

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.419 of 2017

In

Civil Writ Jurisdiction Case No. 2486 of 2010

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Pramod Sah, Son of Jagiri Sah, Resident of village - Mankarwa, Block
Fenhara, Police Station Fenhara, District - East Champaran

.... Appellant

Versus

1. The State of Bihar
2. The Panchayat Secretary, Gram Panchayat Raj Mankarwa, P.S. Fenhara,
District - East Champaran
3. The District Magistrate, East Champaran at Motihari
4. The Block Development officer, Fenhara, East Champaran
5. The District Teacher Employment Appellate Tribunal, East Champaran
6. Diwakar Sharma, S/o Late Ramdeni Sharma, R/o village - Deokulia,
Panchayat Mankarwa, P.S. Fenhara, District - East Champaran

.... Respondents

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Appearance :

For the Appellant/s : Mr. Sanjeev Kumar Singh, Adv.

For the Respondent/s : Mr. Patanjali Rishi, AC to AAG-6

For respondent no.6 : Mr. Ashutosh Tripathi, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

and

**HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH**

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

14 21-08-2018

Re: I.A.No. 2575/2017

Heard Mr. Sanjeev Kumar Singh, learned counsel for the
appellant, Mr. Patanjali Rishi, learned AC to AAG-6 for the State
and Mr. Ashutosh Tripathi, learned counsel for the respondent-
writ petitioner.

This interlocutory application has been filed for
condonation of delay of 3 years 10 months and 13 days in filing
the appeal and the reason assigned by the appellant, who was the



private respondent before the Single Judge, is that this appellant had earlier moved this Court in L.P.A.No. 221/2016 which got dismissed for default on 30.1.2016 and whereafter the present appeal is filed which is belated by more than 3 years and 10 months.

Mr. Sanjeev Kumar Singh, learned counsel for the appellant, while trying to explain the delay has submitted that since the appointment of the respondent- writ petitioner was resting on a fraud, which position was accepted by the District Teachers Employment Appellate Authority so constituted under the Bihar Panchayat Elementary Teachers (Employment and Service Conditions) Rules, 2006, (hereinafter referred to as 'the Service Rules') but has been set aside by the learned Single Judge, even though the appeal is belated, it raises valid issues of substantial character because a rejection of this appeal would only confirm the illegality committed by the respondent State in appointing a person who was not qualified for such appointment.

We have considered the submission of Mr. Sanjeev Kumar Singh as opposed by the learned counsel appearing for the State and the respondent- writ petitioner and have perused the records.

Apart from the fact that we are not persuaded with the



explanation given by the appellant for condonation of delay of over 3 years and 10 months, we find that even the earlier attempt by the appellant was laid back because the appeal though claimed to have been filed within time, was made defect free after lapse of three years in the year 2016.

As regarding the plea of fraud alleged by the appellant as regarding the appointment of the respondent- writ petitioner, we find that the appellant had appeared pursuant to the notice issued by the Writ Court on 16.3.2010 and though the writ petition was allowed three years later vide judgment and order passed on 19.3.2013, the appellant never chose to support his plea by filing any kind of affidavit which would give strength to his plea of fraud alleged against the appointment of the respondent- writ petitioner. The issue has been visited by the learned Single Judge and his opinion is in tune with the Full Bench judgment reported in **2014(2) PLJR 665 (Kalpana Rani vs. the State of Bihar & ors.)** which settles the legal position as regarding the scope of enquiry in the matter of appointment of Panchayat Shiksha Mitra after the absorption of the incumbent as a Panchayat Teacher by operation of law with effect from 1.7.2006 vide amendment to 'the Service Rules'.

Neither on the explanation of the delay nor on the failed



attempt by the appellant to support his plea by filing an affidavit before the learned Single Judge, we are persuaded to grant indulgence on the limitation petition, which is accordingly rejected and consequently, the Letters Patent Appeal is dismissed.

(Jyoti Saran, J)

Surendra/-

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(Chakradhari Sharan Singh, J)

