

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1299 of 2016

In
Civil Writ Jurisdiction Case No.1165 of 2012

Md. Gulam Jilani, S/O Jumman, resident of Village: Andauli (Parihar), P.S.:
Parihar, District: Sitamarhi

..... Appellant

Versus

1. The State of Bihar
2. The Principal Secretary, Human Resources Development, Govt. of Bihar, Patna
3. The Director, Primary Education, Govt. of Bihar, Patna
4. The District Magistrate, Sitamarhi
5. The Member of District Teachers Appointment Appellant Authority, District: Sitamarhi
6. The District Superintendent of Education, Block: Parihar, Sitamarhi
7. The Block Development Officer, Block: Parihar, Sitamarhi
8. The Block Education Extension Officer, Block: Parihar, Sitamarhi
9. The Mukhiya, Gram Panchayat Raj Manikpur Musharniya, Block: Parihar, District: Sitamarhi
10. The Panchayat Secretary, Gram Panchayat Raj, Manikpur Musharniya, Sitamarhi
11. The Head Master, Primary School Ram Bhelahi (South Tola) Block: Parihar, District: Sitamarhi
12. Smt. Gunjan Kumari, W/o Late Ram Subodh Ray, resident of Village: Madanpatti, P.S.: Bathnaha, District: Sitamarhi

..... Respondents

Appearance :

For the Appellant	:	Mr. B.K. Sinha, Senior Advocate
		Mr. Rajnandan Kumar, Advocate
For the Respondent State:		Mr. Kumar Pankaj, AC to SC-5

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date : 06-04-2018

Heard learned counsel for the parties.

The *intra*-Court appeal has been preferred against the order dated 11.04.2016 passed by the learned single Judge in C.W.J.C. No. 1165 of 2012. Since the writ application of the



private respondent No.12 was allowed, therefore, the said order is under challenge.

Learned senior counsel representing the present appellant, who was private respondent in the writ application, submits that there seems to be error apparent committed by the learned single Judge in allowing the writ application for three reasons. One, that if the appointment of the husband of the private respondent as a Panchayat Teacher was held to be bad by the Tribunal on two occasions, which in turn became subject matter of challenge in writs and he died subsequently, merely because the wife was allowed to be substituted as a legal heir, she does not acquire a right to be appointed on the post because the post of Panchayat Teacher is neither inheritable nor can be claimed without demonstrating that she in every respect fulfills the requirement and eligible.

The other corollary from the above submission is that since death of the husband of the private respondent is not a matter of argument, therefore, the vacancy, which may be caused because of the said death, will be open for being filled up by a new exercise where all eligible candidates will get an opportunity to participate and be considered.



Yet another aspect, where learned senior counsel seems to be right in his submission, is that the appointment of the husband of the private respondent was at roster point No.67. Even if the fact that he was Physically Handicapped Category candidate is accepted, which is also in dispute, then the reservation has to be horizontal and not vertical. Learned single Judge has taken note that roster point No.67 belong to an Open Category whereas the husband of the private respondent was a Backward Class Category candidate. In other words, at roster point No.67, a Physical Handicapped Category candidate, belonging to the category for which the roster point has been reserved, will only be eligible for consideration and not merely on the ground that he was physically handicapped, therefore, he should be accommodated on the next roster.

The above issues are issues which are legal in nature, therefore, all the submissions made on behalf of the appellant seems to be correct, which are good enough ground for interfering with the order dated 11.04.2016.

It is taken note of that the private respondent was noticed one too many times, even paper publication was resorted to, but she has chosen not to appear and assist. Counsel for the State, however, is present and his stand is that the counter affidavit filed



on their behalf should be taken into consideration. However, the three aspects, which have been taken note of, cannot be rebutted or can be brushed aside.

The appeal stands allowed. The impugned order dated 11.04.2016 passed by the learned single Judge in C.W.J.C. No. 1165 of 2012 is set aside.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

Pawan/-

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