

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.719 of 2021

In
Civil Writ Jurisdiction Case No.21280 of 2018

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Upendra Kumar Mehta, male, aged about 34 years, S/o- Shri Shivanand Mehta, R/o- Vill. -Sukhsena, P.O.- Simraha, P.S.-Simraha, District-Araria.

... .. Appellant

Versus

1. The State of Bihar through its Principal Secretary, Department of Education, Bihar, Patna.
2. The Director, Primary Education, Department of Education, Bihar, Patna.
3. The State Appellate Authority, Education Department Niyojan Bhawan Patna.
4. The District Teacher Employment Appellate Authority, Araria.
5. The District Education Officer, Araria.
6. The District Programme Officer, (Estt.), Araria.
7. The Block Development Officer, Forbesganj, District- Araria.
8. The Block Education Officer, Forbesganj, District- Araria.
9. The Mukhiya Gram Panchayat Raj, Halhalia, Block- Forbesganj, District- Araria.
10. The Panchayat Secretary, Gram Panchayat Raj Halhalia, Block- Forbesganj, District- Araria.
11. Vikash Kumar, S/o- Bhola Prasad Yadav, R/o-At and P.O.-Simraha, P.S.- Simraha, District- Araria.
12. Pintu Kumar, S/o- Ramdev Prasad Sah, R/o -At and P.O.- Mushai, P.S.- Simraha, District- Araria.

... .. Respondents

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Appearance :

For the Appellant	:	Mr. Rajeev Kumar Singh, Advocate
For the Respondent no. 10	:	Mr. Prashant Kumar Sinha, Advocate
For the Respondent nos. 11 & 12:	:	Mr. Arup Kumar Chongdar, Advocate
	:	Ms. Eesha, Advocate
For the State	:	Mr. Naman Nayak, AC to AAG-13

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CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and

HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

Date : 13-08-2024

The present appeal has been filed under Clause 10



of the Letters Patent Appeal of the Patna High Court Rules against the order dated 15.11.2021, rendered by learned Single Judge, in Civil Writ Jurisdiction Case No. 21280 of 2018 whereby the learned Single Judge has dismissed the writ petition filed by the present appellant/original petitioner.

2. Heard Mr. Rajeev Kumar Singh, learned counsel for the appellant, Mr. Prashant Kumar Sinha, learned counsel for the Respondent No.10, Mr. Arup Kumar Chongdar, learned counsel assisted by Ms. Eesha, learned counsel for the Respondent nos. 11 & 12 and Mr. Naman Nayak, learned AC to AAG-13, learned counsel for the State.

3. Learned counsel for the appellant/petitioner referred to the averments made in the memo of the petition and thereafter contended that the Bihar Panchayat Elementary Teachers (Appointment and Service Conditions) Rules, 2006 were notified for the appointment of Panchayat / Block Teacher. On 25.08.2008, certain amendments were notified and as per the amended rules, the advertisement was issued/published for appointment on the post of *Panchayat*/Block Teacher in the State. It is a case of the petitioner that he was eligible for appointment on the said post and, therefore, he submitted application on 11.11.2008 for the post of *Panchayat* Teacher.



Learned counsel referred to the application form submitted by him pursuance to the advertisement issued for the post in question.

4. It is the grievance of the petitioner that though he was eligible for appointment of the post in question, the respondent denied the same. It is contended that the experience certificate issued by the concerned *Mukhiya* in favour of the petitioner, was not considered by the concerned respondent and thereby weightage of 20 marks were not given to the petitioner. Learned counsel has referred to the experience certificate, copy of which is produced at page 51 of the compilation. It is submitted that the petitioner gained the experience during period between 15.02.2004 to 30.09.2006 as *Lok Sikshak* at a particular school of concerned *Panchayat*. The said certificate was issued by the *Mukhiya* of the said *Panchayat* on 02.11.2008. It is contended that the said certificate was produced with the application despite which it was not considered by the concerned Respondent-Authority. Learned counsel, therefore, submits that the petitioner though entitled for appointment on the post in question, such appointment was denied to him. Petitioner, therefore, filed petition before this Court. However, learned Single Judge *vide* impugned order, dismissed the



petition filed by the petitioner.

