

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.321 of 2016
Arising out of
Civil Writ Jurisdiction Case No. 15933 of 2015**

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1. Sulekha Kumari Wife of Ranjit Kumar Das Resident of village - Pir Nagar, P.O. Amari via Manjhaul, P.S. Khodabandpur, Distt. - Begusarai

.... Appellant/s

Versus

1. The State of Bihar through the Principal Secretary Department of Human Resources, Govt. of Bihar, Patna
2. The Director Primary School, Government of Bihar, Patna
3. The District Magistrate, Begusarai
4. The District Education officer, Begusarai
5. The District Programme officer, Begusarai
6. The Block Education officer, Chhorahi Block, Begusarai
7. The Block Education Extension Officer, Chhorahi Block, Begusarai
8. The Head Master Primary Middle School, Sahpur, Patala Block - Chaurahi, Distt. - Begusarai
9. The Panchayat Secretary, Gram Panchayat Raj Shahpur, Block - Chaurahi, Distt. - Begusarai
10. The Mukhiya Gram Panchayat Raj Sahpur, Block - Chaurahi, Distt. - Begusarai
11. The District Appellate Authority, Begusarai

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Sabal Kumar Jha

For the Respondent/s : Mr. RAJESH SINGH- GP16

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH)

Date: 10-01-2017

Re.: Interlocutory Application No.1254 of 20136

The application is for condonation of delay of 11 days
in filing of the present Letters Patent Appeal.

For the reasons mentioned in the application, we find
that sufficient cause is made out for condonation of delay.



Consequently, we condone the delay in filing of the present Letters Patent Appeal.

Interlocutory Application stands allowed accordingly.

Re.: Letters Patent Appeal No. 321 of 2016.

The present Letters Patent Appeal has been preferred under Clause-10 of the Patna High Court Rules, 1916 challenging the order dated 14.10.2015 passed in C.W.J.C. No. 15933 of 2015 by learned Single Judge whereby the writ application preferred by the appellant has been dismissed and the order dated 18.08.2015 passed by the District Teachers Employment Appellate Authority (hereinafter referred to as 'Tribunal') has been upheld on the ground that the appellant's engagement as Siksha Mitra was not as per the existing guidelines at the relevant time.

The factual matrix of the case is that the appellant made application on 03.01.2006 for being engaged as Siksha Mitra and consequently was directed to join as Siksha Mitra at the Primary School, Shahpur (New) by Sukh Suwidha Committee of Gram Panchayat Raj, Sahpur vide letter no. 13(Ka) dated 04.01.2006 issued by the Mukhiya of the Gram Panchayat Raj, Shahpur as contained in Annexure-3 of the writ application.

Four posts of Siksha Mitra were allocated to Shahpur Panchayat in the year 2003-04 and 7 posts in the year 2005-06. As per



roaster, out of seven post of Siksha Mitra, three vacancies were to be filled up from the male category out of which two posts were unreserved and one post was reserved for most backward class. Four vacancies were to be filled up from the female category out of which one post was reserved for most backward class while the other one was reserved for Scheduled Caste and two posts were to be filled up from the general female category. Accordingly, Dezy Kumari and Poonam Kumari figured at serial no. 1 and 2 of the merit list in the female general category list and Sunaina Kumari under Scheduled Caste category as she belongs to Dushad caste. Sanjay Kumar Rakesh and Aman Raj were engaged as Siksha Mitra in the male (general) category whereas Ram Kumar Mahto was engaged under Backward Class category.

Subsequently, vide memo no. 178 dated 10th of June, 2009, the Block Education Officer intimated to the Headmaster of the concerned school that Ram Kumar Mahto is not entitled to get remuneration as his appointment was found to be illegal. The said order was challenged by Ram Kumar Mahto in C.W.J.C. No. 7670 of 2010 which was disposed of by learned Single Judge of this Court with liberty to approach the appropriate authority under the Rules. Consequently, Ram Kumar Mahto preferred Appeal Case No. 16 of 2013 before the District Appellate Authority, Begusarai. The District



Appellate Authority held that the appointment of Ram Kumar Mahto as Siksha Mitra under the reserved category was illegal as there was no vacancy for male or female in Backward Caste category. So far as appointment of Appellant Sulekha Kumari was concerned, it was held to have been made under collusion and conspiracy as it has already been held illegal and unsustainable, therefore, the appointment of appellant Ram Kumar Mahto, Reena Kumari and Sulekha Kumari were directed to be cancelled. The operative part of the order of the Tribunal reads as follows:-

“Therefore keeping in view the entire facts, circumstances of the case, discussions made and reasons assigned above on strength of documents and materials on record, I find that appointment of Ram Kumar Mahato and respondent Reena Kumari, is against the Rules of Roster, hence illegal as there were no vacancies for male and female BC. So far as Sulekha Kumari is concerned her appointment appears to have been made under collusion and conspiracy and it has already been held to be illegal and unsustainable, therefore these appointments of appellant Ram Kumar Mahto and respondents Reena Kumari and Sulekha Kumari are hereby cancelled and set aside.”

Consequently the appeal preferred by Ram Kumar Mahto was dismissed by the Tribunal vide order dated 18.08.2015. The appellant challenged the order of Tribunal in C.W.J.C. No. 15933 of 2015. The learned Single Judge held that the appointment was made without any advertisement in dubious manner as only single



application was taken and the appellant was directed to join but no agreement was executed as per the existing guidelines, hence it was held to be against the guidelines prescribed for engagement of Siksha Mitra.

Learned counsel for the appellant submits that she was being appointed by the Panchayat Mukhiya after taking application and her appointment is legal.

Learned counsel for the Respondent-State submits that from records it appears that the appellant's was a back door entry as there was no advertisement nor any agreement, as per the guidelines, was executed.

Considering the rival submissions of the parties, it appears from the so-called appointment letter brought on record by the appellant as contained in Annexure-3 to the writ application, that the single application of the appellant was received against the vacant post of Siksha Mitra under most backward caste women category on 03.01.2006 and the appellant was directed to join on 04.01.2006. The letter contained in Annexure-3, the so-called appointment letter issued by the Panchayat Mukhiya, does not suggest that the appellant was engaged on the post of Siksha Mitra, hence admittedly, Annexure-3 does not stipulate that any advertisement was made. Annexure-1 is the letter dated 03.12.2005 issued by the Block Development Officer



which only suggests that the advertisement was required to be made for appointment as Siksha Mitra. Hence the appointment of the appellant was made hurriedly without following the procedure enumerated in the executive instruction for engagement of Siksha Mitra.

Hence, in view of the discussions made above, we do not find any error in the order of the learned Single Judge.

Accordingly, this Letters Patent Appeal is dismissed.

(Hemant Gupta, ACJ)

Amrendra/-

(Dinesh Kumar Singh, J)

AFR/NAFR	NAFR
CAV DATE	N/A
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Transmission Date	N/A

