

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.476 of 2015

In
Civil Writ Jurisdiction Case No.23272 of 2013

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Binita Kumari D/o late Prabhu Pandit, resident of village - Jhajhwa, P.O.-
Jhajhwa, P.S.- Sidhwalia, District- Gopalganj.

... .. Appellant/s

Versus

1. The State of Bihar
2. The Principal Secretary, Human Resources Development Department,
Bihar, Patna.
3. The Director, Primary Education, Bihar, Patna.
4. The Divisional Commissioner, Saran Division at Chapra.
5. The District Magistrate, Gopalganj.
6. The Deputy Development Commissioner - cum - Chairman, District
Education Establishment Committee, Gopalganj.
7. The District Programme Officer Establishment, Gopalganj.
8. The Block Development Officer, Barauli, District- Gopalganj.
9. The Block Education Extension Officer, Barauli, District - Gopalganj.
10. The Mukhiya, Gram Panchayat Raj Sadauwa, Block- Barauli, P.S.-
Sidhwalia, District – Gopalganj.
11. The Panchayat Secretary, Gram Panchayat Raj Sadauwa, Block- Barauli,
P.S.- Sidhwalia, District – Gopalganj.
12. Meera Kumari, D/o Sri Ramchandra Prasad, resident of Village - Sareya
Pahar, P.O.- Barhima, P.S.- Sidhwalia, District - Gopalganj.
13. Asha Dwivedi, wife of Sri Arvind Dubey, resident of Village - Sareya
Pahar, P.O.- Barhima, P.S.- Sidhwalia, District - Gopalganj.
14. The Member, District Teacher Employment Appellate Authority,
Gopalganj.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Umesh Kumar Mishra, Adv.
For the Respondent N.12	:	Mr. Sunil Kumar, Adv.
For the State	:	Mr. Manish Kumar, A.C. to AAG-6

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

and

HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 15-04-2019



Heard Mr. Umesh Kumar Mishra, learned counsel appearing for the appellant, Mr. Sunil Kumar learned counsel appearing for respondent No. 12 and Mr. Manish Kumar, learned Assisting Counsel to A.A.G.-6 appearing on behalf of the State.

This intra Court appeal arises from a judgment and order dated 09.01.2015 passed in C.W.J.C. No. 23272 of 2013 by the learned Single Judge whereby the writ petition filed by the writ petitioner had been dismissed.

The only issue which falls for consideration is whether or not the private respondent (Meera Kumari) was a resident of the State of Bihar or the State of Uttar Pradesh which was her matrimonial home because the appointee to the post of Panchayat Teacher, had to be a resident of Bihar.

It is the appointment of the private respondent as a Panchayat Teacher on 08.10.2006 which is the subject matter of the contest herein. It is not in dispute that the private respondent (Meera Kumari) was married much prior thereto in the State of Uttar Pradesh where she had also obtained an employment as Anganwari Sahaika vide order dated 01.11.2004 as manifest from the joining letter of private respondent which was accepted on 15.11.2004, a



copy of which is enclosed as Annexure-7 to the writ petition. It is to gain the employment as Anganwari Sahaika that the private respondent swore an affidavit, a copy of which is at Annexure-8 in which she admits to be a permanent resident of Dewaria in the State of Uttar Pradesh. The said affidavit sworn by her was not withdrawn before the private respondent sought appointment as a Panchayat Teacher on 08.11.2006 rather it is more than six months after the appointment of private respondent as a Panchayat Teacher that she submitted her resignation from the post of Anganwari Sahaiya on 16.07.2007 vide Annexure-9.

The default on the part of the private respondent is multiple for having sworn an affidavit that she is a permanent resident of Dewaria in the State of Uttar Pradesh, until such time that she withdrew such affidavit, she could not have applied as a Panchayat Teacher in the State of Bihar because Rule 8 of the Bihar Panchayat Primary Teacher (Employment and Service Condition) Rules, 2006 (hereinafter referred to as 'the Rules') inter alia mandates the applicant to be a permanent resident of the State of Bihar for appointment of Panchayat Teacher.

The other default on the part of the private



respondent is that she could not have held two posts at the same time under two separate Government. Even if the post of Anganwari Sahaika is held not to be a civil post yet such post was held by the private respondent while she applied for appointment as a Panchayat Teacher in the State of Bihar.

Mr. Umesh Kumar Mishra, learned counsel appearing for the appellant submits that it is because the Appointment Committee upheld the objection raised by the appellant herein on the disqualification of the private respondent to hold the post of Panchayat Teacher, to cancel her appointment, this led to the appeal before the Panchayat Teacher's Appointment Appellate Tribunal, Gopalganj who vide an illegal order passed on 25.09.2013 interfered with the cancellation order of Appointment Committee which was in tune with the rules, to re-appoint the private respondent. Since in the meanwhile the appellant herein had been appointed in place of the private respondent, the appointment of the appellant was interfered with leading to the writ petition which unfortunately has been dismissed.

We have heard learned counsel for the parties and perused the records.

Even if Mr. Sunil Kumar, learned counsel



appearing for the private respondent (Meera Kumari) endeavors to persuade this Court by canvassing that the marriage in between the parties did not survive and the private respondent had to return to her parental home but the complete absence of materials to support any such contention coupled with the fact that even if there was a marital discord, the resignation against the post of Anganwari Sahaika was submitted almost after 8 months of her appointment on the post of Panchayat Teacher, we reject the plea so taken in support of the impugned action. Having held thus, we are in respectful disagreement with the opinion expressed by the learned Single Judge in C.W.J.C. No. 23272 of 2013 which deserves to be interfered with. Accordingly, the judgment and order dated 09.01.2015 passed in C.W.J.C. No. 23272 of 2013 by the learned Single Judge is set aside.

Consequently the order of the District Panchayat Teachers' Appointment Appellate Tribunal passed in Appeal No. 13 of 2011 insofar as it upholds the appointment of the private respondent (Meera Kumari) and interferes with the order of cancellation of appointment passed by the Appointment Committee, is held *per se* illegal and is,



accordingly, quashed and set aside.

In result, the appeal is allowed and consequently, the appellant stands reinstated on the post of Panchayat Teacher in the Government Primary School, Saraiya Pahar, Barauli-1, Gopalganj.

No order as to costs.

(Jyoti Saran, J)

(Arvind Srivastava, J)

Brajesh/-

AFR/NAFR	A.F.R.
CAV DATE	NA
Uploading Date	24.04.2019.
Transmission Date	