5. Learned counsel submits that while dismissing the petition, the learned Single Judge observed that the petitioner gained experience as *Lok Sikshak* when he was minor and, therefore, such certificate is rightly not considered by the Authority. However, learned counsel for the appellant has placed reliance upon the decision rendered by this Court in the Case of *Mokhtar Ahmad vs. Bihar State Road Transport Corporation & Ors.* reported in *1995 (1) PLJR 183(2)*. Learned counsel has more particularly placed reliance upon paragraph 8 of the said decision. At this stage, learned counsel has also placed reliance upon the decision rendered by Hon'ble Supreme Court in the case of *Gopal Prasad vs. Bihar School Examination Board and Others* reported in *2020 (18) SCC 255* and more particularly para 46 of the said decision.

6. After referring to the aforesaid decisions, learned counsel for the appellant/petitioner would submit that in the said cases also, the concerned employees were appointed when they were minor and when the dispute arose between the employer and the employee, the Supreme Court as well as this Court has considered the fact of minority of the concerned employee and thereafter granted certain relief. Learned counsel, therefore,



urged that though petitioner was minor at the time of gaining experience as *Lok Sikshak*, such experience was required to be considered by the Respondent-Authority. Learned counsel, therefore, urged that the impugned order be quashed and set aside and appropriate direction be issued to the concerned respondent to appoint the petitioner on post in question.

7. On the other hand, learned counsel appearing for the State as well as the Respondent-Authority have opposed the present appeal. It has been mainly contended that no error has been committed by the learned Single Judge while dismissing the petition. Learned counsel appearing for the Respondent no.10-Authority has referred to the counter affidavit of the said respondent and more particularly para 10 of the said counter affidavit. It is contended that while submitting the application form on 11.11.2008, the petitioner did not produce the experience certificate and, therefore, on the left portion of the application form on top, the said aspect has been specifically mentioned by the Authority. Learned counsel has also referred the application form submitted by the petitioner and thereafter referred to the column no.15. It is submitted that though the petitioner has stated that he is having experience of 2 years and 7 months, no details were mentioned in the said application



form when he gained such experience and from which institution. Thus, on this account also, his application was incomplete and, therefore, the Respondent-Authority has rightly not considered his so-called experience gained and thereby the Respondent-Authority has rightly not awarded 20 marks under the said head. Learned counsel, therefore, urged that the petitioner was not entitled to be appointed on the said post as other meritorious candidates, who are secured more marks, have been appointed. Thus, the Respondent-Authority has not committed any error while appointing the other private-respondents, i.e., Respondent nos.11 and 12. Learned counsel has also referred to the orders passed by the District Teachers Appellate Authority as well as State Appellate Authority, Patna and thereafter submitted that both the aforesaid authorities have also rejected the claim of the petitioner and while this Court exercising powers under Article 226 and 227 of the Constitution of India, did not interfere with the concurrent finding of facts recorded by two authorities, this Court may not entertain the present Letters Patent Appeal.

8. Learned counsel Mr. Arup Kumar Chongdar, learned counsel assisted by Ms. Eesha, learned counsel for the respondent nos. 11 & 12 has also supported the submissions



canvassed by learned counsels appearing for the other Respondents-Authorities. Learned counsel submits that Respondent nos. 11 & 12 are more meritorious than the petitioner and, therefore, the concerned Respondent-Authority has rightly appointed them on the post in question. Learned counsel submits that no error has been committed by the learned Single Judge while dismissing the petition and, therefore, the present appeal be dismissed.

9. We have considered the submissions canvassed by learned counsels appearing for the parties and we have also perused the material placed on record as well as the relevant Rules and the decisions upon which the reliance has been placed by learned counsels. It would emerge from the record that pursuance to the advertisement published in the newspaper, appellant/petitioner submitted his application for the post of *Panchayat/Block Teacher*. As per the case of the petitioner, the Respondent-Authority has wrongly discarded the certificate of experience produced by the petitioner along with his application. It is the case of the petitioner that he gained the experience in a particular institution while working as *Lok Sikshak* during the period of between 15.02.2004 to 30.09.2006. The said aspect is specifically mentioned in his application form



that he is having experience as *Lok Sikshak* for 2 years and 7 months despite which the Respondent-Authority has not considered the said aspect and thereby not granted 20 marks for experience. Therefore, in the present case, the dispute is only with regard to the work experience gained by the petitioner.

