

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1390 of 2016

Arising out of

Civil Writ Jurisdiction Case No. 5981 of 2010

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Rajesh Kumar, Son of Sakhi Chandra Das, Resident of Village - Chhaprar Ghat,
P.S.- Bahadurpur, District- Darbhanga

.... Appellant

Versus

1. The State of Bihar through its Chief Secretary, Bihar. Patna
2. The Secretary, Human Resources Development Department, Bihar, Patna.
3. The Collector cum District Magistrate, Darbhanga
4. The District Education Officer, Darbhanga
5. The District Superintendent of Education, Darbhanga
6. The Block Development Officer, Bahadurpur, Darbhanga
7. The District Panchayat Raj Officer, Darbhanga
8. The Mukhiya, Gram Panchayat Raj, Pirri, Bahadurpur, Darbhanga
9. The Panchayat Secretary. Gram Panchayat Raj, Pirri, Bahadurpur, Darbhanga

..... Respondents / Respondents

10. Suresh Das son of Sri Jageshwar Das Resident of Village- Pirri, P.O.-
Kushothar, P.S. - Bahadurpur, District- Darbhanga

.... Petitioner / Respondent

With

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Letters Patent Appeal No. 201 of 2014

Arising out of

Civil Writ Jurisdiction Case No. 5425 of 2010

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Rajesh Kumar, Son of Sakhi Chandra Das, Resident of Village - Chhaprar Ghat,
P.O. Bahadurpur, District - Darbhanga

.... Petitioner / Appellant

Versus

1. The State of Bihar through its Principal Secretary, Human Resources
Development Department, Government of Bihar, Patna
2. The District Magistrate, Darbhanga
3. The District Education Superintendent, Darbhanga
4. The Director, Primary Education, Human Resources Development Department,



Government of Bihar, Patna

5. The Block Development Officer, Bahadurpur, Darbhanga

6. The District Panchayat Raj Officer, Darbhanga

7. The Mukhiya, Gram Panchayat Raj Pirri, Bahadurpur, Darbhanga

8. The Panchayat Secretary, Gram Panchayat Raj Pirri, Block - Bahadurpur, Darbhanga

9. The Block Education Extension Officer, Block - Bahadurpur, Darbhanga

10. Suresh Das, Son of Sri Rajeshwar Das, Resident of Village - Pirri, P.O. Kushothar, P.S. Bahadurpur, District – Darbhanga.

.... Respondents / Respondents

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Appearance:

(In LPA No.1390 of 2016 & LPA No. 201 of 2014))

For the Appellant/s : Mr. Chittaranjan Sinha, Sr. Advocate and
Mr. Siddhartha Prasad, Advocate.

For the Respondent/s : Mr. Rajendra Narain, Sr. Advocate,
Mr. Kaushik and
Mr. Kaushalesh Choudhary, Advocates.

For the State: Mr. Amit Bhushan, AC to GP 17.

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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: 22-12-2017

Heard Mr. Chittaranjan Sinha, learned Senior Advocate assisted by Mr. Siddhartha Prasad, Advocate on behalf of the appellant, as well as Mr. Rajendra Narain, learned Senior Advocate assisted by Mr. Kaushik and Mr. Kaushalesh Choudhary, Advocates on behalf of the respondent no. 10 and Mr. Amit Bhushan, AC to GP 17 represented the State.

2. The present Letters Patent Appeals have arisen from a



common order dated 02.01.2014 passed by a learned single Judge of this Court in CWJC No. 5425 of 2010 (Rajesh Kumar Vs. The State of Bihar & Ors.) and CWJC No. 5981 of 2010 (Suresh Das Vs. The State of Bihar & Ors.). The writ petitioner in CWJC No. 5981 of 2010 is the respondent no. 10 in CWJC No. 5425 of 2010. By the impugned order dated 02.01.2014 the learned single Judge of this court has been pleased to uphold the findings of the District Teachers Appointment Appellate Authority, Darbhanga (in short, 'the Appellate Authority') in Case No. 505/ 2009 (Suresh Das Vs. Block Development Officer, Bahadurpur) and while dismissing the Writ Application bearing no. CWJC No. 5425 of 2010, the Writ Application bearing no. CWJC No. 5981 of 2010 has been allowed and the learned single Judge has directed that the concerned respondents shall proceed as per the order passed by the Appellate Authority. Although two Letters Patent Appeals have been preferred by the appellant but it is only to avoid a technical objection.

