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IN THE HIGH COURT OF JUDICATURE AT PATNA

(Letters Patent Appellate Jurisdiction)

L.P.A.No. of 2013

(Arising out of C.W.J.C.No.12326 of 2011 dismissed on 29.11.2013)

Kumari Sunita Sudha

Versus

.....Appellant

The State of Bihar & others

.....Respondents

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IN THE HIGH COURT OF JUDICATURE AT PATNA
(Letters Patent Appellate Jurisdiction)
L.P.A.No. of 2013

Kumari Sunita SudhaAppellant
Versus
The State of Bihar & othersRespondents

SYNOPSIS

Prayer: Appeal is directed against the order dated 29.11.2013 passed by Hon'ble Mr. Justice Kishore Kumar Mandal in C.W.J.C.No 12326/11 by which dismissed the writ application and hold that Court does not find irregularities muchless patent in illegality in the order passed by the Tribunal merit interference there with. Whenever Learned Tribunal hold counselling was illegally held untrained candidate whenever alleged date was fixed for trained and untrained, on the said very date, similarly situated person from 12 to 15 of the merit list contain Annexure 1 of the writ application, all are untrained and their counselling was held and have appointed along with appellant and they are discharging duty but learned Tribunal hold that on the date, no counselling was held except trained candidate, learned Tribunal as well as Hon'ble Court failed to consider that the respondent no. 10 could not participate the counselling as report contained annexure - 5 of the writ application.

Appellant having qualification Intermediate total marks 361 and she belong to S.C. caste, she is able to apply for the post of Block Teacher in view of the Bihar Panchayat Primary Teacher (Employment and service condition) Rule 2006 (hereinafter referred as a Rule 2006).

31.08.06 The vacancy was issued on the post of Block Teacher, she applied on 31.08.06 and she got receipt bearing no. 2635, thereafter application of the petitioner and other were examined by the committee and thereafter issued general notice for the counselling and petitioner participated the counselling, which was held and their marksheet and others were verified, which is evidentially shown on the list of the counselling on the other hand respondent no.10 did not choose to appear before 29.09.06 counselling, which was held on 29.09.2006.

22.11.07 On the basis of the counselling the case of the petitioner has been selected against the vacancy of S.C., on the post of Block Teachers and issued appointment letter dated 22.11.2007 by which the petitioner has posted as Block Teacher as Uttkrish Middle School, Rampur Deharu, Block Udakishunganj, on the basis of the appointment letter petitioner submitted joining on 28.11.2007.

16.02.10 The respondent no. 10, preferred the writ application bearing C.W.J.C. No.9601/2008 before this Hon'ble High Court, which was heard on 16.02.2010, same was withdrawn for filing an appeal before the District Teacher Employment Appellate Tribunal and thereafter respondent no.10 filed application before the Tribunal, in-ter-alia stated that he filed an application before the District Magistrate on 27.11.07, whenever clause 18 of Rule 2006 clearly stated that any complain filed before the respondent D.D.C. but does not filed till filling writ application.

Hon'ble Single Judge also failed to consider the fact that learned Tribunal committed cross error about the fact that respondent no. 10 did not choose to appear before the counselling, who was appear, their counselling was held and selected un-trained candidate as namely Neelam Kumari, Pawan Kumar Ranjan and Daisy Kumari.

Same ground some aggrieved person was challenging the appointment of the Daisy Kumari and subsequently filed writ application by the said aggrieved Daisy Kumari and their CWJC No. 2510/10 allowed as hold that appointment of the petitioner (Daisy Kumari) for extreneous basis, not on the basis of mark on the category of the trained and said writ application was allowed on 18.03.12

Hence this appeal.