10. We have examined the application form submitted by the petitioner. The said form was submitted on 11.11.2008. It is the specific contention taken by the Respondent No.10 in the counter affidavit and more particularly paragraph 10 thereof that the petitioner did not produce the experience certificate along with his application form and, therefore, on the top of the application itself, on the very same day, i.e., on 11.11.2008, the Authority has made an endorsement that experience certificate has not been produced. Thus, from the said affidavit as well as the endorsement made in application form itself by the Authority, it is clear that though the petitioner mentioned in his application form that he was having experience as *Lok Sikshak* for 2 years and 7 months, he did not produce the said certificate. It is further required to be observed at this stage that even in Column 15 also, no details were supplied by the petitioner with regard to the institution in which he had gained the experience and during which period he had gained such



experience. Thus, column no.15 is also silent with regard to his experience part. It is required to be observed at this stage that though the Respondent No.10 has filed his counter affidavit in the present proceeding, i.e., in L.P.A., the present appellant/original petitioner has not controverted the said averments by filing rejoinder affidavit. Learned counsel for the respondent no.10 has pointed out from the record that even before the District Appellate Authority also, the certificate issued by *Mukhiya* with regard to the experience of the petitioner, was not produced. It was produced for the first time before the State Appellate Authority.

11. It is also relevant to note that the certificate on which the petitioner has based his claim, cannot be accepted because the period when the petitioner gained the experience, he was aged about 16 years and 3 months on the date when he claimed to have gained the experience as *Lok Sikshak*.

12. In the case of *Mokhtar Ahmad (Supra)* reported in *(1995) 1 PLJR 183(2)*, this Court has observed in paragraph 8 as under:

“8. In the counter affidavit filed on behalf of the Corporation these submissions have not been controverted. It is, thus, apparent that when the petitioner was appointed at the age of 16 years and 6 months it was within the complete



knowledge of the employer and even in case there was any prohibition against appointment of a person below the age of 18 years the same was waived by the employer in consideration of getting hold of a good foot ball player. In that view it is no longer open for the Corporation after forty years to turn back and to say that the initial appointment being bad his date of birth must be pushed back by a year and a half. In our opinion, such an action would be wholly unreasonable and arbitrary. We are, therefore, of the opinion that this application must succeed and we allow it by setting aside the impugned order, dated 22.07.94. It is consequently directed that the petitioner must be allowed to continue in service till he attains the age of 58 years on the basis of his date of birth being 01.02.38 as recorded in the service book.”

13. In the case of **Gopal Prasad (Supra)** reported in **2020 (18) SCC 255**, Hon’ble Supreme Court has observed in paragraph 46 as under:

“46. It is nobody's case that any of the employees concerned repudiated their contract of appointment on attaining majority. An employer who knowingly appoints minors with impunity, with its eyes open, cannot evade its obligations under the contract of employment, and that too after the employee has rendered service for almost two decades after attaining majority. The contracts can be said to have been ratified by the employees concerned, on



attaining majority. It cannot, also be said, that an employee appointed when he was 15½ years old, attained any undue advantage, when there was no minimum age for appointment at the material time.”

14. We cannot dispute the proposition of law laid down by the Hon’ble Supreme Court as well as this Court in the aforesaid cases. However, in the aforesaid cases, dispute was between the employee and the employer. In the aforesaid cases, employee had taken the stand that when the employee was appointed, he was minor and, therefore, looking to the facts of the aforesaid cases, the Hon’ble Supreme Court as well as this Court observed that employer was aware about the age of the employee when he was appointed.

15. We are of the view that the aforesaid decisions could not render assistance to the present appellant in the facts and circumstances of the present case. Here, the appellant/petitioner has placed reliance upon the experience certificate issued by the *Mukhiya* from which it can be said that when the appellant/petitioner was appointed as *Lok Sikshak* by the concerned institution, he was a minor.

16. Even otherwise, there are concurrent finding of facts recorded by the First Appellate Authority, the State Appellate Authority as well as the learned Single Judge.



17. Thus, in the present case, we are not inclined to interfere with the orders passed by the concerned Respondent Authorities as well as the order passed by the learned Single Judge. We are of the view that the learned Single Judge has not committed any error while dismissing the petition filed by the appellant herein.

18. Accordingly, the present appeal stands dismissed.

(Vipul M. Pancholi, J)

(Ramesh Chand Malviya, J)

Gaurav Kumar/-

AFR/NAFR	NAFR
CAV DATE	NA
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