3. With the consent of the parties, both the Letters Patent Appeals have been heard together and are being disposed of by this common judgment.

4. The controversy in the matter of the selection process adopted by the State respondents, the Mukhiya of the concerned Gram Panchayat Raj Piraul and the Panchayat Secretary of the said Gram



Panchayat in the matter of appointment of Panchayat Teacher in Pirri Gram Panchayat within Bahadurpur Block in the district of Darbhanga and the judgment passed by the 'Appellate Authority' in the said appointment matter fell for consideration before the learned single Judge.

5. The learned single Judge refused to interfere with the order passed by the Appellate Authority setting aside the appointment of the appellant as Panchayat Teacher and then issuing direction to the concerned respondent to appoint the respondent no. 10. Upon hearing the parties and perusal of the records, the learned single Judge held that the contention of the writ petitioner- appellant that no appeal could have been preferred by the respondent no. 10 before the Appellate Authority appears to be misplaced. According to the learned single Judge, if any of the applicants had a grievance by any action or inaction of the respondents in completing the selection process in accordance with the rules, it could have been raised before the Appellate Authority. It has been held that there cannot be a general proposition that if a grievance has been raised by a person before the then appropriate / competent authority then no further grievance of any nature can be raised by any other person at a different stage before the Appellate Authority after its constitution in terms of Rule 18 of the Bihar Panchayat Elementary Teacher



(Employment & Service Conditions) Rules, 2006 (in short, ‘the Rules’). The learned single Judge has referred to the judgment of a Division Bench of this Court in **Kumari Gayatri Devi @ Gayatri Devi & Ors. Vs. The State of Bihar & Ors.**, reported in **2013 (4) PLJR 341**. Paragraph 7 of the said judgment on which reliance has been placed is quoted hereunder for a ready reference:-

“7. The last submission that the Tribunal cannot look into an appeal against appointments made prior to formation of the Tribunal is required to be noticed only for rejection. There is no such limitation in the Rules that no appeal can be preferred before the Tribunal for a cause of action which arose earlier. Once the Tribunal replaced the earlier appellate authority, the Block Development Officer, it will have jurisdiction to entertain appeals which were could have been entertained by the Block Development Officer.”

6. As a matter of fact, the learned single Judge found that the order dated 09.01.2008 passed by the Block Development Officer (Annexure 11 to the Writ Application) seriously doubted the case of the writ petitioner or the official respondents that counseling was earlier notified and held on 10.10.06 and 11.10.06. The Block Development Officer directed for proceeding afresh from the stage of preparation of provisional merit list. Thereafter, fresh counseling, was fixed on the order of the Block Development Officer, which was held on 14.01.2008 and 16.01.2008. It was duly publicized in which the writ petitioner did not choose to appear. The learned single Judge has



also taken note of the submission of the respondent no. 10 that as per the provision of the Rules governing the process of selection, fresh counseling was required to be gone into after finalization of AUPBANDHIK MEDHA SUCHI. The learned single Judge has accepted the findings of the Appellate Authority as against the appellant wherein it has been held as under:-

“Atyant pichari jati me jab ek hi pad baki tha aur Rajesh Kumar ka naam niyोजan hetu 08.11.06 ko megha suchi me naam tha to phir kyon rikti mante hue Suresh Das ko 16.01.08 me counseling karaya gaya es prasna ka jabab na Rajesh Kumar Diye na Panchayat Sachiv diye. Ek hi niyोजan se sambandhit rahane per kam ank wale ko pehle niyोजit hona aur adhik ank wale ko niyोजit nahi hona jabki counseling me bhag liye hai. Nayaysangat pratit nahi hota hai. 12.01.08 ko jo aprashikchit abhyarthiyon ka megha suchi bana usi ke adhar per atyant pichara warg me Suresh Das se kam ank rahne per bhi Rajesh Kumar ka niyोजan kar diya gaya. 16.01.08 ko jo Suresh Das ko counseling karwaya gaya. Suresh Das ko adhik ank rahane per bhi yeh kahte hue ki atyant pichari jati ka Rajesh Kumar ke duara ped bher diya gaya hai, Suresh Das ka niyोजan nahi kiya gaya hai.”

7. The Appellate Authority, on perusal of the records and after considering the submissions of the parties, held that the Provisional Merit List prepared on 12.01.2008 was not acceptable as no date for counseling was fixed on 12.01.2008. It has been held to be a forged and fabricated document.