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GOVT. OF BIHAR
REGISTRATION EXCISE & PROHIBITION DEPT.
PATNA SCORE PATNA

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IN THE HIGH COURT OF JUDICATURE AT PATNA

(Letters Patent Appellate Jurisdiction)

L.P.A.No. of 2013

(Arising out of C.W.J.C.No.12326 of 2011 dismissed on 29.11.2013)

In the matter of memo of appeal under
Clause 10 of the letters patent of Patna
High Court Rule;

AND
In the matter of

Kumari Sunita Sudha, wife of Chandradeo Ram, resident of Village Biri Ranpal, P.S.
Udakishunganj, District - Madhepura.Petitioner/Appellant

Versus

1. The State of Bihar
2. The Secretary-cum-Commissioner, Human Resources Department, Government of Bihar, Patna.
3. The Director, Primary Education, Bihar, Patna.
4. The Regional Deputy Director of Education, Koshi Division, Saharsa.
5. The Deputy Development Commissioner, Madhepura.
6. The District Teacher Employment Appellate Authority, Madhepura through its secretary.
7. The District Superintendent of Education, Madhepura.
8. The Block Education Extension Officer, Udakishunganj, District Madhepura.

9. The Pramukh Panchayat Samiti Udakisunganj, P.S. Udakishunganj, District Madhepura.

10. Prema Bharti, daughter of Laxmi Narayan Bharti, resident of Village Laxmipur, P.O.

Murlichandwa, P.S. Udakishunganj, District - Madhepura.....-Respondents/Respondents

To,

The Hon'ble Ms Justice Rekha M. Doshit, the Chief Justice of the High Court of
Judicature at Patna and her companion Justices of the said Hon'ble Court.

The humble memo of appeal on be

-half of appellant above named.

Most Respectfully Sheweth:-

1. That this appeal is directed against the order dated 29.11.2013 passed by Hon'ble Mr. Justice Kishore Kumar Mandal in C.W.J.C.No 12326/11 by which dismissed the writ application and hold that Court does not find irregularities muchless patent in illegality in the order passed by the Tribunal merit interference there with. Whenever Learned Tribunal hold counselling was illegally held untrained candidate whenever alleged date was fixed for trained and untrained, on the said very date, similarly situated person from 12 to 15 of the merit list contain Annexure 1 of the writ application, all are untrained and their counselling was held and have appointed along with appellant and they are discharging duty but learned Tribunal hold that on the date, no counselling was held except trained candidate, learned Tribunal as well as Hon'ble Court failed to consider that the respondent no. 10 could not participate the counselling as report contained annexure - 5 of the writ application.

2. That petitioner -appellant crave indulgence of this Hon'ble Court to place some relevant facts for proper adjudication of the case.

3. That Appellant filed for quashing the order dt. 22.06.2011 passed by the respondent member of District Teacher Employment, Appellate Authority, Madhepura by which selection

of the Appellant on the post of Block Teacher has been rejected and directed to appoint to the respondent no.10 in place of the petitioner without giving due opportunities to the Appellant and without considering the report dt.27.04.2011, which was submitted by respondent Block Education Extension Officer, Udakishunganj, by which clearly mentioned that respondent no.10 could not appear before the Board of counselling and her case was not considered and considered the case of petitioner, as an untrained teacher on the basis of available vacancy of S.C. and further issued direction to the respondents to give other legal consequential benefit attached to the post.

4. That Appellant having qualification Intermediate total marks 361 and she belong to S.C. caste, she is able to apply for the post of Block Teacher in view of the Bihar Panchayat Primary Teacher (Employment and service condition) Rule 2006 (hereinafter referred as a Rule 2006).

5. That the vacancy was issued on the post of Block Teacher, she applied on 31.08.06 and she got receipt bearing no.2635, thereafter application of the Appellant and others were examined by the selection committee and thereafter issued general notice for the counselling and Appellant participated the counselling, which was held and their marksheet and others was verified, which is evidentially shown on the list of the counselling on the other hand respondent no.10 did not choose to appear before the counselling, which was held on 29.09.2006 from sl.12 to 15 are untrained, which contained in Annexure-1 of the writ application.

