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In the High Court of Judicature at Patna.

(Letters Patent Appellate Jurisdiction)

L.P.A.No. \_\_\_\_\_ of 2012.

(Arising out of C.W.J.C.No. 5990 of 2011 dismissed  
on 19.1.2012)

Viveka Nand Yadav ..... Appellant.

Versus

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

Subject:-

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-/o/-

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Viveka and Yadav ..... Appellant

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

-: SYNOPSIS:-

This appeal is directed against order dated 19.1.2012 passed by Hon'ble Mr. Justice Ajay Kumar Tripathi in C.W.J.C.No.5990 of 2011.

PARA-2 Appellant passed Matriculation in 1st Division with 63.11% marks and Intermediate in 2nd Division and B.Sc. Hons. in 1st Class.

PARA-3 Real name of Respondent No.8 is Ramnandan Prasad Ramen Respondent No.8 passed Matric in 1st Division.

2003  
PARA-4 Advertisement was made for selection of Panchayat Shiksha Mitra at Maura Jharkaha Panchayat.

PARA-5 Appellant applied within time, Respondent No.8 also applied.

(ii)

17.2.2003 Selection Committee decided to select Respondent No.8  
PARA-6

as Panchayat Shiksha Mitra.

PARA-7 On the basis of forged certificate Respondent No.8

was wrongly selected.

PARA-11 Appellant complained before District Magistrate,  
Madhepura and D.S.A. regarding illegal selection of  
Respondent No.8.

9.11.2006 Respondent No.4 (D.S.E) stopped the remuneration  
PARA-12

of Respondent No.8.

2009 Appeal No.96 of 2009 was instituted before District  
PARA-15 Teachers Appointment Appellate Authority, Madhepura.

PARA-17 Appellate Authority directed the concerned authority  
to produce enquiry report.

PARA-18 Enquiry report was submitted that Respondent No.8  
produced forged certificate.

11.2.2011 Appellate Authority cancelled the appointment of  
PARA-19

Respondent No.8 found illegality.

PARA-20 By same order Appellate Authority observed that  
since the post of Panchayat Shiksha Mitra has been

(iii)

abolished by Government Notification dated 31.1.2007  
and post of Panchayat Teacher came in existence hence  
appellant claim on the post of Panchayat Shiksha Mitra  
can not considered.

PARA-22 Respondent No.8 was selected on the basis of forge  
certificate.

PARA-23 Appellant's claim is since 2003 but due illegal  
appointment of Respondent No.8 the appellant suffered.  
Hence this Letter Patent Appeal.

-/0/-

In the High Court of Judicature at Patna.

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L.P.A.Bo. \_\_\_\_\_ of 2012.

(Arising out of C.W.J.C.No.5990 of 2011 dismissed  
on 19.1.2012).

In the matter of an  
appeal under Clause 10 of the  
Letters Patent of the High Court  
of Judicature at Patna.

And

In the matter of :-

Viveka Nand Yadav Son of Duni Lal Yadav,  
Resident of Village-Kolhua, Police Station-Shankarpur  
District-Madhepura.

.....Petitioner-Appellant.

Versus

1. The State of Bihar.
2. The Member, District Teachers Appointment Appellate Authority, Madhepura.
3. The District Magistrate, Madhepura.
4. The District Superintendent of Education, Madhepura.
5. The Block Education Officer, Shankarpur, District-Madhepura.
6. The Mukhiya, Maura Jharkaha Gram Panchayat, District-Madhepura.
7. The Panchayat Sachiv, Maura Jharkaha Gram Panchayat, District-Madhepura.
8. Ramendra Kumar Ravi @ Ramnandan Prasad Raman, Son of Bhubneshwari Yadav, Resident of Village-Jharkaha, Police Station-Shankarpur, 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 Memorandum of  
appeal on behalf of the  
Appellant abovenamed;

Most Respectfully Sheweth :-

1. That this Memorandum of Appeal is directed against order dated 19.1.2012 passed by Hon'ble Mr. Justice Ajay Kumar Tripathi in C.W.J.C.No.5990 of 2011 whereby Hon'ble Court has been pleased to dismiss the writ application.
2. That the Appellant passed Secondary School Examination in Ist Division obtaining 63.11% Appellant passed Intermediate Examination in IInd Division and he passed B.Sc. Hons in Ist Class.
3. That it is submitted that the real name of Respondent No.2 is Ramnandan Prasad Raman Son of

Bhubneshwari Yadav and he passed Secondary School Exam. in Ist Div. in the year 1981 in the name of Ramnandan Prasad Ramen in which his date of birth is 5.4.1964.

