

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.143 of 2015
IN
Civil Writ Jurisdiction Case No. 10585 of 2013**

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Ranjan Kumar Son of Panna Lal Das Resident of Village - Kushaharmal, P.O. and
P.S. Balua Bazar, District - Supaul.

.... Appellant/s

Versus

1. The State of Bihar, through the Principal Secretary, Human Resources Development Department, Govt. of Bihar, Patna.
2. The Principal Secretary, Human Resource Development Department, Govt. of Bihar.
3. The Director, Primary Education, Govt. of Bihar, Patna.
4. The District Education Superintendent cum District Programme Coordinator, Supaul.
5. The Block Education Extension Officer, Basantpur, Supaul. null null
6. The Mukhiya gram Panchayat Kushahar Block and Anchal - basantpur, Supaul. null null
7. The Panchayat Secretary Gram Panchayat Kushahar Block and Anchal - Basantpur, Supaul.
8. the Principal, Primary School Kushahar, araji gram Panchayat Kushahar, Block and Anchal - Basantpur, Supaul.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Dudh Nath Singh, Adv
For the State : Mr. S.S.P. Yadav-SC-14

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 11-07-2017

Seeking exception to an order dated 20th October,
2014, this appeal has been filed under Clause –X of the Letters Patent.

The petitioner was removed from the post of
Panchayat Teacher vide order Annexure-10 dated 27.11.2007,
available in the record of the writ petition and challenging the said



order, the petitioner filed an appeal before the District Teachers Employment Appellate Tribunal and vide Annexure-14 dated 12.09.2009 the Tribunal, based on the a circular issued by the Director, Primary Education vide Memo No. 3529 dated 12.10.2007 dismissed the appeal of the appellant by holding that the appellant, after his initial appointment in the year 2005 has not acquired the qualification of passing the Intermediate Examination within a period of three years. This order passed by the learned Appellate Tribunal has been approved by the Writ Court. However, while doing so, neither the Tribunal nor the Writ Court took note of the fact that the circular bearing Memo No. 3529 dated 12.10.2007 was issued, a statutory rule pertaining to recruitment in question being the Bihar Panchayat Elementary Sikshak (Niyozan and service condition) Rule, 2006 had come into force on 01.07.2006 and under Rule 4 of sub-clause-3, it was permissible for appointment of a candidate, even if the candidate did not possess the Intermediate Degree, if no other candidate was available, liberty was available to such candidate to pass the examination within six years of his appointment. This vital rule was not taken note of either by the Tribunal or the learned Writ Court and merely on the basis of executive instructions issued much after the enforcement of the rule, the impugned action has been taken. Once a statutory rule was available, the case of the petitioner should



have been examined on the basis of the statutory rule and based on an executive instructions, the impugned action could not be taken.

Accordingly, as all these aspects have not been considered by the Tribunal or by the Writ Court, it is a fit case where the appeal should be allowed, the order passed by the Tribunal vide Annexure-14 dated 12.09.2009 and by the Writ Court on 20.10.2014 in C.W.J.C. No. 10585 of 2013 should be quashed.

In the facts and circumstances of the case, the matter is remitted back to the Tribunal for consideration in the backdrop of the recruitment rule, on the petitioner filing the certified copy of the order wherein the Tribunal shall rehear the matter and decide the appeal after hearing all the concerned within a period of two months.

With the aforesaid, the appeal stands disposed of.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

Shageer/-

AFR/NAFR	NAFR
CAV DATE	NA
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Transmission Date	NA

