

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.238 of 2015

In
Civil Writ Jurisdiction Case No.21125 of 2013

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Kamlesh Kumar Singh S/o late Raj Nandan Singh, resident of Village -
Rathour Newazi Tola, P.S. - Chapra Muffasil, District - Saran at Chapra.

... .. Appellant/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Human Resources Development Department, Govt. of Bihar, Patna.
3. The Principal Secretary, Panchayati Raj Department, Govt. of Bihar, Patna.
4. The District Magistrate, Saran at Chapra.
5. The District Education Officer, Saran at Chapra.
6. The District Programme Officer, Saran at Chapra.
7. The Block Education Extension Officer, Sadar Block, Saran at Chapra.
8. The Pramukh-Cum-Chairman of Panchayat Samiti, Sadar Block, Saran at Chapra.
9. The Block Development Officer-cum-Secretary of Panchayat Samiti, Sadar Block, Saran at Chapra.
10. The District Teacher Employment Appellate Authority, Saran through its member.
11. Prabhat Kumar @ Prabhar Kumar Singh S/o Shiv Kumar Singh, resident of village Mala, P.S. Chapra Muffasil, Dist. Saran at Chapra.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr.P K Shahi, Sr. Advocate Mr. Ram Binod Singh, Advocate
For the State	:	Mr. Vinay Kumar Pandey, AC to GA 2
For Respondent no. 11	:	Mr. Vinod Kumar Kanth, Sr. Advocate Mr. Gyan Prakash, Advocate

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 06-05-2019

Heard Mr. P K Shahi, learned Senior Counsel appearing
with Mr. Ram Binod Singh, Advocate-on-Record for the appellant,



counsel for the State and Mr. Vinod Kumar Kanth, learned Senior Counsel representing the private respondents with the assistance of Mr. Gyan Prakash, advocate on record.

This intra-Court appeal arises from the judgment and order of a learned Single Judge dated 15.01.2015 allowing the writ petition. The learned Single Judge after quashing the order dated 29.07.2013 passed by the District Teachers Employment Appellate Authority, Saran in Appeal No. 104 of 2011 whereby, the order of the District Magistrate passed on 30.10.2006 upholding the appointment of the private respondent no. 11, had been interfered with, restored the private respondent to his position.

The pleadings on record would conform that in a selection process initiated for appointment of Panchayat Shiksha Mitra carried out before the Bihar Panchayat Elementary Teachers (Appointment and Conditions of Service) Rules, 2006 came into force, while the appellant herein was appointed against one such post coming under the General Category, the private respondent-writ petitioner was appointed against the post meant for Extremely Backward Class. The private respondent undisputedly comes from the Backward Category and on such facts coming to surface regarding the caste status of the private respondent that his service was terminated on 16.07.2004. This termination was questioned by



the private respondent-writ petitioner in CWJC No. 16334 of 2004 and a learned Single Judge of this Court by judgment and order dated 09.05.2006 relegated the respondent no. 11 before the Collector, Saran at Chapra. The issue was considered by the District Magistrate, Saran at Chapra who vide order bearing Memo No. 1097 dated 30.10.2006 while not finding any fault with the termination order of the respondent-writ petitioner because he was appointed against a post reserved for the Extremely Backward Class, found merit in his case for consideration in the open / unreserved category on merit because he had higher marks in the Matriculation examination which was the prescribed qualification for such appointment and which put him ahead of the appellant. This fact is not in dispute. Consequently, while directing for appointment of the private respondent-writ petitioner against the post meant for open / unreserved category by virtue of his higher marks obtained in Matriculation examination, the appointment of the appellant was disturbed with and consequently set aside.

This order of the District Magistrate dated 30.10.2006 was questioned by the appellant in CWJC No. 15380 of 2006 and the learned Single Judge while permitting the appellant to withdraw the writ petition allowed him to take recourse to the



forum of the appellate authority which had since been constituted under the Rules.

In between this period, the service of the respondent-writ petitioner was again terminated *al beit* on the ground of difference in the date of birth and which prompted him to come to this Court in CWJC No. 13814 of 2007. The said writ petition was allowed by a learned Single Judge by judgment and order dated 26.06.2008 at Annexure-9 to the writ petition. An attempt was made by the appellant to intervene in the matter which was rejected and the order has attained finality because it was not questioned before the Division Bench. It is after the matter was set at rest that the Tribunal examined the matter in Case No. 104 of 2011 to hold the reinstatement of the petitioner illegal and to direct for reinstatement of the appellant. This order was passed after the second termination was put to question before this Court by the respondent-writ petitioner in CWJC No. 13814 of 2007 which order has attained finality and an attempt by the appellant to intervene in the said proceeding was rejected but not questioned before a superior forum.

The appeal has been allowed by the appellate authority in Case No. 104 of 2011 as, according to the appellate authority, the order of the District Magistrate was an exercise without



jurisdiction. The appellate authority while setting aside the appointment of the respondent-writ petitioner directed for appointment of the appellant against the said post. It was now the turn of the respondent-writ petitioner to approach this Court and since the writ petition was allowed, hence this appeal.

We have heard Mr. P K Shahi, learned Senior Counsel appearing for the appellant and Mr. Vinod Kumar Kanth, learned senior counsel representing the private respondent. Mr. Shahi in attempt to defend the order of the appellate authority and to criticize the exercise by the District Magistrate submits that apart from the fact that the order is *ex parte* and without opportunity of hearing to the appellant, it is also an exercise without jurisdiction because the District Magistrate had no power to examine the appointments. He further submits that the private respondent having taken a chance as a reserved category candidate, he could not have been transposed as a general category candidate in preference to the appellant, who admittedly comes from the general category.

We have heard learned counsel for the parties and have perused the record and in our opinion there is neither any contest nor are we required to go deep into the matter considering the undisputed facts and circumstances existing herein. Undisputedly



the respondent -writ petitioner even if coming from the reserved category had better qualification than the appellant in so far as the marks obtained in Matriculation is concerned and which undeniably, was the prescribed qualification for appointment on the post of Panchayat Shiksha Mitra. In such view of the matter and even if there may have been a default on the part of the District Magistrate, Saran in not giving opportunity of hearing to the appellant before upholding the claim of appointment of the private respondent, considering that the facts are undisputed on the supremacy in qualification of the respondent-writ petitioner, a remand by us for re-examination of the matter, on the plea raised by Mr. Shahi would be mere completion of formality because the outcome of such remand is a forgone conclusion.

Apart therefrom, that the issues were discussed in the second round of proceedings before this Court which finally culminated in the order dated 26.06.2008 (Annexure-9 to the writ petition) and which has attained finality, with the attempt made by the appellant herein to intervene therein, rejected, the issues had been put to rest. In our opinion, in the circumstances noted the exercise by the Tribunal to reopen the matter was without jurisdiction and has been rightly been interfered with by the learned Single Judge on consideration of the facts on record and



the legal position existing, which requires no interference by this Court.

The appeal is dismissed.

(Jyoti Saran, J)

(Anjani Kumar Sharan, J)

mrl./-

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