4. That in the year 2003 there was advertisement for selection of Panchayat Siksha Mitra from Maura Jharkaha Gram Panchayat.
5. That the appellant applied for the said post within time, Respondent No.8 has also applied for the said post in the name of Ramendra Kumar Ravi by concealing his real name and produced forged marksheet of Secondary School Examination (Metric) in which his name shows as Ramendra Kumar Ravi and his date of birth shows as 15.6.1975 and marks shows 709 equivalent to 70% and year of passing 1994.
6. That on 17.2.2003 a meeting of Siksha Samiti was held in Presidentship of Mukhiya for selection



of Panchayat Siksha Mitra and in which it was decided to select Respondent No.8 the post of Panchayat Siksha Mitra as he obtained highest marks in matric than other candidates.

7. That the appellant was in this hope that he will be selected on the post of Panchayat Siksha Mitra as he obtained highest marks in Matric whereas Respondent No.8 produced forge certificate of Matriculation and on that basis he was selected as Panchayat Siksha Mitra.

8. That it is submitted that the real name of Respondent No.8 is Rammandan Prasad Raman and he passed Matric in the year 1981 in Ist Division with 63.11% marks from Zila School, Saharsa bearing Roll 4103 Roll No.0202 and his date of birth is 5.4.1964 but the with malice view subsequently again appeared in Matric Examination in 1994 changing his name as Ramendra Kumar Ravi and his date of birth shows

15.6.1975 and passed Matric in Ist Division with 708/78% marks and on that basis he was selected as Panchayat Siksha Mitra which is against the law.

9. That the voter list of 2005 and 2007 shows that the Respondent No. 8 real name is Ramnandan Prasad Yadav son of Bhubneshwari Yadav and his age shows 44 years.

10. That the appellant took information from Bihar School Examination Board, Patna regarding passing of Matriculation of Respondent No. 8 in which Roll Code 4103 Roll- 202, year 1981, Name-Ramnandan Prasad Raman, Father's name-Bhubneshwari Yadav, Date of birth- 5.4.1964, Marks-577 Div- Ist. School-Zila School, Saharsa which will appear from Annexure-'3' to writ application.

11. That the appellant complained before District Magistrate, Madhepura, District Superintendent

of Education regarding illegality and irregularity done in Selection of Panchayat Siksha Mitra.

12. That Respondent No.4 has considered the complaint of the appellant and vide letter dated 9.11.2006 stopped the payment of remuneration to Respondent No.8.

13. That till long period when no step has been taken by the authority then appellant gave representation on 3.9.2009 to District Magistrate, Madhepura requesting to enquire the matter and after cancelling the appointment of Respondent No.8 he may be appointed on the said post.

14. That then the District Magistrate, Madhepura vide Memo No. 1414 dated 17.8.2008 sent the petition of appellant to District Teachers Appointment Appellate Authority, Madhepura for instituting the same as Appeal.

15. That District Teacher Appointment Appellate Authority, Madhepura registered the same as Appeal No. 96 of 2009 and sent notice to all the parties including Respondent No.8.
16. That Respondent No. 8 appeared in the Court and took plea that he is not Ramandan Prasad Raman and not earlier appeared in Matric examination in 1981.
17. That during pendency of appeal, the Appellate authority directed the concern authority to produce enquiry report.
18. That enquiry report was submitted in which this fact has come that Ramandan Prasad Yadav and Ramendra Kumar is one person and he was selected as Member of the Gram Panchayat but he resigned on 24.2.2003 vide Annexure-'6' of writ application.

19. That after hearing all the parties the Member of Appellate Authority vide order dated 11.2.2011 came on conclusion that Respondent No. 8 has appeared in Matric Examination Second time only to cancel his date of birth and passed the same which shows that he committed mischief, fraud for taking appointment of Ranchayat Siksha Mitra which comes under the pervue of criminal offence and accordingly be cancelled the appointment of Respondent No.8.

