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In the High Court of Judicature at Patna.

(Letters Patent Appellate Jurisdiction)

L.P.A.No. _____ of 2014.

(Arising out of C.W.J.C.No.16760 of 2013 dismissed on
29.08.2013)

Ramanand Kumar Appellant

Versus

The State of Bihar and others..... Respondents.

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-: SYNOPSIS :-

This appeal is directed against order dated 29.8.2013
passed by Hon'ble Mr. Justice Mihir Kumar Jha in C.W.J.C.
No.16760 of 2013 whereby writ petition filed by the
~~xxxxxx~~ Appellant has been dismissed.

2004-06
PARA-2

The appellant passed two year Nursery Teaching
Training Sattrant Exam. in 1st Division from Teachers
Training College of India, Ashok Nagar, Gaya.

2006
PARA-3

Advertisement was made for appointment of Teachers.
Appellant applied for the same.

19.11.2007
PARA-6

Appellant was selected on the post of Panchayat Teacher
Trained.

(ii)

- 20.11.2007
PARA-7 Appellant joined at Panchayat Office, Parwa Navtol,
Murliganj.
- 27.11.2007
PARA-9 Appellant was posted and joined at Nav Srijit Primary
School, Sant Nagar.
- 2009
PARA-10 Bihar School Examination Board a nounced Programme
for taking Nursery Teacher Training Exam.
- 2.7.2009
PARA-11 The appellant appeared in Teachers Training Examination
and passed in Ist Division.
- 22.3.2010
PARA-12 Appellant produced Marksheet to authority concerned.
- PARA-13
15.7.2013 Appellant was not paid salary since June 2008
for this he gave representation.
- PARA-14 Appellant has been terminated from service by anti
back dated 5.5.2008.
- PARA-15 In similar matter Hon'ble Court in C.W.J.C.No.10542 of
2012 set aside the impugned order.
- 2013
PARA-16 Appellant filed C.W.J.C.No.16760 of 2013 before Hon'ble
High Court.
- 29.8.2013
PARA-16 Aforesaid writ petition has been dismissed.

(iii)

PARA-20 Prior to termination the appellant was not asked
show cause.

PARA-23 The institution from where the appellant passed is
recognized institution under N.C.T.E.

PARA-28 Appellant was not served any termination order.

Hence this Letters Patent Appeal.

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L.P.A.No. _____ of 2014.

(Arising out of C.W.J.C.No.16760 of 2013 dismissed
on 29.8.2013)

In the matter of an
appeal under Clause 10 of
the Letters Patent of Patna
Court Rules.

AND

In the matter of :-

Ramanand Kumar Son of Shiv Shankar Prasad Yadav,

Resident of Village-Kaloukha, Police Station-Chatra,

District-Madhepura..... Petitioner/Appellant.

Versus

1. The State of Bihar through Principal Secretary,

Human Resources Department, Government of Bihar, Patna.

Filed through:-

Manoj. Kumar, Advocate

for Petitioner

A.O.R.No.- 03982.

2. Director, Primary Education, Government of Bihar,
Patna.
3. District Magistrate, Madhepura.
4. District Education Officer, Madhepura.
5. Block Development Officer, Murliganj, District-
Madhepura.
6. Block Education Officer, Murliganj, District-
Madhepura.
7. Bihar School Examination Board, Patna through its
Chairman, Patna.
8. Head Master, New Srijit Primary School, Sant Nagar,
District-Madhepura.

... Respondents- Respondents.

To,

The Hon'ble Ms. Justice Rekha M. Doshi,
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 behalf of the Appellant
abovenamed;

Most Respectfully Sheweth :-

1. That this appeal is directed against order dated 29.8.2013 passed by Hon'ble Mr. Justice Mihir Kumar Jha in C.W.J.C.No.16760 of 2013 whereby the writ petition filed by the Appellant has been dismissed.
2. That the appellant passed two years Nursery Teaching Training Satrant Examination 2006 from Teachers Training College of India, Ashok Nagar, Gaya in Sessions 2004-2006 in 1st Division The marksheet of Teachers Training Examination has already contained in Annexure-1 to the writ petition.
3. That in the year 2006 an advertisement was published for appointment of Teachers in different school and the appellant applied for the post of Panchayat

Teacher within time.

4. That vide letter dated 10.11.2007, the Panchayat Sachiv, Parwa Navtol, Murli ganj, Madhepura informed the appellant that your name has been included in provisional merit list and directed him to appear on 18.11.2007 for certificate verification and consent. The letter dated 10.11.2007 has already contained as Annexure-2' to the writ petition.

5. That the appellant appeared on 18.11.2007 and given his consent and his all educational certificat has been verified by the authority and found genuine and correct.

6. That vide letter dated 19.11.2007 issued by Panchayat Sachiv, the appellant was selected on the post of Panchayat Teacher Trained and he was directed to join at Nav Srijit Primary School, Santnagar, Madhepur. The appointment letter dated 19.11.2007 has already annexed as Annexure-3 to the writ petition.

