

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Review No.4 of 2017

in
Letters Patent Appeal No. 630 of 2014

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Md. Izhar Son of Md. Sharafat Ali R/o Village - Samalpur, P.O. & P.S. - Bihpur,
District - Bhagalpur.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, H.R.D.D., Government of Bihar, Patna.
3. The District Superintendent of Education, Bhagalpur.
4. Member, the Teacher Employment Appellate Authority, Bhagalpur.
5. The Block Education Extension Officer, Bihpur, District - Bhagalpur.
6. The Panchayat Secretary, Jhandapur, District - Bhagalpur.
7. Mahendra Prasad Yadav father name not known resident of village - Jhandapur,
P.S. - Bihpur, District - Bhagalpur.
8. Neeraj Kumari daughter of Late Bhujangi Ray resident of village - Jhandapur,
P.S. - Bihpur, District - Bhagalpur.
9. Lousi Bharti W/o Shyam Nandan Singh resident of village - Jhandapur, P.S. -
Bihpur, District - Bhagalpur.

.... Respondents-Opposite Parties

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Appearance :

For the Petitioner/s : Mr.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH)

Date: 20-06-2018

Re. : Interlocutory Application No. 1477 of 2017

Heard learned counsel for the petitioner, State and the
respondents no. 8 and 9.

2. The Interlocutory Application has been filed seeking
condonation of delay of 76 days in filing the Civil Review
Application.

3. The Court finds that sufficient cause has been shown
for filing of the review petition after the expiry of period of limitation.



4. Accordingly, Interlocutory Application No. 1477 of 2017 stands allowed. Delay in filing the Civil Review Application stands condoned.

Re. : Civil Review No. 4 of 2017

5. The petitioner has moved the Court seeking review of the judgment and order dated 26.09.2016 passed in Letters Patent Appeal No. 630 of 2014 by which challenge to the order of the learned single Bench dated 21.02.2014 in C.W.J.C. No. 6067 of 2011 remained unsuccessful.

6. The petitioner was initially appointed in January, 2007 on the post of Panchayat Teacher but subsequently in the year 2011, on a complaint made before the concerned District Teachers Appellate Authority, his appointment was cancelled. Challenge to the same before this Court in the aforesaid writ petition failed and subsequent challenge before the Division Bench in Letters Patent Appeal also failed.

7. Learned counsel for the petitioner submitted that he is a handicapped person and the rules permit that even if no vacancy has been advertised for handicapped person, if he is qualified, he shall be appointed and in turn, the post on which he is appointed, if reserved for any other category, the category on which the handicapped person is appointed shall automatically be carried forward to the next roster point to which the handicapped person belongs. It was submitted that



in such view of the matter, the petitioner was rightly appointed against a general female category post and cancellation of the appointment by the District Teachers Appellate Authority is not in accordance with the Rules. It was further submitted that the petitioner has worked for a number of years and further, that as of now also, one post is vacant in the school in question on which the petitioner can be adjusted.

8. Learned counsel for the State submitted that the review application is misconceived for the reason that what has been noted on fact in the order under review, there is no error in the same and the petitioner cannot claim appointment on a post which is reserved for a female candidate irrespective of the category to which he or she belongs. Learned counsel submitted that even otherwise, once the petitioner could not have held the post reserved for female, the question of being handicapped would not come to his aid, as at best, only a handicapped female candidate could have been appointed on the general female category post as per the policy of the State Government as contained in Circular no. 502 dated 2nd November, 2002, issued by the State Government in the Department of Personnel and Administrative Reforms.

9. Learned counsel for the respondents no. 8 and 9 submitted that the District Teachers Appellate Authority had rightly interfered in the matter as it found that the appointment of the petitioner, being a male, on the post reserved for a female could not



be sustained.

10. Having considered the facts and circumstances of the case and submissions of the learned counsel for the parties, the Court finds that no ground has been made for review of the order dated 26.09.2016.

11. The admitted position is that the post on which the petitioner got appointment was for a female candidate which should not have been filled up by a male candidate, irrespective of the category. Further, contention of the learned counsel for the petitioner that still one post is vacant, cannot be a ground for the Court to direct consideration of the case of the petitioner for appointment on such post since at relevant point of time the post was duly filled up and only later the incumbent had resigned, and thus, the same has to be treated, in law, as a fresh vacancy and persons who had attained eligibility on the date the post became vacant had a right to apply for being considered for such appointment.

12. For the reasons aforesaid, the review application stands dismissed.

(Ahsanuddin Amanullah, J)

(Madhuresh Prasad, J)

Prakash/-

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