20. That in the same order dated 11.2.2011 in Para- 4 it was held that as per Government letter No.108 dated 31.1.2007 the appointment of Panchayat Siksha Mitra can not be done, if any illegality found then only erring person will be removed but in w his place no one can be appointed and accordingly with this observation the claim of appellant on the post of Panchayat Siksha Mitra has been refused.

21. That it is humbly submitted that the appellant was effected by part of the order mentioned in Para-1 by which appellant's claim for appointment on the said post has been refused.
22. That like Respondent No.8 appellant also applied for the post of Panchayat Siksha Mitra and he fulfilled all criteria and he obtained highest marks after Respondent No.8 but unfortunately Respondent No. 8 was selected on the basis of forge and fabricated marksheet.
23. That if Respondent No. 8 was not selected at that time, then appellant certainly might be selected on the post of Panchayat Siksha Mitra in the year 2003 and then he continued on the said post.
24. That Respondent No.8 has committed fraud and mischief in taking appointment on the post of Panchayat Siksha Mitra and now said fraud and mischief was detected by the authority concern

then the appellant's claim for appointment on the said post has been revived and justified.

25. That being aggrieved with the order of Appellate Authority the appellant filed C.W.J.C. No.5990 of 2011 before Hon'ble High Court. Hon'ble Court vide order dated 19.1.2012 has been pleased to dismiss the writ application on the ground that after 1.7.2006 the post of Panchayat Shiksha Mitra stood abolished and thereafter no one can be appointed on such a post now.

26. That Hon'ble Single Judge did not consider the case of the appellant properly and dismissed the writ application.

27. That Hon'ble Single Judge failed to consider this fact that Respondent No. 8 got appointment on the post of Shiksha Mitra on the forged and fabricated basis.

28. That Hon'ble Single Judge failed to appreciate this fact that Respondent No.8 has committed fraud, in various ways, he changed his name from Rammandan Prasad Raman to Ramendra Kumar Ravi, he changed his date of birth from 5.4.1964 to 15.6.1975, he obtained earlier 577 marks in Matric and now in second attempt he obtained 709 marks.

29. That Hon'ble Single Judge failed to appreciate this fact that as per Act and Rule of Bihar School Examination Board, once any candidate passed Matric, then he can not appeared Second time in Matric by changing his name and date of birth.

30. That Hon'ble Single Judge did not appreciate the enquiry report submitted by Panchayat Sachiv, in which he gave report that Respondent No.8 Ramendra Kumar Ravi and Rammandan Prasad Raman is same person.

31. That Hon'ble Single Judge did not



appreciate this fact that Appellate Authority also found illegality, then he cancelled the appointment of Respondent No.8.

32. That Hon'ble Single Judge rejected the claim of the appellant that after 1.7.2006 the post of Shiksha Mitra was abolished, it is submitted that it is not the fault of the appellant, if authority found illegality, then authority concern should take disciplinary action against erring persons and for the fault of erring person why the appellant will suffer.

33. That the appellant submits that if the post of Panchayat Shiksha Mitra has been abolished then the appellant is entitled for appointment on the post of Panchayat Teacher because as per provision after 1.7.2006 all Panchayat Shiksha Mitra will be converted into Panchayat Teacher but due to laches on the part of Respondent authority the appellant lost the chance for appointment on the post of Panchayat Shiksha Mitra, if

he was appointed on the said post, he was certainly converted into Panchayat Teacher and for the fault of Respondent authority the appellant can not be suffered.

34. That the grievance of the appellant is in continuation since 2003 and authority concern found illegality in appointment of Shiksha Mitra, hence appellant should be appointed on the post of Panchayat Teacher.

35. That the appellant has not moved earlier before Hon'ble High Court in the instant matter.

Being aggrieved and dissatisfied with order dated 19.1.2012 passed by Hon'ble Mr. Justice Ajay Kumar Tripathi in C.W.J.C.No.5990 of 2011, the appellant begs to move this Hon'ble Court in Letters Patent Appeal on amongst others the following

GROUNDS:-

- (i) For that the impugned order passed by Hon'ble Single Judge is bad in law as well on facts of the case.
- (ii) For that all the facts produced by the appellant has not been properly considered by the Hon'ble Single Judge and passed impugned order.
- (iii) For that Hon'ble ~~High~~ Single Judge failed to appreciate this fact that Respondent No.8 has committed fraud intaking appointment on the post of Panchayat Shiksha Mitra.
- (iv) For that in enquiry report this fact has come that the Respondent No.8 has committed fraud.
- (v) For that Appellate Authority cancelled the appointment of Respondent No.8 by finding illegality and fraud.