8. Assailing the order passed by the Appellate Authority as well as the learned single Judge, Mr. Chittaranjan Sinha, learned



Senior Counsel representing the appellant in both the Appeals, has taken us through Annexure-11, which is the order dated 09.01.2008 passed by the Block Development Officer who was the Appellate Authority at the relevant time, because the Rules under which the District Teachers Appointment Appellate Tribunal was constituted, came into force only on 25.08.2008. Mr. Sinha submits that in the aforesaid order the Block Development Officer has categorically discussed the applications bearing Sl. No. 1333, 1334, 1335, 1336 & 1337, for which the counseling was held on 10.10.2007 and 11.10.2007. The Block Development Officer was of the view that these applicants were not entered in the Applicants' Register earlier and they were not residents of this district. It is also mentioned therein that the District Education Officer, Darbhanga, who has submitted the enquiry report, has nowhere mentioned about the earlier published provisional panel dated 08.11.2006. It is argued that the Block Development Officer has categorically held that the Sub Divisional Education Officer, Benipur had with an intention to confer benefits upon his favourites did this act which is evident from the entries made vide Sl. No. 1054(Ka), 1333, 1334, 1335, 1336 & 1337, which are all entered at a later stage. Those applications were cancelled and then the Block Development Officer directed for appointment of candidates in accordance with the earlier published provisional panel



dated 08.11.2006. Regarding the balance vacancies, if any, the counseling was fixed on 14.01.2008 and 16.01.2008. Learned Senior Counsel, therefore, submits that because the name of this applicant was there in the earlier published provisional panel dated 08.11.2006 he had no reason to participate in the counseling fixed on 14.01.2008 and 16.01.2008. Attention of this Court has also been drawn towards Annexure-5 to the Writ Application which is said to be the provisional panel dated 08.11.2006 in which the name of this petitioner appears at Sl. No. 36 in Economically Backward Category (EBC) with 52.11% marks in Matriculation.

9. It is also submitted by the learned Senior Counsel representing the appellant that the order dated 09.01.2008 passed by the Block Development Officer was never challenged, therefore, the same attained finality and the appointments made by virtue of the provisional panel dated 08.11.2006 cannot be questioned before the Appellate Tribunal which came into being later on under the provisions of the Rules.

10. On the other hand, Mr. Rajendra Narain, learned Senior Counsel representing the respondent no. 10, submits that first of all the two dates, i.e. 10.10.07 and 11.10.07 mentioned in the order dated 09.01.2008 passed by the Block Development Officer are required to be correctly read as '10.10.06' & '11.10.06' because the



dispute which had been raked up before the Block Development Officer was only with regard to the counseling held on 10.10.06 and 11.10.06. Learned Senior Counsel submits that if the appellant was already selected and was placed in the provisional panel dated 08.11.2006 then under what circumstances he could attend the so-called counseling held on 12.01.2008 when the final selection list is said to have been prepared. It is further argued that the appeal proceeding initiated by the Block Development Officer was at the instance of the then Mukhiya and it was a camouflage to cover up the misdeeds which he had done.

11. Learned Senior Counsel has referred the Counter Affidavit filed on behalf of the respondents no. 2, 3, 5 & 8, who are the State respondents, and submits that on perusal of the photocopy of the Applicants' Register, which is Annexure-1 to the Counter Affidavit, it would appear that the name of this appellant Rajesh Kumar has been forcibly entered in the register in between the names of Rajesh Kumar Mandal and Mahendra Pandit. The column, showing Sl. No. of the receipt of his application, shows 'NIL'. Learned Senior Counsel, therefore, submits that the provisional panel dated 08.11.2006 has been found to be a forged document and, therefore, it would not inspire confidence.

12. Learned Senior Counsel has further taken us through



another provisional panel dated 12.01.2008 in which the name of this appellant has been shown at Sl. No. 16. He, thus, submits that if the provisional panel dated 08.11.2006 was already in existence and the same was to be acted upon then there would not have been any occasion to prepare another panel dated 12.01.2008 when vide order of the Block Development Officer he directed to act upon the provisional panel dated 08.11.2006 and as submitted by other side only for the remaining vacant seats Block Development Officer had fixed the date of counseling on 14.01.2008 and 16.01.2008.