6. That on the basis of the counselling the, case of the Appellant has been selected against the vacancy of S.C., on the post of Block Teachers and issued appointment letter dt. 22.11.07 by which the Appellant has posted as Block Teacher as Uttkrish Middle School, Rampur Deharu, Block Udakishunganj, on the basis of the appointment letter, she submitted joining on 28.11.07

7. That soon after appointment of the appellant, she submitted joining in respective school and she is discharging duties to satisfaction of the authorities concerned till today.

8. That in view of the rule 2006, a panel was prepared, same was approved by the selection committee for appointment and letter of appointment issued to the name of the selected candidate, in light of the section 18 of Rule 2006 by which clearly issued direction, if any person aggrieved for selection or others, they shall file a complaint before the Dy. Development Commissioner but no any persons filed complaint against the appellant and other, even respondent no. 10. thus she has no case in view of government direction/order as well Rule 2006.

9. That it is admitted fact that the appellant has been appointed on the post of Block Teacher against the vacant post of S.C., the case of respondent no. 10 has not been considered reason behind she could not appear before the counselling, in the result her name does not mentioned in the final merit list.

10. That it is admitted fact is that the respondent no. 10, preferred the writ application bearing C.W.J.C.No.9601/2008 before this Hon'ble High Court in which was heard on 16.02.2010, same was withdrawn for filing an appeal before the District Teacher Employment Appellate Tribunal and thereafter respondent no. 10 filed application before the Tribunal, inter-alia stated that he filed an application before the District Magistrate on 27.11.2007, whenever clause 18 of Rule 2006 clearly stated that any complaint filed before the D.D.C. but respondent no. 10 could file rather writ application.

11. That notices were issued to the appellant and other respondents, inter-alia stated that in view of the provision laid down in rule 2006, no complaint filed by the respondent no. 10 within the statutory period before statutory authority D.D.C., moreover she was not participated in the counselling for this reason, her appointment was not under consideration rather case of appeal.

lant was considered, if any aggrieved regarding selection of the appellant, respondent no. 10 should have filed complain before the statutory authority within the 30 days but did not file, even not filed before D.M.

12. That further needful to state here that respondent Block Education Officer, Udakishunganj has also submitted reply along with the record of the selection by letter memo. 285 dt. 27.04.10 (annexure-5 of writ application), inter-alia stated that the date of counselling was fixed on 26.09.2006 to 29.09.2006 as per direction issued by the department and further stated that the respondent no. 10 did not appear before the counselling, respondent D.S.E. Madhepura issued a memo no. 139 dt. 23.02.2007 by which specific direction is issued that applicant, who did not appear before the counselling, their claim itself rejected, on the said light claim of the respondent no. 10 has not been considered, the case of the appellant has not been considered.

13. That learned member of the appellate tribunal could not go through the record neither considered the reply filed by the respondent Block Education Officer, Udakishunganj, nor submission advanced by the appellant, could not hold that whether respondent no. 10 filed application within statutory period from any complain under clause 18 of Rule 2006 but without going through the record and found that during the period from 26.09.2006 to 29.09.2006, said very date was fixed for counselling for trained applicant and hold that the case of appellant was considered as a trained but perusal of the chart Lordship will find that her and along with other untrained applicant's case was considered as untrained and further hold that the respondent no. 10 having higher marks than the appellant, her case should be considered but did not consider as whether she filed an application within the statutory period before the authority, answer is, certainly not filed. Hence impugned orders are illegal and fit to be set aside.

14. That further needful to stated here that in light of Rule 2006 ,case of petitioner/appellant and other considered,hence claim of respondent no.10 have to considered ,as whether she filed application view of the clause 18 of rule 2006, but she did not filed except fake and concocted document,thus notification no. 3716 dt. 23.10.2008 does not applicable to case of respondent no.10, if any she filed application before the statutory authority same was pending for due consideration ,then matter of the respondent no.10 has to be considered, thus in view of the above submissions the order of the tribunal is bad in law and fit to be setaside.

