioner in CWJC No.18056 of 2010) saying that the alleged forged marksheet was deliberately got inserted by someone inimical to the petitioner. The learned Single Judge took a view that on the basis of the rival pleadings the Court would not record a finding on this point. The learned Single Judge took note of the submissions made on behalf of the respondent no.6 that it has been brought to the notice of the State respondent that a fraud has been committed by the petitioner then surely an FIR could have been registered initiating an in-depth investigation into the said allegation for which no direction of the statutory authority is required and as the Court was informed that an FIR has already been lodged after the impugned order was passed by the Appellate Tribunal and the same is under investigation.

9. The learned Single Judge proceeded to quash/set aside the order dated 29.07.2010 passed by the Appellate Tribunal (Annexure-1 to the writ application) with an observation that quashing



of the order of the Authority would not preclude the concerned respondent(s) from initiating and/or pursuing the criminal case/proceeding and the subsequent action/proceeding, if need be, in accordance with law.

10. CWJC No.18407 of 2010 preferred by the present appellant for a writ of mandamus was dismissed by the learned Single Judge holding that no relief can be granted to the petitioner by directing his engagement/appointment as Panchayat Siksha Mitra in view of the principles laid down in the case of Smt. Renu Kumari Pandey Vs. State of Bihar reported in 2011 (4) PLJR 297 and in view of the Full Bench judgment of this Court in the case of Kalpana Rani Vs. State of Bihar reported in 2014(2) PLJR 665.

11. The present appeal has been preferred only against the order passed in CWJC No.18056 of 2010 by which the learned Single Judge has set aside the order of the Appellate Tribunal. The grievance of the appellant is that the learned Single Judge has failed to appreciate that it is an open and shut case. The respondent no.6 was appointed as Panchayat Siksha Mitra on the basis of a marksheet showing him to have obtained 626 marks out of total 900 marks. It is not in dispute now that the marksheet on the basis of which the respondent no.6 was appointed is a forged and fabricated marksheet and there is no dispute of the fact that the respondent no.6 had



obtained only 356 marks out of total 900 marks and had passed the matriculation examination in 3rd division. It is also not in dispute that this appellant had applied for his engagement as Panchayat Siksha Mitra by virtue of having obtained 1st division in the matriculation examination but was ousted by the respondent no.6 who was engaged by dint of the forged marksheet. The submission is that the learned Single Judge has completely erred in being swayed away by the submission on behalf of the respondent no.6 that the said forged marksheet was deliberately got inserted by someone inimical to the petitioner. The learned Single Judge, according to the appellant, could not appreciate that admittedly the respondent no.6 had got appointment as Panchayat Siksha Mitra on the basis of the said marksheet alone and therefore his plea that the said marksheet was deliberately got inserted by someone inimical to the petitioner was out rightly a false and frivolous plea just to save his skin. Attention of this Court has also been drawn to the counter affidavit filed on behalf of the respondent no.6 in the present appeal. In paragraph 6 of the counter affidavit the respondent no.6 has stated that he had submitted his marksheet of matriculation 3rd division, but the marksheet of the 1st division was submitted deliberately by someone inimical to the respondent no.6. The marksheet supplied to the appellant under the provisions of the RTI Act, 2005 is in the name of respondent no.6



which is admittedly a forged marksheet and is being disowned by respondent no.6 but it is admitted that the same was used by the Panchayat Secretary to help the respondent no.6 in the appointment/engagement as Panchayat Siksha Mitra.

12. In view of the admitted position that the respondent no.6 had obtained 3rd division whereas he was given appointment as Panchayat Siksha Mitra on the basis of a forged marksheet showing him to have obtained 626 marks out total 900 marks in 1st division and thereby ousting the appellant from getting appointment, we are of the considered opinion that the order passed by the Appellate Tribunal was just and proper and no interference was required at the level of the learned Single Judge. It is well settled law that fraud includes all acts, omissions and concealments which involved breach of legal or reputable duty, trust or confidence justly reposed and which causes injuries to another, or by which, undue and unconscious advantage is taken by the person playing fraud and such person can be thrown out at any stage of the litigation.

13. In the present case, we are of the opinion that the materials available before the Court are clearly indicating that the respondent no.6 got appointment as Panchayat Siksha Mitra on the basis of a fake and forged marksheet in his name showing him to have passed matriculation examination in 1st division with better marks



than the present appellant. The respondent no.6 has himself admitted that he had obtained 3rd division in matriculation examination. Thus, the facts being clear that the appointment of the respondent no.6 was based on a fake and forged marksheet, the same cannot be allowed to be continued. The learned Single Judge has, in our opinion, erred in interfering with the order of the Appellate Tribunal. We, therefore, set aside the impugned order dated 19.01.2015 passed in CWJC No.18056 of 2010 and restore the order dated 29.07.2010 passed by the Appellate Tribunal, West Champaran in Case No.254 of 2009. Since the criminal case is said to have been lodged pursuant to the direction of the Appellate Tribunal, it is expected that the State respondents shall pursue the same to its logical end.

13. The Letters Patent Appeal is allowed. There will be, however, no order as to cost.

(Rajeev Ranjan Prasad, J)

Ajay Kumar Tripathi, J: I Agree.

(Ajay Kumar Tripathi, J)

Arvind/-

AFR/NAFR	NAFR
CAV DATE	04.10.2017
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