

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.50 of 2016
Arising out of
Civil Writ Jurisdiction Case No. 14640 of 2009
Alongwith
Interlocutory Application No. 81 of 2016

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Nitu Pandey, W/o Sri Prabhakar Kumar Pandey, resident of Village - Jhilwaniya, P.G. Gaura, P.S. Kateya, District - Gopalganj.
2. Bimlawati Devi, W/o Sri Manoj Ram, resident of Village and P.O. Rudrapur, P.S. Kateya, District - Gopalganj.

.... Appellant

Versus

1. The State of Bihar.
2. The District Magistrate, Gopalganj.
3. The District Superintendent of Education, Gopalganj.
4. The Block Development Officer, Kateya Block, District - Gopalganj.
5. The District Teachers Employment Appellate Tribunal, Gopalganj.
6. Kumari Sweta, W/o Sri Shyam Kishore Duvedi, resident of Village- Babhani, P.O. Rudrapur, P.S. Kateya, District - Gopalganj.
7. Saroj Bharati, W/o Sri Motilal Ram @ Saral Ram, resident of Village and P.O. Rudrapur, P.S. Kateya, District - Gopalganj.

.... Respondents

with

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Letters Patent Appeal No. 2254 of 2015
Arising out of
Civil Writ Jurisdiction Case No. 5346 of 2009
Alongwith
Interlocutory Application No. 9777 of 2015

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Bimlawati Devi, W/o Sri Manoj Ram, Shiksha Mitra (Panchayat Teacher), Raj Middle School, Rudrapur, Kateya, District Gopalganj.

.... Appellant

Versus

1. The State of Bihar through Principal Secretary, Human Resources Development Department, Govt. of Bihar, Patna
2. The Director, Primary Education, Bihar, Patna.
3. The District Magistrate, Gopalganj.
4. The District Superintendent of Education, Gopalganj.
5. The Member, District Teacher’s Appointment Appellate Tribunal, Gopalganj.
6. The Block Development Officer, Kateya Block, District- Gopalganj.
7. The Block Education Extension Officer, Kateya Block, District- Gopalganj.
8. The Head Master, Primary School, Kotawa Khas, Kateya, District- Gopalganj.
9. The Mukhia, Gram Panchayat Raj, Rudrapur, Kateya, District Gopalganj.
10. Saroj Bharati, W/o Sri Saral Ram, resident of Village and P.O. Rudrapur, P.S. Kateya, District-Gopalganj at present Assistant Teacher, Shiksha Mitra



(Panchayat Teacher) Raj Middle School, Rudrapur, Kateya, District-Gopalganj.

.... Respondents
with

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Letters Patent Appeal No. 2319 of 2015
Arising out of
Civil Writ Jurisdiction Case No. 5377 of 2009
Alongwith
Interlocutory Application No. 10008 of 2015

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Nitu Pandey, W/o Sri Prabhakar Kumar Pandey, D/o Sri Hirdyanand Pandey,
resident of village-Jhilwaniya, P.O. Gaura, P.S. Kateya, District - Gopalganj.

.... Appellant
Versus

1. The State of Bihar through Principal Secretary, Human Resources Development Department, Govt. of Bihar, Patna.
2. The Director, Primary Education, Bihar, Patna.
3. The District Magistrate, Gopalganj.
4. The District Superintendent of Education, Gopalganj.
5. The Member, District Teacher's Appointment Appellate Tribunal, Gopalganj.
6. The Block Development Officer, Kateya Block, District-Gopalganj.
7. The Block Education Extension Officer, Kateya Block, District-Gopalganj.
8. The Head Master, Primary School, Kotawa Khas, Kateya, Gopalganj.
9. The Mukhia, Gram Panchayat School, Rudrapur, Kateya, District-Gopalganj.
10. Kumari Sweta, W/o Sri Shyam Kishore, resident of Babhani Kateya, P.S. Kateya, District-Gopalganj at present Assistant Teacher, Shiksha Mitra (Panchayat Teacher) Primary School Kotawa Khash Anchal Kateya, District-Gopalganj.

