

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.29 of 2024
In
Civil Writ Jurisdiction Case No.484 of 2019**

Kavita Kumari, D/o Shri Bharat Singh, R/o Village and P.O. Rushi, P.S. Daudpur, District Saran.

... .. Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Primary Education Department, Govt. of Bihar, Patna.
2. The State Appellate Authority, Education Department, Govt. of Bihar, Patna.
3. The Director Primary Education, Govt. of Bihar, Patna.
4. The Member, District Teachers Employment Appellate Authority, Saran.
5. The Commissioner, Saran, Division at Chapra.
6. The District Magistrate, Saran.
7. The District Proramme Officer (Establishment), Saran.
8. The Block Development Officer, Manjhi Block, Saran.
9. The Mukhiya, Gram Panchayat Raj, Nasira, P.S. Daudpur, District, Saran.
10. The Panchayat Secretary, Gram Panchayat Raj, Nasira, P.S. Daudpur, District Saran.
11. Shandhya Kumari, D/o Mithilesh Kumar Sharma, R/o Village Nasira, P.S. Daudpur, District Saran.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Y.V. Giri, Sr. Advocate Mr. Krishna Murari, Advocate
For the State	:	Mr. Kunal Tiwary, Advocate Mr. Ashok Kumar, Advocate
For Respondent No. 11	:	Mr. Prashant Kashyap, Advocate Mr. Arvind Kr. Sharma, Advocate

**CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE THE ACTING CHIEF JUSTICE)**

Date : 04-02-2025

Re: I.A. No. 2 of 2024



The learned Advocate for the appellant/ applicant presses I.A. No. 2 of 2024 for condoning the delay of 33 days in preferring this appeal.

2. For the reasons stated in the application, the delay of 33 days in preferring this appeal is condoned.

3. I.A. No. 2 of 2024 stands allowed.

Re: LPA No.29 of 2024

4. Heard Mr. Y.V. Giri, the learned Senior Advocate for the appellant/Kavita Kumari, Mr. Prashant Kashyap, the learned Advocate for respondent No. 11 and Mr. Kunal Tiwary, the learned Advocate for the State.

5. The appellant had been working as Panchayat Teacher since 14.07.2007. Private respondent No. 11 had also participated in the selection process and because she had higher marks than the appellant, her name was entered in the merit-list above the appellant. However, appointment was given to the appellant in 2007 on the plea that on the date of



counselling, the private respondent No. 11 did not appear. The difference of marks of the appellant and the respondent No. 11 is one. Both come from the same category of unreserved female. After some time of the appointment of the appellant, a complaint was made by private respondent alleging that deliberately the notice of counselling was sent to the candidates Under Postal Cover (UPC). She was never served the notice nor did she have any idea about such counselling being held. It was also lamented by her that on the first day of the counselling, the appellant was chosen and, in fact, the sequence of events indicated that the entire process was orchestrated to accommodate the appellant.

6. An inquiry commenced and ultimately the matter travelled to the District Teachers Appellate Authority where the respondent No. 11 lost. She lost in appeal before the State Appellate Authority as well.

7. The ground taken by respondent No. 11 in the two proceedings, referred to above, was that times



without number the Supreme Court has held that sending notices under UPC is with a purpose to defraud genuine candidates and accommodate people who have wires connected to the influential persons.

8. Reference was made by the private respondent before both the forums that in view of the judgment in **Chitranjan Kumar Singh vs. The State of Bihar & Ors. : 2010(4) PLJR 183**, any notice sent by UPC would be deemed to have given unfair advantage to the person selected, especially when the other person has secured higher marks than the appointee.

9. It was considered to be a fraudulent action.

10. This judgment took into account an almost similar plea taken in the case of **Gadakh Yashwantrao Kankarrao vs. E.V. alias Balasaheb Vikhe Patil and Ors.: AIR 1994 SC 678** wherein it was held that a notice/ dispatch by UPC is doubtful. A certificate of posting is very easy to be obtained and, therefore, is not reliable. Expenses in sending registered notice is



immaterial and that cannot be a ground to validate such action of issuing notice under UPC.

11. The countervailing arguments of the appellant before all the forums was that the private respondent was married in another village and, therefore, she was not interested in her appointment as Panchayat Teacher. Perhaps this was the reason for her not to appear in the counselling on 14.07.2007. In fact, the complainant having been kept out of the selection process, out of design, the complaint was filed only after two months of her marriage.

12. With respect to the validity of notice by UPC regarding holding of counselling, it was asserted by the appellant before both the forums and also before the learned Single Judge that such prohibition on sending such notices by UPC came only after 2010.

