

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1164 of 2013
IN
Civil Writ Jurisdiction Case No. 20116 of 2012**

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Usha Bharti Wife Of Shri Dinesh Kumar Ram Resident Of Village - Ranga Kol,
P.O. Salehpur P.S. Falka, District - Katihar

.... Appellant

Versus

1. The State Of Bihar
2. The District Education Officer, Katihar
3. The District Program Officer, (Establishment), Katihar
4. The District Teacher Employment Appellate Authority, Katihar
5. The Block Development Officer, Falka, P.O. & P.S. Falka, District - Katihar
6. Sakita Kumari Wife Of Bishundeo Das Resident Of Village And P.O. Nawadah
Harijan Tola, P.S. Kharika, District - Bhagalpur

.... Respondents

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Appearance :

For the Appellant : Mr. Shashi Bhushan Kumar –Manglam, Advocate
Mr. Ravi Ranjan, Advocate
For the Respondent State: Mr. Md. N. Hoda Khan, SC-1
Mr. Md. Naushaduzzoha, AC to SC-1
For the Respondent No.6: Mr. Ranjan Kumar Singh, Advocate
Mr. Rajesh Kumar, Advocate

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**CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 11-04-2017

Heard counsel for the parties.

The appellant was the petitioner before the learned single Judge whose order dated 24.06.2013 is under challenge. The learned single Judge dismissed the writ application refusing to interfere with the order dated 03.10.2012 passed by the District Teachers Employment Appellate Tribunal, Katihar, which had found the appointment of the present appellant to be illegal, manipulated



and the Panchayat deliberately defeated the right of consideration of the private respondent No.6 even though she had 55.11% marks, whereas the appellant had 49.88% marks.

Counsel for the appellant submits that there was no occasion for the Tribunal to reconsider the matter when in an earlier appeal, which was case No.1546 of 2009, filed by the present appellant, the Tribunal decided in her favour and her order of removal passed by the Block Development Officer was set aside and she was ordered to be reinstated, but ignoring the previous adjudication the Tribunal has had a turn around and passed an order holding her appointment to be bad.

The previous order of the Tribunal is an non-est order because that order was obtained without impleading private respondent No.6 as a party and the order was passed on the submissions and the pleadings of the present appellant and it was an one sided adjudication. The private respondent, therefore, filed a writ application and was permitted to go before the Tribunal and assert her right which has now been adjudicated in her favour, by the Tribunal, after looking into the records and the manner in which the counselling was held and the way the Panchayat created a sham of an information or notice under the U.P.C. even before a decision was taken to inform the short listed candidates. The narration of facts and



finding both by the Tribunal and upheld by the learned single Judge does not require to be interfered with. The facts are telling. The appointment of the appellant was manipulated and the effort on the part of the appellant has been to find ways and means to hang on to the appointment when she knew all along that somebody more meritorious than her was deliberately prevented from participation and selection in the category of Scheduled Caste, as both of them belong to the same caste.

The learned single Judge has rightly refused to interfere with the order of the Tribunal. The previous order of the Tribunal to that extent will be of no help and assistance to the present appellant because such order is not the issue before us, it is the subsequent adjudication and the finding of the Tribunal, which has been upheld by the learned single Judge, correctness of which is to be tested on the touchstone of the fact and law.

The appeal has no merit. It is dismissed.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

Pawan/-

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