.... Respondents

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Appearance :

(In LPA No.50 of 2016)

For the Appellant : Mr. Bipin Bihari Singh, Advocate.
For the Respondents : Mr. Anjani Singh, Advocate.

(In LPA No.2254 of 2015)

For the Appellant : Mr. Bipin Bihari Singh, Advocate.
For the Respondents : Mr. Anjani Singh, Advocate.

(In LPA No.2319 of 2015)

For the Appellant : Mr. Bipin Bihari Singh, Advocate.
For the Respondents : Mr. Anjani Singh, Advocate.

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

Date: 31-01-2017



Re.: Interlocutory Application Nos. 81 of 2016 in L.P.A. No. 50 of 2016, 9777 of 2015 in L.P.A. No. 2254 of 2015 and 10008 of 2015 in L.P.A. No. 2319 of 2015:

These applications are for condonation of delay of 04 years and 45 days respectively in filing of the aforesaid three Letters Patent Appeals.

For the reasons mentioned in the applications, we find that sufficient cause is made out for condonation of delay. Consequently, we condone the delay in filing of the aforesaid three Letters Patent Appeals.

Interlocutory Applications stand allowed accordingly.

Re.: Letters Patent Appeal Nos. 50 of 2016, 2254 of 2015 and 2319 of 2015.

Heard learned counsels for the parties.

In all these three appeals, LPA No. 50 of 2016 is taken as leading case, so as to refer to the facts and party position.

The common order dated 19th September, 2011 passed by the Learned Single Bench of this Court in CWJC No. 5346 of 2009 analogous with CWJC No. 5377 of 2009 and CWJC No. 14640 of 2009, is the subject matter of challenge in all the three Letters Patent Appeals, whereby CWJC No. 5346 of 2009 filed by respondent no.7 and CWJC No. 5377 of 2009 filed by respondent no.6 have been allowed and CWJC No. 14640 of 2009, filed by the



appellants, has been dismissed.

Since the parties are common and the issues are identical and ancillary, thus these appeals are heard together and being disposed of by a common order.

LPA No. 50 of 2016 is directed against the order dated 19.09.2011, by which CWJC No. 14640 of 2009 filed by the appellants namely, Nitu Pandey and Bimlawati Devi, has been dismissed.

LPA No. 2319 of 2015 has also been filed by the appellant (Nitu Pandey) and is directed against the order dated 19.09.2011, by which CWJC No. 5377 of 2009 filed by Kumari Sweta (Respondent No.06), has been allowed.

LPA No. 2254 of 2015 filed by the appellant Bimlawati Devi against the order dated 19.09.2011, by which CWJC No. 5346 of 2009 filed by Saroj Bharti (Respondent No.07), has been allowed.

The Learned Single Bench while allowing the writ petitions, has directed as to reinstate the writ petitioners, namely, Saroj Bharti and Kumari Sweta, in service, and further held them entitled, for their salary for the period they had earlier worked prior to their termination by the B.D.O., Kateya, Gopalganj, and also with effect from the date of their joining, in terms of the order



of Writ Court. The Learned Single Bench though dismissed the writ petition of the appellants, namely, Nitu Pandey and Bimlawati Devi but made them entitled for payment of salary for the period, they performed their duties as a Teacher.

The 'issue' relates with validity of initial appointment on the post of Shiksha Mitra made in the year 2005 of respondent nos.6 and 7 who having total percentage of obtained marks less than 45% in Intermediate and subsequently their termination from services by the Block Development Officer, Kateya, vide order 08.08.2005, and another issue involved herein is consequent appointment of the appellants on the post of Shiksha Mitra made somewhere in February, 2006, without any advertisement made by the Panchayat Appointment Committee as also without following the procedure prescribed for appointment, as stipulated in the Guidelines, 2004 of Shiksha Mitra.

