

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.2153 of 2015

IN

C. REV. 374 of 2014

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Kumari Kanchanbala, wife of Shailendra Kumar, Resident of Village - Chipura Khurd, Block Sampatchak, Police Station - Gouri Chak, District - Patna

.... Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Government of Bihar, New Secretariat Building, Bailey Road, Patna-800 001
2. The District Magistrate, Patna
3. The Sub-Divisional Officer, Patna.
4. The Block Development Officer, Sampathak Block, Patna
5. The District Panchayati Raj Officer, Patna
6. The District Superintendent of Education, Patna (now District Programme Officer, Patna with changed nomenclature)
7. The District Teachers Employment Appellate Tribunal, Patna
8. The District Education Officer, Patna
9. The Block Education Extension Officer, Block Sampatchak, District - Patna
10. The Mukhia, Grampanchayat Chipura Khurd, Block Sampatchak, District - Patna
11. The Panchayat Secretary, Grampanchayat Chipurakhurd, Block Sampatchak, District - Patna

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Sanjay Kumar Verma

For the Respondent/s : Mr.

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 18-06-2018

This Intra-Court appeal has been preferred for setting aside the order dated 19.03.2012 passed by the learned Writ Court in Civil Writ Jurisdiction Case No.14755 of 2011 by which the learned Writ Court has been pleased to dismiss the writ application preferred by the present appellant and refused to interfere with the order, as contained in Annexure-10 to the writ application, passed by the learned District Teachers' Employment Appellate Tribunal, Patna



(hereinafter referred to as the 'Tribunal'). The writ application was preferred challenging the order of the Tribunal refusing to interfere with the order passed by the District Superintendent of Education holding that the petitioner was illegally appointed against the vacancy which was created due to removal of one Anil Kumar. The District Superintendent of Education held that there was no vacancy against other backward caste category, the said finding of the District Superintendent of Education has been upheld by the Tribunal. The Tribunal has discussed the case of the petitioner in paragraph 6 of the impugned order dated 18.02.2011 (Annexure-10). There is a categorical finding of the District Superintendent of Education as well as the Tribunal to the effect that as per the reservation roster/chart there was no vacancy in the backward category. It has also been taken note of the fact that weightage marks of 17 which is the minimum marks prescribed for unreserved category has been given to the petitioner.

2. The learned Writ Court has gone by the findings recorded by the Tribunal and on the face of those findings refused to interfere with the impugned order in the writ application.

3. Learned counsel for the appellant has assailed the impugned order passed by the learned Writ Court submitting that the learned Writ Court could not appreciate that the petitioner's appointment was made due to removal of Anil Kumar an appointee in



backward class category and for that reason the learned counsel has relied upon the enquiry report of the Block Development Officer. Learned counsel submits that while examining the earlier complaints enquiries were made by the competent authority and the appointment of the petitioner-appellant was found valid and genuine. It is his further submission that the order of the District Superintendent of Education dated 28.10.2009 has been quashed by the Hon'ble High Court in CWJC No.6550 of 2010, a copy of the order dated 06.05.2013 passed in CWJC No.6550 of 2010 has been enclosed as Annexure-5 to the review application.

4. We have heard learned counsel for the appellant and learned counsel representing the State. It appears that the writ-petitioner had earlier challenged the order passed by the District Superintendent of Education in CWJC No.1909 of 2010 which was disposed off vide order dated 01.12.2010 relegating the petitioner to the Appellate Tribunal. The petitioner was given opportunity to first challenge or assail the impugned order passed against her before Appellate Tribunal. It is in this background that she had approached the Appellate Tribunal and the Appellate Tribunal has thereafter heard all the parties, perused the relevant registers and minutes of the meeting of the Employment Committee and only thereafter passed the final order dated 18.02.2011. The Appellate Authority did not rely upon the reports of the District Panchayat Raj Officer, Patna and the



Block Development Officer, Sampatchak for the reason that both the officers had not considered the fact that there was no vacancy advertised for the post in the backward category and on 20.05.2005 in absence of there being a vacancy in the backward category, the appointment of the petitioner was not legal and valid. The contention of learned counsel for the appellant based on the order dated 06.05.2013 passed in C.W.J.C No.655/2010 loses it's relevance because the appellate authority being a competent statutory forum has examined the case of the petitioner and recorded a finding. The petitioner-appellant is unable to demonstrate any illegality or perversity in the finding of the learned appellate authority.

5. In view of the categorical findings of facts, which have not been assailed with any cogent evidence and materials on the record, we do not find any illegality or infirmity with the impugned judgment of the learned Writ Court.

6. The Letters Patent Appeal has, thus, no merit. It is, accordingly, dismissed.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Arvind/-

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CA V DATE	
Uploading Date	19.06.2018
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