15. That the case of petitioner is that the petitioner having qualification I.A untrained and belongs to S.C. category and her case was considered against the vacancy of S.C. untrained teachers, even in counselling her case was considered as untrained and from perusal of the chart, lordship will find that the column of the trained is vacant and years/ session mentioned of I.A. ,as similarly situated untrained person mentioned but sessions has been given only for intermediate not for training, not only same manner others case was considered as Neelam Kumari, Pawan Kumar Ranjan thus allegations is illegal same has been clarified by the reply submitted by the B.E.O., Udakishunganj.

16. That appellants have not moved before this Hon'ble Court any time earlier against the impugned order.

Being aggrieved and dissatisfied with order order dated 29.11.2013 passed by Hon'ble Mr.Justice Kishore Kumar Mandal in C.W.J.C.No 12326 of 2011 appellant beg to prefer this memo of appeal on among other the following.

GROUND S:-

I. For that the learned single Judge failed to appreciate the the case of the appellant and

passed order impuged, which is bad in law as well as on fact.

- II. For that learned Single Judge failed to consider the fact that the appointment of the appellant was made on 22.11.07, in the light of the Government notification dt. 01.07.06 known as Bihar Primary Teacher, (Employment and Service Condition) Rule 2006 (hereinafter refer as Rule 2006), as per Rule 18 respondent no. 10 have to file complain before Deputy Development Commissioner about the complain of the Block Teacher, respondent no. 10 did not choose to file any complain before appellate authority DDC.
- III. For that learned Single Judge failed to consider the fact that learned Tribunal passed order dt. 26.06.11 inter-alia considered that the respondent no. 10 filed application before Block Development Officer on 30.12.07, whenever he was not filed, moreover appellate authority regarding complain of the Block Teacher as per Rule 18 of 2006 was DDC was appellate authority.
- IV. For that further Hon'ble Single Judge failed to consider the fact that respondent no. 10 could not file any appeal before the Appellate Authority DDC. Even then, learned Teacher Tribunal, Madhepura passed the order by considering the delay for filing appeal on the ground that respondent no. 10 filed appeal BDO on 30.12.07 and somewhere mentioned that on 03.12.2007 but annexure -7 of the reply of the counter affidavit by which lordship will find that no anywhere mentioned about the fact that he filed complain either before BDO or DDC, rather mentioned that he filed application before District Magistrate on 27.11.07.
- V For that earlier respondent no. 10 filed CWJC No. 9601/08 contained annexure -4 of the said writ application, which is legal notice but did not mention anywhere. She filed

appeal before BDO or DDC. Not only even respondent no. 10 filed appeal before Tribunal not anywhere stated that he filed any appeal before the statutory authority, after Constitution of the appellate authority by notification dt. 25.08.08. Thereafter respondent issued a notification dt. 23.08.08 by which clearly mention that as Clause "kha" IV as stated as follows :-

अपीलकर्ता द्वारा नियोजन से संबंधित सभी प्रकार के अपील 30 दिनों के अन्दर प्राधिकार को देना अनिवार्य होगा। 30 दिनों के बाद प्राप्त अपील पर समुचित कारण होने पर ही प्राधिकार द्वारा विचार किया जा सकेगा।

- VI. For that learned Single Judge as failed to consider about the limitation which was only 30 days from the date of the occurrence. In present case appointment was made on 22.11.07, no complain filed by respondent no. 10 after lapse of the more than 4 years filed appeal before the appellate Tribunal without filing any condonation petition of the delay.
- VII For that learned Tribunal consider as respondent no. 10 filed application before the different authority including BDO, whenever respondent no. 10 itself admit by earlier writ application that she did not file any application before the statutory authority in this score, no case of the respondent no. 10.
- VIII For that the Hon'ble Single Judge also failed to consider the fact that learned Tribunal committed cross error about the fact that respondent no. 10 did not choose to appear before the counselling, who was appear, their counselling was held and selected un-trained candidate as namely Neelam Kumari, Pawan Kumar Ranjan and Daisy Kumari, if there selection is found true, the question of the Selection of the appellant is illegal does not arise in any score.