13. Prior to the judgment in **Chitranjan Kumar Singh** (supra), the general practice had been to issue notice regarding the counselling date under UPC for



the reason of registered notices being sent to so many of the candidates would have been expensive and the Panchayat was not ready to fund such expenses.

14. This argument was never accepted by any authority. Nonetheless, the private respondent could not demonstrate that the notice was never sent. In fact, there was no complaint from the other persons who were recipients of the notice that they did not know the date of counselling.

15. Since the appellant was the second in the merit-list with almost similar marks, who had attended the counselling and, therefore, the appointment was made.

16. There was yet another fact which was taken into account by the State Appellate Authority that the *Mukhiya* had recorded in the proceedings that the father of private respondent had intimated that her daughter (private respondent No. 11) had been married in a different village. It was, therefore, inferred that she



by that time had no interest in pursuing her career as a Panchayat Teacher.

17. It also came to light before the State Appellate Authority that the respondent No. 11 had applied for the post in another block in which her matrimonial-home was located.

18. Be that as it may, when the respondent No. 11 lost before both the forums, she approached the High Court *vide* CWJC No. 484 of 2019. The learned Single Judge, after having taken into account that the notice for counselling was sent through UPC, found that the appointment of the appellant was vitiated by fraud and, therefore, thought it best that it be annulled. While coming to this conclusion, he did not take into account the submission of the appellant that, in fact, the private respondent No. 11 was not interested in coming to the counselling for the reason of her marriage in a neighbouring block. Only on the issue of the notices having been sent by UPC and not by registered post, the



appointment of the appellant was held to be bad in the eyes of law.

19. However, the learned Single Judge, realising that now a new Rule under the rubric of Bihar State School Teachers (Appointment, Transfer, Disciplinary Proceedings and Service Conditions) Rules, 2023 has come into force and that long time has passed, especially when the appellant has remained in service for about 11 years and the private respondent No. 11 has not been in service for all this while, it was observed that it would not be appropriate to direct the concerned authority for the appointment of private respondent No. 11.

20. In sum and substance, the claim of both the appellant and the private respondent were repudiated and liberty was given to the State to initiate the process of appointment afresh on account of the vacancy created by annulment to the appointment of the appellant in accordance with the Rules of 2023.



21. This judgement enures in nobody's favour.

22. Both the appellant and respondent No. 11 would have come of age in applying afresh. The judgment by the learned Single Judge was passed on 06.11.2023 and since then no process for filling up the post has been initiated by the State.

23. However, on the contrary, the State in its counter affidavit before the Writ Court and also before this Court has not objected to the judgment of the learned Single Judge denying appointment to both the appellant and respondent No. 11.

24. We have taken note of the fact that no appeal was preferred by respondent No. 11 or by the State independently. In fact, even in the counter affidavit filed by respondent No. 11, there is no prayer to accommodate her on the post having become vacant with the annulment of the appointment of the appellant.

25. Though there is no place for any inference in legal proceedings but then the judgment impugned at



the instance of the appellant has led to a post having become vacant whereas the State is slow in filling the same.

26. We have also taken note of the fact that the appellant had obtained only one mark less than respondent No. 11. The practice in currency at the relevant time was of sending notices by UPC which, by no means, can be used as a convenient tool for defrauding the other contestant; nonetheless that was the accepted practice.

27. It could not be demonstrated by the private respondent No. 11 that no notice was issued at all, which could have been very conveniently done by taking such information from other applicants and if they would have also supported the contention that no notice was ever issued and that it was only on paper so as to leave the field open for the appellant, the situation would have been different.

28. In our analysis therefore, we find flaw in



the judgment of the learned Single Judge to the extent that the decision only renders a post vacant, leaving the incumbent and the person who aspired to be on that post dissatisfied and left in a lurch as to the future course of action.

29. With the promulgation of the Rules of 2023, the minimum and maximum age requirement also has been fixed which perhaps would prevent both the appellant and the respondent No. 11 from applying afresh in case the process of appointment is started by the State.

30. We have also looked at the judgment from the point of view of the education policy and the need for Panchayat Teachers. The post had become vacant which has yet not been filled up.

31. Considering this aspect of the matter, we set aside the judgment impugned.

32. Based on the statement made by the appellant that she is still continuing to teach in the school



because of stay granted by the Appellate Court, her appointment should remain inviolate.

33. The appeal stands allowed.

(Ashutosh Kumar, ACJ)

(Partha Sarthy, J)

Rajesh/Saurabh

AFR/NAFR	NAFR
CAV DATE	NA
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