

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.67 of 2016

IN

Civil Writ Jurisdiction Case No. 16707 of 2012

- =====
1. Mritynjay Kumar Singh S/o Sri Ram Naresh Singh R/o Village- Bhindiya, P.O. - Narayanpur, P.S. Madhaura, District Saran (Chapra) at present posted in Utkramit Middle School Banga Bazar, Anchal - Sahebganj, District Muzaffarpur.
 2. Pushpraj (Pushpraj is wrongly typed in impugned order) Padmakar, son of Sri Madan Prasad Singh R/o Village - Madhopur Hazari, P.S. Sahebganj, District Muzaffarpur at Present posted in Rajkiya Primary Middle School Bangra Gachhi tola, Sahebganj, District Muzaffarpur.
 3. Sabita Kumari W/o Sanjay Kumar, R/o Village- Madhopur Hazari, P.S. Sahebganj, District Muzaffarpur
- Appellants

Versus

1. The Mukhiya Panchayat Raj, Bangara, Nizamat, Block Sahebganj, Muzaffarpur.
2. The State of Bihar through the Principal Secretary, Education Department, Bihar Patna.
3. The Principal Secretary, Education Department, Government of Bihar, Patna.
4. The Director, Primary Education Govt. of Bihar Patna.
5. The District Teacher Appointment Appellate Authority, Muzaffarpur through its Member
6. The District Magistrate, Muzaffarpur.;
7. The District Education Officer, Muzaffarpur.
8. The District Programme Officer (Establishment) Muzaffarpur.
9. The Block Development Officer, Sahebganj, Muzaffarpur.
10. The Block Education Officer, Sahebganj, Muzaffarpur.
11. The Panchayat Secretary, Panchayat Raj, Bagra, Nizamat, Block Sahebganj, Muzaffarpur.
12. The Headmaster, Primary School, Vishnupur Chak , Pahar (Kankya) Sahebganj, Muzaffarpur.
13. Kumari Anju (Petitioner in C.W.J.C. No. 16707 /12), Wife of Shri Sunil kumar Resident of Village- Pratap Patti, P.S. Sahebganj, Muzaffarpur.
14. Surendra Mahto (Respondent No., 13 in C.W.J.C. no. 16707 of 2012) son of Rameshwar Mahto Resident of Village- Rasulpur, Sahebganj, Muzaffarpur.

.... Respondents 2nd Set.

with

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Letters Patent Appeal No. 106 of 2016

IN

Civil Writ Jurisdiction Case No. 17021 of 2012

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1. Mritunjay Kumar Singh S/o Sri Ram Naresh Singh R/o Village - Bhindiya, P.O. - Narayanpur, P.S. - Madhaura, District - Saran (Chapra) at present posted in Utkramit Middle School Banga Bazar, Anchal - Sahebganj, District - Muzaffarpur.
 2. Pushpraj Padmakar Son of Sri Madan Prasad Singh Resident of village - P.O. Madhopur, Hazarea, P.S. Sahebganj, District - Muzaffarpur. At present posted in Rajkiya Primary School, Bangra, Gachhi Tola, Sahebganj, District - Muzaffarpur.
 3. Savita Kumari Wife of Sanjay Kumar Resident of village - P.O. Madhopur, Hazarea, P.S. Sahebganj, District - Muzaffarpur. At present posted in Utkramit Middle School, Bangra, Gachhi Tola, Sahebganj, District - Muzaffarpur.



