

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5469 of 2018

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Rakesh Kumar Tiwary, S/o Sri Sitaram Tiwary, Resident of village-
Dhanadhi, P.O.- Bijauli, P.S.- Aurangabad, District- Aurangabad.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Panchayati Raj Department, Government of Bihar, Patna.
2. The District Magistrate, Aurangabad.
3. The Sub-Divisional Officer, Aurangabad.
4. The District Panchayat Raj Officer, Aurangabad.
5. The Block Development Officer, Deo, Aurangabad.
6. The Chairman/Sarpanch, Gram Kutchhary, Kharkani, Block- Deo, Aurangabad.
7. Ajit Kumar Yadav, S/o Sri Ram Narayan Yadav, R/o Chandauli, P.O.- Bijauli, P.S.- Aurangabad, District- Aurangabad.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Purushotam Sharma, Adv.
For the State	:	Mr. Kameshwar Prasad Gupta (GP-10) Ms. Deepanjali Gupta, (AC to GP-10)
For Respondent no.7	:	Mr. Prem Ranjan Kumar, Adv. Mr. B.B. Mishra, Adv.

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL ORDER

5 06-02-2024 Heard learned counsel for the petitioner, learned counsel for the State and learned counsel for the private respondents.

2. The present writ petition has been filed for quashing of the order dated 18.01.2018 contained in Memo No.86 (annexed as Annexure-14) passed by the Block Development Officer, Deo, Aurangabad passed in compliance of the order dated 05.06.2017 contained in letter No.779 of the



District Panchayati Raj Officer, Aurangabad and letter dated 16.09.2017 contained in letter No.280 of the Sub-Divisional Officer, Aurangabad alleging discrepancies in the date of birth as 08.10.1979 in matric exam of Bihar Board and 08.10.1980 in the *Madhyama* Exam of Sanskrit Board.

3. Learned counsel for the petitioner submits that the issue of holding two certificates by the petitioner i.e. one from Bihar School Examination Board and another from *Madhyama* Examination of Sanskrit Board has already been raised before the competent authority and it was tested by him and final order has been passed by the District Magistrate, Aurangabad in Misc. Appeal No. 43/2010 on 28.11.2014. Counsel also submits that the said order dated 28.11.2014 has not been challenged by the private respondent before any higher authority and as such, the said order acquired finality. Counsel further submits that after lapse of about two years, the private respondent has filed objection before the Block Development Officer afresh, raising the same issue on which the petitioner has been granted opportunity by the Block Development Officer and passed order which is against the decision of the District Magistrate passed in order dated 28.11.2014 in Misc. Appeal No.43/2010.

4. Learned counsel for the State on the other hand



submits that from the documents, it transpires that the objection with regard to obtaining two certificates has been raised by the private respondent before the Appellate Court of District Magistrate, Aurangabad. But, on the said pleadings, no specific findings has come.

5. Learned counsel for the private respondent submits that since there is no finding come on the specific points, therefore, he raised those points afresh before the Block Development Officer.

6. Upon hearing the pleadings and going through the documents, it transpires to this Court that petitioner is the appointee on the post of Gram Kutchhari Sachiv on the basis of Bihar Gram Kutchhari Secretary Rule, 2007. His appointment was subject to challenge before this Hon'ble Court in Civil Writ Jurisdiction Case No. 17325/2009. Thereafter, he moved before the SDO, Aurangabad and order was passed in his favour *vide* order dated 24.04.2010 against which the private respondent no.7 has filed miscellaneous appeal and in the said miscellaneous appeal, the question which is the subject matter of the present writ petition has been challenged by him on which, the matter was decided and appointment of the petitioner was affirmed by the Court. It is well settled principle of law i.e.



doctrine of res-judicata that, once the matter has been decided between the same set of parties on the same issue then, any of them cannot litigate under the same title further. It is also the law particularly, clause 5 of section 11 of the Code of Civil Procedure, 1908 that any relief claimed which is not expressly granted shall for the purpose of this section deemed to have been refused.

7. In this background and the position of law, this Court is of the firm view that the point of two date of birth i.e. one by Bihar School Examination Board and another by *Madhyama* Examination of Sanskrit Board which was raised in the pleading by the private respondent on which no expression was granted, then, in the light of the said doctrine of res-judicata, it deemed to have been refused.

8. Upon perusal of the documents, it transpires to this Court that it is not the case of the private respondent that he has taken benefit of date of birth showing one place on the basis of Bihar Board or at another place with the help of date of birth in *Madhyama*, rather, the petitioner has been appointed by virtue of his *Madhyama* certificate, he is doing the service by virtue of *Madhyama* certificate and he has not used the alleged Bihar School Examination Board anywhere.



9. In the light of the discussions made, this Court is of the firm view that once the matter has already been decided by the Appellate Forum and which has not been challenged by the private respondent any further it acquired finality and hence, entertainment of any application and passing order by the Block Development Officer which is challenged before this Court in the present writ petition i.e. order dated 18.01.2018 contained in Memo No.86 (annexed as Annexure-14) as well as the entire proceeding which has been initiated by virtue of letter no. 895 dated 13.07.2016 (annexed as Annexure-9) are hereby set aside.

10. With the aforesaid observations, this writ petition is hereby allowed.

(Dr. Anshuman, J.)

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