The brief facts leading to these appeals are that in the year 2005, the respondent nos.6 and 7 were appointed on the post of Shiksha Mitra in the Gram Panchayat Rudrapur, Block Kateya, District- Gopalganj. Total numbers of applicants were 33, out of which the respondent no.6, namely, Kumari Sweta, was selected under general category and respondent no.7, namely, Saroj Bharti, was selected under Scheduled Caste category. They made their



joining on the post of Shiksha Mitra on the respective place of posting under the Gram Panchayat. The Block Development Officer, Kateya, vide Letter No. 977 dated 08.08.2005 pointed out the irregularity made in the appointment of Shiksha Mitra under the Gram Panchayat, Rudrapur, and asked the Mukhiya and Panchayat Secretary not to allow the joining of respondent nos. 6 and 7, in the concerned School.

After the said order of the B.D.O. Kateya, the Panchayat Employment Committee, cancelled the appointment of the respondent nos. 6 and 7. Thereafter, the appellants herein came to be appointed on the post of Shiksha Mitra against the vacant posts, created by the cancellation of appointment of respondent nos.6 and 7. The private respondents, since had already joined prior to the order dated 08.08.2005 of the Block Development Officer, Kateya, therefore, it could not be effected and the respondent nos.6 and 7 kept continuing the work. They earlier also approached this Court vide CWJC No. 1770 of 2007, seeking direction for payments of their salary. This Court disposed of the writ petition with a direction upon the District Teachers Appointment Appellate Authority, hereinafter referred to as the 'Appellate Authority' to look into the matter. Thus the matter came up before the Appellate Authority for consideration but the Appellate Authority vide order



contained in Memo No. 1949 dated 09.04.2009 did not grant relief to the respondents regarding their payment of salary, rather upheld the order of termination by the B.D.O. dated 08.08.2005 passed against the respondents.

The Appellate Authority in the said order contained in Memo No. 1949 dated 09.04.2009 also held the appointment of the appellants as a valid and directed for payments of their current salary as well as arrears of salary. In pursuance to the order of the Appellate Authority, appellants were paid salary. The private respondents again approached the Appellate Authority against their termination of services, as also, against the appointment of the appellants, whereupon the Appellate Authority considering the Letter No. 930 dated 15.06.2009 issued by the Human Resources Development Department, Bihar, Patna, vide Letter No. 2254 dated 03.09.2009 held the appointment of respondent nos. 6 and 7 as a valid appointment, making ineffective the earlier letter bearing no. 1949 dated 09.04.2009 by cancelling the earlier decision, and further directed to regularize the employment of respondent nos.6 and 7.

Prior to issuance of the Letter No. 2254 dated 03.09.2009 by the Appellate Authority, the respondent no.6 filed CWJC No. 5377 of 2009 and respondent no.7 filed CWJC No.



5346 of 2009 against the order dated 09.04.2009 passed by the Appellate Authority, by which termination of their services by the order of the B.D.O. Kateya, was upheld and the appellants filed CWJC No. 14640 of 2009 against the Letter No. 2254 dated 03.09.2009 passed by the Appellate Authority, by which the appointment of respondent nos. 6 and 7 was held as a valid appointment and there was direction for regularization of their service.

The Learned Single Bench considering the rival contention of the parties, held that the termination order of private respondents namely, Kumari Sweta, and Saroj Bharti, passed by the B.D.O. Kateya, was an illegal order and without jurisdiction, which subsequently affirmed by the Appellate Authority vide order dated 09.04.2009, therefore, held that the order of the Appellate Authority dated 09.04.2009 was fit to be quashed and the Learned Single Bench consequently held that order of the Appellate Authority contained in Letter No. 2254 dated 03.09.2009, the subject matter of challenge in CWJC No. 14640 of 2009, requires no interference.