- IX For that Hon'ble Single Judge also failed to consider the fact that the sessions mention 88-89, which is session of the I.A., but in column of training qualification not mention as BT but from 1 to 11 of Annexure - 1 in front of their name mentioned as BT.
- X For that stand of the respondent no. 10 was time to time change as in the CWJC No. 9601/08. She was stating at paragraph 5 of her writ application as follow :-
- That petitioner who has 431 marks in the Intermediate examination appear in the counselling at Udakishunganj Block at the fixed date and thereafter she is stating there that he has no notice about the counselling, the alleged date i.e. 26.09.06 to 29.09.06 was date for the trained candidate, hence she was not appeared.
- XI For that perusal of the Annexure -5 issued by the Block Education Officer, Udakishunganj which was filed before District Teacher Tribunal, Madhepura clearly stated that respondent no. 10 did not appear before the counselling. Hence on the basis of counselling a merit list was prepared and have appointed four persons including appellant.
- XII For that on the same ground some aggrieved person was challenging the appointment of the Daisy Kumari and subsequently filed writ application by the said aggrieved Daisy Kumari and their CWJC No. 2510/10 allowed as hold that appointment of the petitioner (Daisy Kumari) for extreneous basis, not on the basis of mark on the category of the trained and said writ application was allowed on 18.03.12 which was stated in the paragraph no. 13 of the reply of the counter affidavit . But Hon'ble Single Judge failed to consider and passed impugned order.
- XIII For that on the basis of proceeding preside by the selection committee by which held that application for appointment shall be received for appointment as Block Teacher

from 18.08.06 to 05.09.06, whereas petitioner filed an application on 31.08.06 and respondent no. 10 filed application on 08.09.06 much after the fixed date.

- XIV For that learned Tribunal hold that selection process of the selection committee is illegal then appointment alongwith others which is contained annexure -1 has gone alongwith the others is mentioned on 12-15.
- XV For that Hon'ble Single Judge hold that in the merit list which is contained annexure 1 in front of her name mention the session 1988 - 1990 is Intermediate not trained whereas tribunal hold that appellant / petitioner selected by showing ,she is trained in the session 1988-90. In this circumstances order of the Tribunal is wrong illegal and fit to be set aside.
- XVI For that if any untrained candidate counselling was not held by Selection Committee then how name mentioned from 12 to 15 in Annexure -1 have been appointed, if any counselling was not held then all appointments should be declared illegal. In pursuance of Annexure 5 of the writ application their appointment has not been illegal but only case of petitioner has been declared illegal same is fit to be set aside.
- XVII For that order impugned dt.22.06.2011 passed by respondents is without application of mind and same is illegal and fit to set aside .
- XVIII For that appellant was duly selected by selection committee after excuting all relevant document and issued appointment letter by competent authority .
- XIX For that the repondent no.10 made complaint after lapse of more than year when she was not participate the counselling, thus her case is not tenable for consideration at all thus impugned order is fit to be setaside.
- XX. For that action of the respondents is illegal, arbitrary, and unjustified by passing order

impuged.

- XXI. For that petitioner-Appellant is being harassed for the fault of the respondents authority which is evidently clear from records that petitioner has been appointed, duly selected by selection committee
- XXII. For that the order impugned is bad in law and fit to be set aside.
- XXIII. For that on the facts and circumstances of the case petitioner-Appellant deserve relief by this Hon'ble Court.

It is, therefore, prayed that your lordships may graciously be pleased to Admit this application, Issue notice and after hearing the parties set aside the order dated 29.11.2013 passed by Hon'ble Mr. Justice Kishore Kumar Mandal in C.W.J.C.No 12326/11 and allow the writ application and/or pass such other orders as your lordships may deem fit and proper in the facts and circumstances of the case;

And/or

During the pendency of this appeal, may kindly stay the impugned order dt. 22.06.2011 and 29.11.2013

And for this the appellant shall ever pray.



