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24/8/12

IN THE HIGH COURT OF JUDICATURE AT PATNA
(Letters Patent Appellate Jurisdiction)

L.P.A.No. of 2012

(Arising out of CWJC No. 11926 of 2009)

Swati Priya and others ...Appellants

Versus

The State of Bihar and othersRespondents.

Sub:- Letters Patent appeal

I N D E X

1. Memo of appeal 1-18

2. Impugned order.

Vakalatnama.

2.

Resident of Village-Mohalla-Chausa, P.S.Chausa
District -Madhepura.

3. Sunita Kumari wife of Sri Sunil Kumar Singh
Resident of village/Mohalla-Alamnagar,P.S.
Alamnagar,Distt- Madhepura.

4. Pushpa Rani wife of Sri Rajneesh Kumar ,
Resident of Village/Mohalla-Alamnagar, P.S.
Alamnagar,Distt- Madhepura.

5. Prerna Kiran wife of Sri Brajesh Kumar ,
Resident of Village/Mohalla- Alamnagar,P.S.Alamnaga
District-Madhepura.

6. Kumari Bulbul wife of Sri Abhinandan Kumar
Resident of village/Mohalla-Naya tola,P.S.
Puraini Dist- Madhepura.

7. Kumari Kanchan w/o Sri Vinod Kumar, Resident
of Village/Mohalla-Maharajganj, P.S.Madhepura
District- Madhepura.

3.

8. Sulekha Kumari ,D/o Sri Shiv Yadav, resident of
Village/Mohalla- Lakshmipur, P.S .Udakishunganj
District-Madhepura.
9. Priyanka Bharti w/o Sri Naresh Kumar, Resident
of Village-Duhwi Shhwi, P.S. Puraini, Distt-
Madhepura.
10. Vaishali Kumari D/o Sri Valmiki Prasad Gupta
Resident of Village/Mohalla-Bihariganj, P.S.
Bihariganj, Distt- Madhepura.
11. Nisha wife of Late Pankaj Kumar Resident of
Village- /Mohalla- Gwalpara P.S. and Dist-Madhepura

.....Petitioners/Appellants

Versus

1. The State of Bihar through the Secretary and
Commissioner ,Ministry of Human Resources, Govt.
of Bihar Patna.

04.

2. The District Magistrate, Madhepura.
3. The District Education Superintendent cum-District Programme Co-ordinator Sarva Siksha Abhiyan Madhepura, Dist- Madhepura.
4. The Additional District Programme Co-ordinator Sarva Siksha Abhiyan Madhepura, Dist-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 behalf of the appellants
abovenamed;

MOST RESPECTFULLY SHEWETH:

1. That this appeal is directed against the impugned judgment and order dated 11.5.2012 passed

5.

by this Hon'ble court in CWJC No. 11926/2009 passed by Hon'ble Mr. Justice Mihir Kumar Jha which was heard and dismissed the writ application while the petitioner had ~~written~~ been prayer in the aforesaid writ petition for issuance of an appropriate direction to the respondent authorities to appoint the petitioner, appellant on the post of Ansh Kalin Shikshak in Kasturba Gandhi Balik Vidyalaya of Madhepura District which is situated in different blocks strictly in the consequence with the qualification and provision as laid down in the original advertisement published in Dainik Jagran Newspaper dated 4.8.2007 and the final merit list when prepared by the respondents but subsequently new direction letter no.6366 dated 27.11.2007 issued by the State Govt. Patna as regards the appointment which came much later i.e. more than 3 months from the date of the publication of the

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original advertisement and of which the petitioners/
appellants had no knowledge till the publication
of final merit list and in the guideline has been
changed by the State Govt.

2. That the appellant has earlier not moved for
grant of any L.P.A. before this Hon'ble Court against
the present impugned judgment in the instant case.

3. That the ^{Hon'ble} ~~xxxx~~ Single Bench was pleased
to heard this case and dismissed the writ application
filed by the petitioner before the Hon'ble High Court
Patna by which the Hon'ble Single Bench was pleased
to dismissed the writ petition.

04. That the single Judge without going through
the entire material of the case and has been dismissed
the writ application while committed serious error
in the impugned order dated 11.5.2012.

7.

Being aggrieved and dissatisfied with the impugned order dated 11.5.2012 passed in CWJC no. 11926/2009 passed by Hon'ble Mr. Justice Mihir Kumar Jha by which the appellant dissatisfied with the impugned order and the appellant seeks to preferred this L.P.A.on amongst the following

GROUNDS

- (I) For that the order under appeal has been based on misappropriation of the relevant facts and upon committed error in the earlier order of this Hon'ble court dated 11.5.2012 passed in C.W.J.C.No. 11926/2009.
- (II) For that in the facts and circumstances of this case, the proper order should have been passed on the basis of the writ petition the petitioners are the bonafide

8.

candidates they were apply for the post of Ansh Kalin Sikshak in Kasturba Gandhi Balika Vidyalaya in Madhepura district in different blocks while the Advertisement dated 4.8.2007 has been published in the Dainik Jagran Newspaper and the appellant they were apply also appear in the written test. examination while the interview was held on 27.11.2007 and 5.7.2008 by which the name of those appellant were mention in the selected penal (Final gradation list) but the respondent has not been appointed these candidates and after some time the change of createria and qualification for such post of part time teacher the additional qualification in Artsand Rk Crafts ,Phpsical Education ,Music and Vocational trend would

9.

any be eligible for appointment on the post of ~~these~~ Ansh Kalin Shikshak, but in the original advertisement dated 4.8.2007 there was no such additional qualification but subsequently 26.12.2008 while relying upon the direction issued by the State Officer, Patna, through letter no.6360 dated 27.11.2007, denied the appointment of successful candidates ,including these appellant in the change of policy decision therefore the present impugned order passed by this Hon'ble Court it is fit to be set aside.

