

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.18 of 2021

In

Civil Writ Jurisdiction Case No.18489 of 2017

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Md. Shariful Hasan S/o-Md. Najmuddin R/o-Vill-Mukariya, P.O.-Chauki
Haripur, P.S.-Kadwa, District-Katihar, at Present Working as Block Teacher in
Upgraded Urdu Middle School Naughara, Gram Panchayat Raj Uday
Rampur, P.S.-Kadwa, Block-Chainpur, District-Kaimur (Bhabhua)

... .. Appellant/s

Versus

1. The State of Bihar through the Principal Secretary Education, Department,
Govt. of Bihar, Patna.
2. The Director Primary Educatuion, Govt. of Bihar, Patna.
3. The District Magistrate, Kaimur (Bhabhua).
4. The District Education Officer, Kaimur (Bhabhua).
5. The District Programme Officer (Estt.), Kaimur (Bhabhua).
6. The Block Development Officer, Chainpur, District-Kaimur (Bhabua),
7. The Panchayat Secretary, Gram Panchayat Udayrampur, Block Chainpur,
District-Kaimur (Bhabhua).
8. The Mukhiya Gram Panchayat, Udayrampur, Block-Chainpur, District-
Kaimur (Bhabhua).

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Rajeev Kumar Singh
For the Respondent/s : Mr.Shashi Shekhar Tiwary, AC to AAG-13

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE RAJIV ROY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 27-07-2022

Heard learned counsels for the parties.

2. In the instant L.P.A., appellant has questioned the
validity of the order of the learned single Judge dated
25.02.2020 passed in C.W.J.C. No. 18489 of 2017. Appellant
among others were appointed as a Panchayat Teacher on



19.11.2007. Appointment was cancelled on 28.09.2011. Petitioner invoked writ jurisdiction in filing C.W.J.C. No. 19073 of 2011. During pendency of the aforesaid writ petition, Respondent-Mukhiya modified the cancellation of appointment dated 28.09.2011 on 06.02.2012 while reinstating the appellant. On the other hand, C.W.J.C. No. 19073 of 2011 filed by the appellant was dismissed on 30th October, 2013. It is to be noted that in all fairness, appellant should have apprised this Court in C.W.J.C. No. 19073 of 2011 on 30th October, 2013 in respect of new developments during pendency of the aforesaid petition to the extent that order of cancellation of appointment dated 28.09.2011 has been modified on 06.02.2012 and appellant was taken back to duty. The appellant has also not filed review petition in respect of order dated 30th October, 2013 passed in C.W.J.C. No. 19073 of 2011. The aforesaid petition was dismissed along with some other petitions. In some other petitions petitioners who were aggrieved preferred L.P.A. in which appellant has been arrayed as Respondent No. 15. L.P.A. was dismissed. In other words, order of the learned single Judge dated 30th October, 2013 has been confirmed. In the light of judicial pronouncements official respondent had not taken action against the appellant. The appellant vide C.W.J.C. No.



18489 of 2017 seeking certain monetary benefits during the intervening period from the date of cancellation of appointment till reinstatement that he is entitled to arrears of salary. During pendency of the present C.W.J.C. No. 18489 of 2017 official respondents have taken a decision to remove the appellant from service on 23.07.2018. The appellant filed Interlocutory Application in questioning the letter- removal order dated 23.07.2018 and Interlocutory Application was allowed. Before counter affidavit is filed by the official respondents, the learned single Judge has disposed C.W.J.C. No. 18489 of 2017. Hence, the present appeal.

3. Learned counsel for the appellant submitted that once the cancellation of appointment was modified on 06.02.2012 he is entitled to have the benefit of all service benefits. Further removal order dated 23.07.2018 is not in accordance with law and it is arbitrary.

4. Per contra, learned counsel for the respondent resisted the aforesaid contentions and submitted that the appellant has slept over his right as and when C.W.J.C. No. 19073 of 2011 decided on 30th October, 2013 and it is against appellant and further it was confirmed in L.P.A. Even though appellant has not questioned the order of the learned single



Judge dated 30th October, 2013 in filing L.P.A.

5. Heard learned counsels for respective parties.

6. Question for consideration in the present appeal is whether the appellant is entitled to monetary benefits during the intervening period from the date of cancellation of his appointment on 28.09.2011 to 06.02.2012 or not and further is there any error in the order of removal dated 23.07.2018 or not?

7. Undisputed facts are that the appellant was appointed as a Panchayat Teacher on 19.11.2007. The appointment order was cancelled on 28.09.2011 and it was confirmed by the learned single Judge in C.W.J.C. No. 19073 of 2011 on 30th October, 2013. During pendency of aforesaid petition, cancellation of appointment was modified while reinstating the appellant on 06.02.2012. Modified order dated 06.02.2012 should have been brought to the notice of the learned single Judge during pendency of C.W.J.C. No. 19073 of 2011 in seeking disposal of the writ petition or withdrawal of the writ petition.

8. On the other hand, appellant suffered an order before the learned single Judge on 30th October, 2013 to the extent that cancellation of the appointment order dated 28.09.2011 was affirmed.



9. At this stage, it is to be noted that the appellant had remedy of filing review petition in C.W.J.C. No. 19073 of 2011 or filing L.P.A. against the order dated 30th October, 2013 in apprising L.P.A. Bench that during pendency of C.W.J.C. No. 19073 of 2011, order of cancellation of appointment dated 28.09.2011 has been modified on 06.02.2012. Therefore, nothing survives in the writ petition. In other words, appellant has slept over his right with reference to dismissal of his writ petition C.W.J.C. No. 19073 of 2011 dated 30th October, 2013 by which cancellation of appointment of the appellant dated 28.09.2011 has attained finality. Further L.P.A. filed by the similarly situated person in which appellant was arrayed as Respondent No. 15. Even in that L.P.A. as Respondent appellant could have sought permission of the L.P.A. bench in highlighting cancellation of appointment order dated 28.09.2011 has been modified on 06.02.2012 and he had been reinstated. It is to be noted that at every stage the appellant has slept over his right.

10. In the light of these facts and circumstances, the official respondents proceeded to remove the appellant on 23.07.2018 with reference to judicial pronouncement ordered in C.W.J.C. No. 19073 of 2011 dated 30th October, 2011 read with



L.P.A. decision in which the appellant has arrayed as Respondent No. 15. Thus, the petitioner has not made out a case so as to interfere with the order of the learned single Judge.

11. Accordingly, the present L.P.A. stands dismissed.

(P. B. Bajanthri, J)

(Rajiv Roy, J)

rakhi/-

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CAV DATE	
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