INDIA
Issued for Certified
Patna High Court

Rs. 000007

5.12.2013

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IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12326 of 2011

1. Kumari Sunita Sudha W/O Chandradeo Ram R/O Vill.- Biri Ranpal,
P.S.- Udakishunganj , Distt.- Madhepura

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Secretary- Cum- Commissioner Human Resources Department,
Govt. Of Bihar, Patna
3. The Director Primary Education, Bihar, Patna
4. The Regional Deputy Director of Education, Sahi Division, Saharsa
5. The Deputy Development Commissioner, Madhepura
6. The District Teacher Employment Appellate Authority, Madhepura
Through Its Secretary
7. The District Superintendent of Education, Madhepura
8. The Block Education Extension Officer, Udakishunganj, Distt.
Madhepura
9. The Pramukh Panchayat Samiti, Udakishunganj, P.S. Udakishunganj, Distt.
Madhepura.
10. Prema Bharti, daughter of Late Anand Bharti, resident of village
Laxmipur, P.O. Murlichandwa, P.S. Udakishunganj, Dist. Madhepura.

.... Respondent/s

CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR
MANDAL
ORAL ORDER

7 29-11-2013

by her non selection as untrained
Prakhand teacher against Scheduled Caste category in the
selection process undergone by the selection committee of
Panchayat Samiti Udakishunganj in the District of Madhepura the
private respondent herein filed a writ petition being CWJC No.
966 of 2008. This Court by an order dated 16.2.2010 (Annexure
A to the counter affidavit of respondent no.10) dismissed the
application giving liberty to the petitioner to file an appeal
before the District Teachers' Employment Appellate
Authority/Tribunal which came into existence in terms of Rule

18 of the Bihar Panchayat Elementary Teacher (Employment & Service Conditions) Rule 2006 (for short 'the Rule'). It was observed that in case such an appeal is preferred within one month it should be considered and decided on merits in accordance with law. Consequently, the respondent no.10 filed an appeal bearing Appeal Case No. 04 of 2010. The appellate Authority/Tribunal by order dated 22.6.11 (Annexure-6) after hearing the parties and analyzing the facts brought on record, allowed the same whereby selection and appointment of the petitioner was held illegal and the respondent no.10 was held entitled to be appointed to the post of Prakhand Teacher. The said order of the Tribunal dated 22.6.11 has been impugned in the present writ petition.

There is no dispute that the writ petitioner as well as the respondent no.10 both belong to Scheduled Caste category and both of them are untrained. The petitioner obtained 361 marks in the Intermediate level examination whereas the respondent no.10 obtained 431 marks in the Intermediate examination. As per the Rule provisions, the candidate(s) obtaining higher percentage of marks in the Intermediate level examination is to be preferred. According to the petitioner, she made an application for appointment on 31.8.06 and on notice she appeared for counselling. Having been found most suitable she was selected and appointed. The respondent no.10 did not choose to appear in the counselling which was held on 29.9.06. On being

selected the petitioner was offered appointment letter dated 22.11.07 and she joined as the Block Teacher, Upgraded Middle School, Rampur Deharu within Udakishunganj Block. The respondent no.10 did not file any grievance application before the competent authority against her such selection. Instead, she filed a writ petition in this Court and in the light of the order dated 16.2.2010 she filed the appeal before the Tribunal which was allowed by the order dated 22.6.2011. The Tribunal erred in not considering the case of the petitioner in passing the aforesaid order and hence the writ petition was allowed.

Heard Mr. Sharda Nand Mishra for the petitioner, Mr. Bibhakar Tiwari for the respondent no.10 and counsel for the State. The parties have exchanged pleadings.

Learned counsel for the petitioner, while assailing the order of the Tribunal, has contended that although the petitioner obtained lesser percentage of marks than the respondent no.10 but the main matter is that the respondent no.10 had not elected to appear in the counselling. It is next contended that the application was filed by the respondent no.10 beyond the time prescribed therefor. The order passed by the Tribunal is non-speaking/ non reasoned order inasmuch as the case of the petitioner has not been considered. The respondent no.10 has taken vacillating stand about filing of her objection/grievance against selection of the petitioner before the Authorities. This

creates a serious doubt about filing any such application by the respondent no.10.