From the facts referred above, it appears that the whole dispute arose on account of the order dated 08.08.2005 passed by the Block Development Officer, Kateya, in respect of termination



of services of private respondent nos. 6 and 7, whereas by that time both the respondents have already made their joining and had been serving the post of Panchayat Shiksha Mitra, in the concerned Schools, consequent to the order dated 08.08.2005 of the Block Development Officer, Kateya, two vacancies of Panchayat Shiksha Mitra were created under the Gram Panchayat, Rudrapur, and without following the procedure and publication of advertisement even, as to fill-up the said vacancies, the Panchayat Selection Committee filled-up the vacancies by making appointment of the appellants.

The question would arise, for our consideration that whether the Block Development Officer, Kateya, was empowered to pass the order dated 08.08.2005, relating to validity of appointment of the respondent nos. 6 and 7 as Panchayat Shiksha Mitra and whether the Appellate Authority was empowered to decide the dispute relating to the appointment of Panchayat Shiksha Mitra, made in the year 2005.

In the case of Smt. Renu Kumari Pandey & Ors.-Vs- State of Bihar & Ors. 2011 (4) PLJR, 297, the Division Bench of this Court had occasion to adjudicate the same issue, as indicated above. The Division Bench of this Court held thus:

“18 We may also note here that though the State Government framed a complete



scheme of employment of Panchayat Shiksha Mitra at Gram Panchayat level in furtherance of its goal of 'Education for all' in none of the aforesaid Resolutions the Government had provided for an adjudicatory machinery. In other words, the State Government did not make any provision for redressal of grievance in respect of selection and employment of Panchayat Shiksha Mitra or their re-employment after the expiry of the contractual period. On perusal of the records of the above writ petitions, we find that in absence of such machinery, the aggrieved persons approached the authority whom such persons considered to be competent/the environment authority. In our opinion, in absence of powers expressly conferred upon any such authority the reports of the orders made by such authority are of no consequence. No relief can be granted on the basis of the finding recorded by such authority. We may also point out that Elementary Teachers Appellate Authority constituted under Rule 18 of the Rules, as amended by Bihar Panchayat Elementary Teachers (Employment & Service Condition) (Amendment) Rules, 2008, is empowered to entertain here and decide, the appeals arising out of the employment of Elementary Teachers under the Rules. The said Appellate Authority has no jurisdiction to enter hear and decide the disputes



relating to the employment of the Panchayat Shiksha Mitra under the then prevalent Resolutions, circulars, orders, instructions”.

In view of the opinion of this Court, expressed in the case of Smt. Renu Kumari Pandey(Supra) we are in agreement to the extent of the finding recorded by the Learned Single Bench that the Block Development Officer, not being a competent authority, could not have passed such order, relating to validity of appointment of respondent nos. 6 and 7 as Shiksha Mitra, made in the year 2005.

We have also considered the Resolution contained in Memo No. 2517 dated 04.07.2008 issued under the signature of the Joint Secretary, Human Resources Development Department, Government of Bihar, Patna, which is part of Annexure-4 to the writ petition filed by the appellants, which clearly indicates that in view of the decision of the Government, such Panchyat Shiksha Mitra who may have been removed from the service on account of having lesser marks than 45% in Intermediate, shall be deemed to be re-employed on the post of Panchayat Shiksha Mitra from the very date of the removal from service.

Therefore, the period under which the respondent nos. 6 and 7 may have been out of service on account of the illegal order



of the Block Development Officer, Kateya, having no bearing as to disentitle them for absorption on the post of Panchayat Teacher, because the Resolution of the State Government talks about ‘deemed absorption’ of the service on the post of Panchayat Teacher.

In view of the discussions made above, we find no reason to interfere in the order of the Learned Single Bench.

All the three Letters Patent Appeals are, accordingly, dismissed.

(Hemant Gupta, ACJ)

(Sudhir Singh, J)

U.K./-

AFR/NAFR	AFR
CAV DATE	NA
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