

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.669 of 2017

In
Civil Writ Jurisdiction Case No.18297 of 2016

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Moni Kumari, Daughter of Yogendra Choudhary, Resident of Village & Post-
Pokhar Bhinda, P.S.- Sakatpur, District- Darbhanga.

... .. Appellant/s

Versus

1. The State of Bihar, through the Principal Secretary, Education Department
Government of Bihar, Patna.
2. The District Education Officer, Supaul.
3. The District Programme Officer (Establishment), Supaul.
4. The Block Development Officer, Supaul.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Alok Kr. Chaudhary, Advocate
For the Respondent/s : Mr. Priyadarshi Matri Sharan AC to AAG-15

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 26-09-2018

1. Feeling aggrieved and dissatisfied with the
impugned judgment and order passed by the learned Single
Judge dated 17.03.2017 in C.W.J.C. No. 18297 of 2016 by
which the learned Single Judge has dismissed the said petition
and has refused to interfere with the order of termination of the
petitioner from the post of Panchayat Teacher, the original writ-
petitioner has preferred the present Letters Patent Appeal.

2. The facts leading to the present Letters Patent
Appeal in nut shell are as under:

2.1. That the recruitment process was started in the



year 2006. As per Rule 8 (Kha) of the Bihar Panchayat Elementary Teacher (Employment and Service Conditions) Rules, 2006, a person has to attain the age of 18 years on 1st of January of the year of recruitment. In the present case, the year of recruitment was 2006, the candidate was required to attain the age of 18 years as on 01.01.2006. Though the original writ-petitioner has not completed 18 years of age on 01.01.2006 and as such was not eligible even to make an application and she was only 17½ years old, when she was appointed on 30.11.2006. Subsequently, it was transpired that the date of birth of the original writ-petitioner was 05.07.1988 and, therefore, she has not completed 18 years of age as on 01.01.2006 and her service came to be terminated and even the recovery of the fixed salary/honorarium was ordered.

2.2. Feeling aggrieved and dissatisfied with the order of termination with the recovery of fixed salary/honorarium already paid to her, the original writ-petitioner approached this Court by way of C.W.J.C. No. 18297 of 2016.

2.3. Before the learned Single Judge the petitioner as such did not dispute that as on 01.01.2006 she was 17½ years old i.e. less than 18 years. However, the original writ-



petitioner/learned counsel for the original writ-petitioner relied upon the decision of the learned Single Judge of this Court in the case of **Bahjat Fatma Vs. The State of Bihar & Ors. (C.W.J.C. No. 18315 of 2008)** by submitting that in the similar set of circumstances the termination was set aside by this Court. However, on facts the learned Single Judge has specifically observed that the decision in the case of **Bahjat Fatma** (supra) shall not be applicable to the facts of the present case and thereafter the learned Single Judge has disposed of the petition without interfering with the order of termination, however, has set aside the order directing for recovery of the fixed salary/honorarium already paid to her.

2.4. Feeling aggrieved and dissatisfied with the impugned order passed by the learned Single Judge dismissing the petition and confirming the order of termination of the petitioner from the post of Panchayat Teacher, the original writ-petitioner has preferred the present Letters Patent Appeal.

3. Learned counsel appearing on behalf of the appellant has heavily relied upon the decision of the learned Single Judge in the case of **Bahjat Fatma** (supra) in support of his submission that the order of termination on the ground that the petitioner had not completed 18 years of age as on



01.01.2006-the year of recruitment, is bad in law.

4. Having heard learned counsel appearing on behalf of the respective parties and considering the facts in the case of **Bahjat Fatma** (supra), we are of the opinion that the decision in the case of **Bahjat Fatma** (supra) relied upon by the learned counsel for the appellant-original writ-petitioner shall not be applicable to the facts of the case on hand. In the case before the learned Single Judge, in the case of **Bahjat Fatma** (supra) it was found that though the employment was made on 30.11.2006, she was appointed in the month of January, 2007. Therefore, the learned Single Judge considered the age of 18 years as on 01.01.2007. In the present case, the recruitment as well as appointment both are made in the year 2006 itself. Therefore, recruitment year shall be considered the relevant date for the purpose of appointment i.e. 18 years is required to be considered as on 01.01.2006. If that be so, the original writ-petitioner was less than 18 years and, therefore, she was not eligible for appointment. Considering the aforesaid facts and circumstances, when the learned Single Judge has dismissed the petition and not interfered with the order of termination, it cannot be said that the learned Single Judge has committed any error which calls for the interference of this Court in exercise of



intra court appellate jurisdiction.

4.1. In view of the above and for the reasons stated above, the present appeal fails and the same deserves to be dismissed and is accordingly dismissed.

(Mukesh R. Shah, CJ)

(Ashutosh Kumar, J)

P.K.P./-R.S.Sen

AFR/NAFR	
CAV DATE	
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