Learned counsel for the respondent no.10, on the other hand, submits that even from the report of BEO (Annexure-5) submitted on her grievance application it would appear that the application was filed by her within time. Filing application by her beyond the prescribed time was not raised by the petitioner before the Tribunal. Such grievance is, therefore, being raised before this Court for the first time. The same is, therefore, fit to be rejected. Referring to the order dated 3.8.11 passed in the present case, it has been submitted that the petitioner initially submitted before this Court that she was not afforded due opportunity of hearing by the Tribunal. The order passed by the Tribunal and the order sheet of the said appeal enclosed along with the counter affidavit filed by the respondent no.10 amply demonstrate that adequate opportunity was afforded to both parties including the writ petitioner. Drawing attention to the order passed by the Tribunal, it has been submitted that the same is well reasoned order. The Tribunal has discussed the materials placed on record by the parties and thereafter concluded that the appointment of the writ petitioner was made in an arbitrary /illegal manner. No fault, therefore, can be found with the said order passed by the Tribunal exercising extraordinary and discretionary writ jurisdiction of

this Court.

On perusal of the order passed by the appellate Authority/Tribunal, it appears that the Tribunal considered the case of the parties in great detail. On perusal of the records of the selection process undergone in the present case and after hearing the parties it was found that the selection Committee without informing the respondent no.10 about the counselling permitted the petitioner to participate in the counselling scheduled to be held between 26.9.06 to 29.9.06. In the notice, counselling of trained candidates was scheduled from 26.9.06 to 29.9.06. On 29.9.06 the counselling of 14 applicants/candidates were done. Clandestinely the writ petitioner was shown to have participated in the counselling as per M-13, typed copy whereof has been enclosed as Annexure. In the column 'Prashikshan' it was shown 1988-90 against the writ petitioner. There is no controversy that the petitioner is an untrained candidate and pursued the Intermediate of Arts course between 1988-90. In all fairness, the respondent no.10 was entitled to be appointed against said post having secured higher percentage of marks than the writ petitioner in the Intermediate of Arts Examination. The Tribunal has recorded a clear finding that the case of the writ petitioner that in spite of notice the respondent no.10 did not appear at the counselling on the date(s) fixed for such counselling was not found substantiated. On the contrary, the Tribunal found that with

a view to give undue advantage to the writ petitioner she was shown as trained candidate and was shown to have participated in the counselling on the date(s) which was fixed for counselling of the trained candidate(s) only. As about delay in raising the issue before the appropriate authority against such selection of the writ petitioner the Tribunal on appreciation of the materials placed before it found that there was no delay in filing such application. This issue raised by the petitioner would not hold much water in view of the directions issued by this Court on the writ petition filed by the petitioner. The Tribunal afforded opportunity of hearing to both the parties and perused all the materials placed before it and passed the order which appears to be well reasoned. This Court does not find any illegality much less patent illegality in the order passed by the Tribunal meriting interference therein. The application lacks merit. Dismissed.

No cost(s).

Sd/-

(Kishore Kumar Mandal, J)

Shyam/-

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A. S. O. 05.12.13

For Joint Registrar (J)

Patna High Court

Appointed U/S 76 Act of 1872

A. S. O.
05/12/2013
921219232

AFFIDAVIT

I, Kumari Sunita Sudha, aged about 43 years, wife of Chandradeo Ram, resident of Village Biri Ranpal, P.S. Udakishunganj, District - Madhepura., do here by solemnly affirm and stated as follows:-

1. That I am petitioner -appellant in this case and as such am well acquainted with the facts and circumstances of the case.
2. That I have gone through the contents of this application and have fully understood the same. The statements made in paragraphs no.3, 7, 13, 15 to 18, true to my knowledge and those made in paragraphs no. 4, 5, 6, 8, 9, 10, 11, 12 and 14, are based on information derived from the records of the case and rest are by way of submission before this Hon'ble Court.
3. That annexures are true/photo copies of the originals.

~~कुमारी सुनीता सुधा~~
(कुमारी सुनीता सुधा)