- (v) For that Appellate Authority cancelled the appointment of Respondent No.8 by finding illegality and fraud.
- (vi) For that the claim of appellant has been rejected on this ground that after 1.07.2006 the post of Panchayat Shiksha Mitra was abolished it is submitted that due to laches of authority concern the appellant was not appointed on the post of Panchayat Shiksha Mitra, if he was appointed at the relevant time, then certainly his post was converted in Panchayat Teacher.
- (vii) For that if the Respondent authority has found illegality then disciplinary action should be taken against erring person and for the laches of such authority why the appellant will be suffered.

(viii) For that after 1.7.2006 the post of Panchayat Shiksha Mitra has been converted into Panchayat Teacher hence appellant is entitled for appointment on the post of Panchayat Teacher because his grievance is in continuation since 2003.

(ix) For that in the facts and circumstances of the case the impugned order is bad in law and fit to be set aside.

It is, therefore, prayed that your Lordships may graciously be pleased to admit this appeal, issue Notice to Respondents, call for the records of the case and after hearing the parties be pleased to allow this appeal and set aside the order dated 19.1.2012 passed by Hon'ble Mr. Justice Ajay Kumar Tripathi in C.W.J.C.No.5990/201

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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, Viveka Nand Yadav, aged about 38 years, Son of Duni Lal Yadav, Resident of Village- Kolhua, Police Station- Shankarpur, District- Madhepura, do hereby solemnly affirm and state as follows :-

1. That I am Appellant in this appeal and as such am well acquainted with the facts and circumstances of the case.
2. That the Contents of this Appeal have been read by me and understood the same and the statements of facts made in Paragraph Nos. 2, 5, 7, 10, 11, 13, 16, 17 and 19 to 23 are true to my knowledge and those made in Paragraph Nos. 3, 4, 6, 8, 9, 12, 14, 15 and 18 are based upon informations 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.
3. That the Annexures are true copy of its original.

Viveka Nand yadav

CERTIFICATE.

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

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

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:-



IN THE HIGH COURT OF JUDICATURE AT PATNA  
Civil Writ Jurisdiction Case No.5990 of 2011

Viveka Nand Yadav, son of Duni Lal Yadav, resident of village – Kolhua,  
Police Station – Shankarpur, District - Madhepura

Petitioner/s

Versus

The State Of Bihar & Ors

Respondent/s

Appearance :

For the Petitioner/s : Mr. Binod Kumar Singh

For the Respondent/s : Mr. Subhash Chandra Singh Ga7

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR TRIPATHI

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE ANIL KUMAR TRIPATHI)

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2 19-01-2012

Reason for the petitioner to file the present Writ

Application, challenging Annexure- 7, which is the order passed by  
the District Teachers Employment Appellate Tribunal, Madhepura in  
Case No. 96 of 2009, dated 11.02.2011, is failure of the Tribunal to  
give a decisive direction in favour of the petitioner for his  
appointment.

From perusal of the impugned order, it is evident that  
the petitioner assailed the appointment of the private-respondent no.  
8 on the ground that he had produced forged certificate with regard  
to his age and that allegation of the petitioner was found to be  
correct and, therefore, his appointment was set aside. However,  
when it came down to giving relief to the petitioner, the Tribunal has  
refused to grant such a relief, because the issue of appointment  
related to the post of Panchayat Shiksha Mitra.

Since there is no longer a post of Panchayat Shiksha  
Mitra in existence after 01.07.2006, the Tribunal has done no wrong

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in not giving direction in favour of the petitioner for such appointment.

Such view has also been expressed by a Division Bench of this Court in a recent decision.

In view of the same, no interference is warranted with the decision of the Appellate Authority. Writ Application is dismissed.

*SKM* (Ajay Kumar Tripathi, J.)

SKM

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*For Joint Registrar (J) 2-12*

Patna High Court

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*21-2012*