.... Petitioners / Appellants

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Government of Bihar, Patna.
2. The Principal Secretary, Education Department, Government of Bihar, Patna.
3. The Director Primary Education, Government of Bihar, Patna.
4. The District Teacher Employment Appellate Authority, Muzaffarpur through its member.
5. The District Magistrate, Muzaffarpur.
6. The District Education Officer, Muzaffarpur.
7. The District Programme Officer (Establishment), Muzaffarpur.
8. The Block Development Officer, Sahebganj, Muzaffarpur.
9. The Block Education Officer, Sahebganj, Muzaffarpur.
10. The Mukhiya Panchayat Raj, Bangara Nizamat, Block Sahebganj, Muzaffarpur.
11. The Panchayat Secretary, Panchayat Raj, Bangra, Nizamat Block, Sahebganj, Muzaffarpur.
12. The Headmaster, Primary School Vishnupur Chak, Pahar (Kanya), Sahebganj, Muzaffarpur. Respondents 1st set.
13. Sohan Mahto, son of Ramnath Mahto Resident of village - Jagdishpur, P.S. - Sahebganj, District - Muzaffarpur.
14. Surendra Mahto, son of Rameshwar Mahto Resident of Village - Rasulpur, P.S. - Sahebganj, District - Muzaffarpur.

.... Respondents

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Appearance:

(In LPA No.67 of 2016)

For the Appellant/s : Mr. Rajendra Narain, Sr. Advocate and
Mr. Shashi Shekhar Tiwary, Advocate.

For the Respondents-State: Mr. Manoj Kumar Sinha, AC to GA 9.

For the private respondent: Mr. Krishna Kant Singh, Advocate.

(In LPA No.106 of 2016)

For the Appellant/s : Mr. Rajendra Narain, Sr. Advocate and
Mr. Shashi Shekhar Tiwary, Advocate.

For the Respondents-State: Mr. Rajiv Roy, G.P. 1 and
Mr. Suresh Kumar, AC to GP 1.

For the private respondent: Mr. Krishna Kant 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: 29-08-2017

A very pointed submission has been made by the learned



Senior Counsel in assailing the order of the learned Single Judge dated 23.07.2014. His submission is that even though the learned Single Judge has reproduced Rule 9 of the Bihar Panchayat Elementary Teacher (Employment & Service Conditions) Rules, 2006 in Paragraph 35 of the impugned order with regard to the weightage which is required to be given for experience he has erred by not reading the said provision in the right perspective because the 20 marks, which is required to be given by way of weightage, is not 20%. Every candidate having certificate of experience can earn 20 extra marks in addition to the total marks in working out the percentage of the merit position but it is not required to be read as if after calculation of the percentage of marks, additional 20% is required to be given to a candidate on the basis of the certificate of experience.

2. This position of law has rightly been explained in a decision rendered on 05.03.2013 by a Division Bench of this Court. It is the case of **Chhotelal Chaudhary Vs. The State of Bihar & Ors.**, reported in **2014 (3) PLJR 606**. Attention of this Court has been drawn to Paragraph 3 of the said order.

3. If the private respondent had been given the benefit of 20% to work out his merit position on the basis of the experience certificate in question then it is a wrong addition of weightage which has been given to him for providing employment and, to that extent,



the order and observation of the learned Single Judge seems to be *per incuriam* and in the teeth of the Division Bench decision in the case of **Chhotelal Chaudhary** (Supra).

4. With only 20 marks added to the marks of Surendra Mahto (private respondent no. 14), his total marks do not added up to give him the benefit of continuance on the post of a Panchayat Teacher as the other respondents have more marks in terms of the percentage minus the weightage as such. It is, therefore, clarified that Surendra Mahto shall stand removed from his post as a Panchayat Teacher forthwith and so far as the respondents no. 13 (Sohan Mahto and Kumari Anju) are concerned, since the learned Single Judge has allowed Sohan Mahto and Kumari Anju to continue to work on the post of Panchayat Teacher, no interference with that part of the direction or observation is required. It is expected that the two writ petitioners, Kumari Anju and Sohan Mahto, who are respondent no. 13 in these appeals, will continue in service as if they were not disturbed.

(Ajay Kumar Tripathi, J)

(Rajeev Ranjan Prasad, J)

Dilip, AR

AFR/NAFR	NAFR
CAV DATE	N/A
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