13. Learned Senior Counsel representing the respondent no. 10 points out from Paragraph 17 of the Writ Application that the appellant himself admits that he was selected on 12.01.2008, which is said to be the panel of finally selected candidates, on the basis of which appointment letters were issued. This, according to learned counsel is indicating towards unfair play in action on the part of Mukhiya and Panchayat Sachiv. The respondent no. 10 was already called for counseling on 14.01.2008, he has got much more marks than the appellant, post earmarked for EBC was vacant then only respondent no. 10 was called for counseling but only three days before the date fixed by Block Development Officer a Selection List dated 12.01.2008 was made and the appellant was appointed.

14. It has been pointed out that the learned single Judge



has rightly noticed that as per the provision of the Rules governing the process of selection, fresh counseling was required to be gone into after finalization of AUPBANDHIK MEDHA SUCHI. It is thus submitted that the Appellate Authority as well as the learned single judge has rightly refused to accept the submissions of the appellant on the face of the materials available on the record.

15. We have considered the rival submissions of the parties and perused the records.

16. At the very first instance, we would accept the plea of the respondent no. 10 that the order dated 09.01.2008 passed by the Block Development Officer wrongly contains the two dates, i.e. 10.10.07 and 11.10.07 as the dates of counseling. It is, in fact, 10.10.06 and 11.10.06 which are the dates shown for counseling. A perusal of the Applicants' Register, which is Annexure-1 to the Counter Affidavit of the State respondents, clearly shows the dates as 10.10.06 and 11.10.06. So far as the submission of the learned Senior Counsel representing the appellant that the order dated 09.01.2008, as contained in Annexure-11 to the Writ Application, passed by the Block Development Officer, Bahadurpur specifically talks of Sl. No. 1054(Ka), 1333, 1334, 1335, 1336 & 1337, for which counseling was held on 10.10.07 and 11.10.07, cannot be accepted because we find that Annexure-1 to the Counter Affidavit of the State respondents is



the only document showing that the counseling was held on 10.10.06 and 11.10.06. If there was any counseling held on 10.10.07 and 11.10.07, which is talked about in the order of the Block Development Officer, the same would have definitely been brought on the records. We have, therefore, reasons to believe that the order dated 09.01.2008 was passed by the Block Development Officer at the instance of the Mukhiya, only to cover up his misdeeds and to confer benefits upon the person like the present petitioner / appellant. We have already noticed how the name of this appellant has been entered in the Applicants' Register, showing that the counseling was held on 10.10.06 to 21.10.06.

17. We are also of the considered opinion that what has been held by the Appellate Authority vide Annexure-1 to the Writ Application is a correct finding of fact. It has been found that the counseling fixed on 14.01.08 and 16.01.08 was properly publicized. It has also been found that the respondent no. 10 has got better marks than the present appellant, therefore, the appellant being less meritorious than the respondent no. 10 got appointed, and therefore, if the Appellate Authority found that on the basis of the MEDHA SUCHI of untrained applicants, which was prepared on 12.01.08, the present appellant was appointed despite having lesser marks than the respondent no. 10 and, as such, his appointment is bad in law, no fault



may be found with such finding. The Tribunal has also correctly questioned the argument of the appellant by raising a doubt on his plea that he was appointed on the basis of the provisional panel dated 08.11.2006. The question is if the appellant was already appointed on the basis of the provisional panel dated 08.11.2006 then why that post was treated as a vacant post and the respondent no. 10 was called for counseling against the post reserved for EBC on 14.01.2008. This clearly shows that the respondent no. 10 was called in counseling only because the said post was vacant but he was not appointed despite having better marks than the present appellant on the ground that the said post was already filled up.

18. We are in agreement with the directions issued by the Tribunal that the appointment of the appellant is not a legal and valid appointment, and therefore, the respondent no. 10. should be appointed.

19. We also agree with the view taken by the learned single judge that the appeal preferred by the respondent no. 10 before the Appellate Tribunal was because of a dispute arising at a different stage and the said dispute could have been adjudicated only before the Appellate Authority which had already come into existence by virtue of the Rules.

20. In view of what has been discussed here-in-above and



found, we do not find any illegality or infirmity with the order passed by the Appellate Tribunal as well as the impugned order passed by the learned single Judge.

21. These Appeals have no merits and they are, accordingly, dismissed.

(Rajeev Ranjan Prasad, J)

I Agree.
Ajay Kumar Tripathi, J.-

(Ajay Kumar Tripathi, J)

Dilip, AR

AFR/NAFR	NAFR
CAV DATE	20.12.2017
Uploading Date	22.12.2017
Transmission Date	N/A

