

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1445 of 2014
Arising out of
Civil Writ Jurisdiction Case No. 14786 of 2010**

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Nilu Kumari daughter of Kapildeo Mahto, Panchayat Shikshak, Gram Panchayat Raj III, Ramdiri, Block- Matihani, District- Begusarai

.... Appellant / Respondent.

Versus

1. The State of Bihar
2. The District Officer, Begusarai
3. The District Superintendent of Education, Begusarai
4. The Block Development Officer, Block Matihani, Distt- Begusarai
5. The Block Education Officer, Block Matihani, Distt- Begusarai
6. The Mukhiya, Gram Panchayat Raj III, Ramdiri, Block- Matihani, Distt- Begusarai
7. The Panchayat Secretary, Gram Panchayat Raj III, Ramdiri, Block- Matihani, Distt- Begusarai
8. Anupam Rani, D/o Late Chandrika Prasad Das and W/o Manoj Kumar, Resident of Ward No.13, Damrolal Durgasthan, Mungeriganj, P.O. Begusarai, P.O. Town, District- Begusarai

.... Petitioner / Respondent

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Appearance:

- For the Appellant/s : Mr. Yugal Kishore, Sr. Advocate,
Mr. Ravindra Kumar Rai, Advocate.
- For the State : Mr. Rakesh Ambastha, AC to AAG 7.
- For the Respondent no.7 : Mr. Shyamal Krishna Sinha, Advocate.
- For the Respondent no.8 : Mr. Pankaj Kumar Singh, Advocate.

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**CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 29-06-2017

Heard learned Senior Counsel for the appellant and
counsel for the respondents.

Respondent no. 8 in the Writ Application is the appellant
in this Letters Patent Appeal. This is so because the learned Single



Judge vide order dated 18.09.2014 set aside the order of the District Teachers Employment Appellate Authority, Begusarai and gave a direction to appoint the private respondent no. 8 of the Letters Patent Appeal, who happened to be the petitioner in the Writ Application being CWJC No. 14786/2010.

An exercise for appointment on the post of Panchayat Teacher was initiated in Gram Panchayat Raj, Ramdiri III. Besides the present appellant and the private respondent, there were other applicants but we are concerned about the appointment made on the post, by the Gram Panchayat of the present appellant, even though she had lesser percentage of marks than the private respondent.

The private respondent was given the letter of appointment by the Gram Panchayat because she figured higher in the merit list than the present appellant but it is her case that even though she went to the Panchayat on 26.02.2007 to give her consent for such appointment, she was not allowed to give the consent because there was nobody to receive it. When the consent was not taken on 26.02.2007 till 4:30 in the afternoon, she was assured, in absence of the Panchayat Secretary, by the Mukhiya of the Gram Panchayat that the formality would be completed on the next day and she should report by 11:00 A.M. Even on 27.02.2007 nothing emerged because this time the Mukhiya went missing and later on she came to learn



that on the ground of non-submission of consent by the private respondent, person lower in merit than the appellant came to be appointed.

The private respondent has been knocking at the doors of various authorities, i.e., the District Education Officer, the District Magistrate and even the Chief Minister of the State. She got some relief in the sense that her complaint addressed to the Chief Minister was marked to the authorities who forwarded it to the District Teachers Employment Appellate Authority for adjudication and the District Teachers Employment Appellate Authority primarily on the ground that in absence of a very clear evidence that consent was not taken by the Gram Panchayat on 26.02.2007 and that the appellant, who came to be appointed, has been working as such for almost three years and the appeal was brought before the tribunal after almost three years of such appointment dismissed the application which led to filing of the Writ Application.

Learned Senior Counsel representing the present appellant submits that the learned Single Judge has committed errors of facts and law because the tribunal in its well considered decision held that no case was made out with regard to the private respondent having presented herself before the authorities for giving her consent. All these seems to be an afterthought and that is the reason why the



tribunal dismissed the appeal of the private respondent which was interfered with by the learned Single Judge by setting aside the appointment of the appellant and directing the respondents to appoint the private respondent.

If the private respondent whose consistent case is that she did go before the Mukhiya and the Gram Panchayat for giving her consent which was not taken and she did quickly respond by moving the District Education Officer on 27.02.2007 itself and then the District Magistrate thereafter, then the stand of the learned Senior Counsel that since she has approached the tribunal at a belated stage so the grievance should be held to be an afterthought is not correct. There is evidence to show that she has been trying to assert her right and seek redressal of a wrong committed against her by not being appointed. The delay was caused in approaching the tribunal because of lack of proper instruction and guidance to her.

In addition to that, this Court has come across hundreds of cases of such kind where a person with more merit and marks is deliberately not allowed to either participate in the counseling or the Panchayat does not accept the consent on the fixed date so that they get an opportunity to appoint a person lesser in merit for obvious considerations. Such kind of game has been played out even in the present case and that is the reason why the learned Single Judge set



aside the order of the District Teachers Employment Appellate Authority dated 17.07.2010 and held that since the private respondent had more merit and she was deliberately prevented from giving her consent on 26.07.2007, the appointment of the present appellant was *per se* a fraud played with the system to accommodate her at the cost of the private respondent no. 8.

In the above circumstances, no interference is warranted with the order of the learned Single Judge dated 18.09.2014. It is a fit case where in fact an order should have been passed for prosecution of the Panchayat Secretary and the Mukhiya but since the Mukhiya is dead and the Panchayat Secretary too must have moved on in the last 10 years, the Court refrains from passing such a direction.

The appeal is dismissed being devoid of merit.

(Ajay Kumar Tripathi, J)

(Rajeev Ranjan Prasad, J)

Dilip, AR

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