7. That on 20.11.2007 the appellant gave his joining at Panchayat Officer, Parwa Navtol, Murliganj and his joining has been accepted. The joining report dated 20.11.2007 is contained as Annexure-4 to the writ petition.

8. That Panchayat Secretary Parwa Navtol, Murliganj relieved the appellant for joining at Sankul Sansadhan centre, Middle School, Parwa Navtol by letter dated 20.11.2007 and the appellant joined there on 21.11.2007. The letter dated 20.11.2007 and joining Report dated 21.11.2007 are annexed as Annexure-'5' and '6' to the writ petition.

9. That Headmaster cum-Sankul Conservator, Middle School, Parwa Navtol vide order dated 26.11.2007 relieved the appellant for joining at Nav Srijit Primary School, Sant Nagar and the appellant joined there on 27.11.2007. The order dated 26.11.2007 has been annexed as Annexure-'7' to the writ petition.

10. That in the year Bihar School Examination Board, Patna announced the programme for taking Nursery Teacher Training Exam. 2009 of Session 2004-06 of Teachers Training College of India, Ashok Nagar, Gaya. The Appellant was issued admit card for appearing in the said Examination. The admit card has already annexed as Annexure-'8' to the writ petition.

11. That on 2.7.2009 the appellant appeared in Nursery Teacher Training Examination, 2009 conducted by Bihar School Exam. Board and the appellant passed in Ist Division in the said Exam. The Marksheet has already been annexed as Annexure-'9' to the writ petition.

12. That on 22.3.2010 the appellant produced marksheet before authority concerned and same has been accepted.

13. That the appellant has been continued his duty but he was paid salary for six months only

through opening account in the Bank but since June 2008 his salary has not paid, for this the appellant gave several representations to the authority concerned but no payment has been done. The representations dated 16.6.2009 and 15.7.2013 are annexed as Annexure-'10' Series to the writ petition.

14. That the appellant has been working then all of a sudden vide letter dated 5.5.2008 issued by Block Development Officer, Murliganj in back dated terminated the appellant from the service on the ground that the certificate of Teachers Training is not genuine. The order dated 5.5.2008 is annexed as Annexure-'11' to the writ petition.

15. That in similar matter in C.W.J.C.No.10542 of 2012 Santosh Kumari-Versus-The State of Bihar the Hon'ble Court vide order dated 22.6.2012 quashed the termination order and directed the authority pass afresh order. The order dated 22.6.2012 is annexed as Annexure-12 to the writ petition.

16. That against impugned order of termination the appellant filed C.W.J.C.No.16760 of 2013 before Hon'ble High Court but Hon'ble Court vide order dated 29.8.2013 dismissed the writ petition.

17. That it is relevant to state here that the aforesaid writ application was heard on 29.8.2013 by Hon'ble Single Judge and order pronounced on 6.2.2014 and there is delay of about six months and hence the order is not maintainable in the eye of law.

18. That Hon'ble Apex Court in several cases held that the ~~cases~~ after hearing the parties in any case, the order should be pronounced within stipulated period not kept pending for long time.

19. That the Hon'ble Single Judge did not consider the case of the appellant and dismissed the writ petition.

20. That Hon'ble Single Judge did not consider the aforesaid decision contained as Annexure-12, which

was passed in similar term, but passed such impugned order.

21. That when the appellant demanded his arrear of salary then authority concerned passed termination order in back dated.

22. That prior to termination the appellant was not asked show cause, not given chance of hearing or explanation which is clear violation of natural justice.

23. That the appellant continued working as Panchayat Teacher from November 2007 to July 2013 and he has been made signature on separate attendance Register daily as advised by the Headmaster but he was not paid salary since July 2008 continuously.

24. That in pursuance to Hon'ble Court direction said Santoshi Kumar and Raj Kumar were reinstated in service and they are working since then and getting their salary.

25. That the institution Teacher Training College of India, Ashok Nagar, Gaya is a valid and recognized institution under N.C.T.E. as well as Government of Bihar for imparting courses of two years Nursery Teachers Training.

26. That the institution has taken Nursery Teachers Training Satrant Exam. 2006 of the appellant and others of Session 2004-06 in which appellant passed in 1st Division. Like appellant aforesaid Santoshi Kumari and Raj Kumar also passed Teachers Training Satrant Exam. 2006 in same Session.

27. That on the basis of aforesaid Marksheet of Nursery Teachers Training Satrant Exam. the appellant as well as Santoshi Kumari and Raj Kumar were appointed as Panchayat Teacher and subsequently they all have terminated from service on the ground that their training degree is not valid.

28. That now said Santoshi Kumari and Raj

Kumar are working as Panchayat Teacher on the basis of same very marksheet of Teachers Training as well as in the light of Hon'ble Court direction but in case of the appellant Hon'ble Single Judge passed impugned order which is clear discrimination with the appellant.

