

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1645 of 2016
IN
Civil Writ Jurisdiction Case No. 11401 of 2015**

=====

Archana Kumari, W/o Dhananjay Srivastava, Resident of village - Baherwa, P.O. - Mahuawan, P.S. - Kateya, District - Gopalganj, at present working as a Block Teacher in Upgraded Middle School, Ameya West, Block - Kateya, District - Gopalganj.

.... Appellant

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Govt. of Bihar, Patna.
2. The District Education Officer, Gopalganj.
3. The District Programme Officer (Establishment), Gopalganj.
4. The Block Development Officer, Kateya, P.O. Mahuawan, P.S. Kateya, District Gopalganj.
5. The Mukhia, Gram Panchayat Raj Ameya, P.O. Mahuawan, P.S. Kateya, District - Gopalganj.
6. The Secretary, Gram Panchayat Raj Ameya, P.O. Mahuawan, P.S. Kateya, District - Gopalganj.
7. The District Teacher's Employment Appellate Tribunal, Gopalganj.
8. Sangeeta Kumari, D/o Sri Ram Parikshan Yadav, P.O. & P.S. Kateya, District - Gopalganj.

.... Respondents

=====

Appearance :

For the Appellant/s : Mr. Rajesh Kumar Sharma, Adv.
For Respondent No.8 : Mr. Rajeev Kumar Singh, Adv.
Mr. Sitaram Prasad, Adv.
Mr. Anjani Kumar, Adv.
For the State : Mr. Ramashray Roy, AC to AAG 11

=====

**CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL**
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)
Date: 26-09-2018

Heard Mr. Rajesh Kumar Sharma, learned Counsel appearing
for the appellant, Mr. Ramashray Roy, learned AC to AAG 11, for the
State and Mr. Rajeev Kumar Singh, learned Counsel for the private



respondent.

This intra-Court appeal arises from a judgment and order dated 24.06.2016 in CWJC No. 11401 of 2015 passed by the learned Single Judge of this Court, whereby the writ petition was dismissed in consideration of the facts in dispute and the opinion expressed by the District Teachers Employment Appellate Authority, Gopalganj on a matter arising from Case No. 108 of 2011, filed by the private respondent no. 8, whereby the appointment of the appellant, who was writ petitioner before the learned Single judge, was set aside inter alia on grounds that the private respondent was better on merit.

The following two issues have been raised by the appellant-writ petitioner before this Court to question the judgment and order of the learned Single Judge:

(a). The order impugned in the writ petition dated 09.11.2012, is a fabricated document because the records of the case shows that the matter is yet pending before the appellate authority; and

(b) If an irregularity in appointment is detected by the appellate authority or this Court then the matter should be remitted to the appointing authority to take a final decision in consideration of relative merit of all the candidates and no direction should be mechanically issued in favour of the complainant.



We have heard learned Counsel for the parties and have perused the records.

It is taking note of the arguments on fabrication of the order put to challenge in the writ petition dated 09.11.2012 of the appellate authority that a Co-ordinate Bench had issued notice to the private respondent on 21.03.2018 taking serious note of the allegation. It is drawing strength from the observations present in that order that Mr. Sharma also informed that a Special Leave Petition against that order of this Bench preferred by the aggrieved was dismissed by the Supreme Court. According to the learned counsel, if the order dated 09.11.2012 of the appellate authority is itself a fabricated document then no right vests in the private respondent to occupy the post.

In the second limb of argument, it is the submission of Mr. Sharma in reference to a judgment of this Court reported in 2015(2) PLJR 616 (**Prawesh Kumar Das vs. the State of Bihar & ors.**) that if an illegality is found in any appointment process, then every applicant for the post needs to be considered and a direction cannot simply be issued in favour of the challenger.

The contentions have been opposed by the learned Counsel appearing for the respondents.

In so far as charge of fabrication is concerned, we do note from the order-sheet enclosed at Annexure-3 to the supplementary



affidavit filed in the present proceeding that vide order passed on 05.10.2012 the appellate authority put the matter “For Orders” on 09.11.2012 and when final order was passed. It is not in dispute that it is feeling aggrieved by the final order passed on 09.11.2012 that the appellant as the writ petitioner was before this Court assailing the same on its merit. Mr. Sharma tries to draw strength from a communication of the Presiding Officer of the appellate authority which is a part of Annexure-3 and is dated 29.03.2016 but in our opinion even the contents of the said letter does not come to the aid of the appellant because it again accepts that the final order was a part of the proceedings which has since been seized by the investigating agency. In our opinion, it is simply notings present in the order-sheet after 05.10.2012 which has given an impression to the appellant as well as the Presiding Officer to raise this bogey which actually is a misconception of the correct status of the matter. The contention thus raised by the appellant-writ petitioner as to the veracity of the order dated 09.11.2012 lacks foundation and is accordingly rejected.

In so far as the second issue advanced by Mr. Sharma is concerned, we do not dispute the submissions on principle but if the learned Single Judge has expressed his opinion taking note of the circumstances, where there is no other challenger to the appointment of the appellant-writ petitioner, we find no reasons to interfere



therewith and/or to substitute our opinion thereon. As we have observed, the submissions made by Mr. Sharma in support of the second issue may be sound on principle but taking note of the uncontested position that it is only the private respondent who chose to contest the appointment of the appellant-writ petitioner and undisputedly was a better candidate, neither the action of the appellate authority to uphold her claim can be found fault with nor is the opinion of the learned Single Judge to confirm such decision suffers any infirmity for requiring interference.

The appeal is dismissed.

The interim order passed on 21.03.2018 stands vacated.

The private respondent is restored to her post and shall be allowed to discharge her duties with all consequential benefits.

(Jyoti Saran, J)

(Nilu Agrawal, J)

Archana/Surendra

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	27.10.2018
Transmission Date	NA