29. That the Hon'ble Single Judge has dismissed the writ petition that on the ground that the appellant assailed order after passing then five years but it is submitted that impugned termination order dated 5.5.2008 has been passed in the year 2013 in back dated when the appellant demanded his arrear of salary.

30. That it is submitted that if impugned order has been passed on 5.5.2008, but Respondent authority has not shown any service of impugned order.

31. That it appeared from the impugned order dated 5.5.2008 from naked eye that no copy of the order has been served to the appellant since it was served to

Mukhiya/Panchayat Sachiv, Block Education Extension
Officer, Murliganj, District Education Officer, Madhepura

32. That the Respondent State never filed any
Counter Affidavit denying the contention of the appe-
llant, but the Hon'ble Single Judge has wrongly come
on the finding that the appellant moved before the
Court after more than five years.

33. That on the basis of Passing Satrant
Examination the appellant as well as Santoshi Kumari
and Raj Kumar were appointed on the post of Panchayat
Teacher and subsequently the appellant as well as Santoshi
Kumari and Raj Kumar were passed Teacher Training Exam.
in same session conducted by Bihar School Exam. Board,
but said Santoshi Kumari and Raj Kumar are working in
the light of Hon'ble Court direction but in case of the
appellant the such impugned order has been passed.

34. That the it is clear discriminatory action

of the Hon'ble Single Judge as well as Respondent authority.

35. That order passed by the learned Single Judge is bad in law as well as on facts.

36. That the appellant has not moved earlier before Hon'ble Division Bench against impugned order.

Being aggrieved and dissatisfied with order dated 29.8.2013 passed by Hon'ble Mr. Justice Mihir Kumar Jha in C.W.J.C.No.16760 of 2013 the appellant prefers an appeal on amongst others the following

GRUNDS: -

- (i) For that the impugned order passed by the Hon'ble Single Judge is bad in law as well as on facts.
- (ii) For that the Hon'ble Single Judge has not considered the case of the appellant properly.

and passed impugned order.

(iii) For that prior to passing termination order the appellant was not asked show cause, not given chance of hearing or explanation.

(iv) For that Hon'ble Single Judge has dismissed the writ petition on the ground of delay, but Hon'ble Single Judge did not consider this fact that the Respondent authority passed impugned order dated 5.5.2008 in back dated which has been came in the knowledge of the Appellant in the year 2013 then he immediately filed writ petition in the year 2013.

(v) For that if the order has been passed in the year 2008, but the appellant was not served the copy of impugned order at that time.

(vi) For that it appears from naked eye of impugned order dated 5.5.2008 that no copy

of the same has been served to the appellant.

(vii) For that the appellant passed Teacher Training Exam. from recognized institution i.e. Teacher Training College of India, Ashok Nagar, Gaya which is valid and recognized institution under N.C.T.E. as well as Government of Bihar.

(viii) For that from the said very institution Santoshi Kumari and Raj Kumar passed teachers Training Exam. in same sessions and their candidature has been considered and they are working.

(ix) For that in case of Santoshi Kumar and Raj Kumar Hon'ble Single Judge in C.W.J.C.No. 10542 of 2012 set aside the termination order but in case of the appellant Hon'ble Single Judge took different stand of delay.

(x) For that there has been discrimination with the appellant in passing impugned order by Hon'ble Single Judge.

(xi) For that there is serious error of law occurred in passing impugned order which caused serious prejudice to the appellant.

It is, therefore, prayed that your Lordships may graciously be pleased to allow the Letters Patent Appeal, call for the Records and after hearing the parties be set aside the order dated 29.8.2013 passed by Hon'ble Mr. Justice Mihir Kumar Jha in C.W.J.C. No. 16760 of 2013, so that substantial justice can be issued under the facts and circumstances stated in this Letter Patent Appeal.

And/Or

Pass such other order or orders
as your Lordships may deem fit and
proper.

And for this, the Appellant shall ever pray.

AFFIDAVIT.

I, Ramanand Kumar, aged about 36 years, son of Shiv Shankar Prasad, Yadav, resident of Villan-Baloutha, P. P. Chatra, Distt. Madhpradesh, do hereby solemnly affirm and state as follows:

1. That I am Appellant in this case and as such am well acquainted with the facts and circumstances of the case.
2. That the contents of this petition have been read by me and understood the same and the statements of facts made in Paragraph Nos. 1 to 9, 11 to 13, 16 to 21, 24, 25, 27, 28, 30, 32 and 33 are true to my knowledge and those made in Paragraph Nos. 10, 14, 15, 22, 23, 26, 29 and 31 are based upon information derived from the records of the case which I believe to be true and the rest are by way of submissions to this Hon'ble Court.

Ramanand Kumar

CERTIFICATE.

It is certified that ground set forth above are good grounds for Letters Patent Appeal.

It is my instruction that the appellant has not moved earlier in this Hon'ble Court against the impugned Judgement.

In my opinion no notice either to the Attorney General of India or Advocate General of Bihar under Order XXVII-A Rule 1 of the Code of Civil Procedure is necessary.

Advocate for Appellant.

Dated:-