III. For that in view of the matter in exercise of its jurisdiction the Hon'ble Single Judge should not have passed an order which has the effect of rendering the entire

10.

order passed in favour of the state Govt. on the basis of the change policy decision while the successful candidates these appellants they were awaiting for appointment after the Final Gradation (Merit list) published by the respondents., by which the appellant has been effected with the retrospective order, but the law provided that only the prospective order will be effected.

IV. For that in view of the matter the Hon'ble Single Judge has passed an order and dismissed the writ application therefore the aforesaid order it appears that the appropriate rights of appellant for the purpose of interest of justice the present L.P.A. is being file by the appellant.

11.

V. For that ~~the~~ in any view of the matter the order under appeal is misconceived errors seeks to preferred appropriate for natural justice and hence the impugned order dt. 1,5.2012 passed in CWJC No. 11926/2009 it is fit to be set aside.

= It is, therefore, prayed that your Lordship may graciously be pleased to admit this appeal ,issue notice to the respondents and after hearing the parties who may chose to appear be pleased to allow the appeal and set aside the impugned judgment and order dt.11.5.2012 passed in CWJC No.11926 of 2009 and further be pleased to allow the writ application.

12.

And/or

Pass such other order or orders

as Your Lordships may deem

fit and proper to the facts and

circumstances of this case.

And for this the appellants shall ever pray.

13.

A F F I D A V I T

I, Swati Priya aged about 26 years, d/o Sri Dinesh Prasad Gupta, resident of village-Udakishunganj, P.S. Udakishunganj, District-Madhepura, do hereby solemnly affirm and state as follows:-

1. That I am appellant no.1 and am well acquainted with the facts and circumstances of this case.
2. That the contents of this appeal have been read over and explained to me in Hindi which is understood and they are true to my knowledge and belief.
3. That ~~the~~ ~~annexu~~

14.

CERTIFICATE

This is to certify that the ground set forth above are good grounds for Letters Patent Appeal.

My instruction is that the matter out of which appeal has arisen not come before this Hon'ble court against the impugned order.

I further certify that no notice either to Attorney General of India or to the Advocate General of Bihar is necessary to be served Under Order XXVII A Rule 1- C.P.C.

Advocate.

4/ 11-05-2012

Having heard counsel for the parties

as with regard to the following relief:-

"For issuance of an appropriate direction, order or writ in the nature of Mandamus commanding the Respondent authorities to appoint the petitioners on the post of Ansh Kalin Shikshak in Kasturba Gandhi Balika Vidyalaya of Madhepura district situated in its different blocks strictly in consonance with the qualifications and provisions as laid down in the original advertisement published in Dainik Jagaran dated 4.8.07 and the final merit list as prepared by the respondents themselves.

For further commanding the above Respondents not to proceed with the new direction (letter no. 6366 dated 27.11.2007, issued by the State office, Patna) as regards the appointment, which came much later i.e. more than three months from the date of the publication of the original advertisement and of which the petitioners had no knowledge till the publication of the final merit list."

this Court is of the considered opinion that merely because the petitioners were applicant to an advertisement dated 04.08.2007 and had also appeared in the written test followed by interview held on 27.11.2007 and 05.07.2008 which led to inclusion of their name in selected panel, they will have no right of being appointed

if the Authorities of the Bihar Education Project while considering for one year appointment on the post of part time teacher have realized the change of criteria and the qualification for such post of part time teacher. In this context, it has to be taken into account that under Bihar Education Project the power of appointment of teachers in Kasturba Gandhi Girls Balika Vidyalaya, in Sarb Shiksha Abhiyan, it is the district Committee headed by the Collector which had to take a decision based on the policies and directions issued by the head office of Bihar Education Project. It is not in doubt, that on 04.08.2007 when the advertisement for different posts including the part time post in Kasturba Gandhi Girls Balika Vidyalaya for appointment of part time teacher on one year contract had been issued, the minimum prescribed qualification was Intermediate with preference to the trained teachers. However, such part time trained teachers who were the considered particularly in the block where the School was situated had been found to be not fulfilling the object and accordingly on

27.11.2008, it was decided that such part time trained teacher should be engaged having expertise in the field of Arts, Craft, Physical Education, Music and Vocational training. There can be no doubt that the employer is the best Authority to lay down the qualification and if before appointment of the petitioner the criteria was changed, the petitioner cannot claim any right to be appointed only because they had undergone the process of selection and their names had also been included in the seniority list. Reference in this connection may usefully be made to the judgment of the Apex Court in the case of *The State of Haryana vs Subash Chander Marwaha and others, 1997 (1) SCC 151*.

The next limb of submission of learned counsel for the petitioner that since the vacancies on the post of part time teachers have still been in existence and therefore, advertisement has not been issued as yet, a direction can be given for appointment of the petitioners on the basis of the earlier advertisement, has to be only noted for its being rejected. The Apex Court in the case

of Subash Chandra (supra) in fact has laid down that mere existence of vacancy would not confer even an empanelled candidate to be appointed as a matter of right. It is true that in such a situation, this Court exercising power of judicial review will have to find out as to whether there was any justification in the explanation of the respondents for not making appointment of the petitioners. and to that extent the law stands settled in the case of *K. Jayamohan vs The State of Kerala and Anr*, reported in 1997(5) SCC 170.

In this background, when this Court would found that there was a special claim for appointment of part time teachers by confining candidature of particular Block and the Authorities at the directorate level from amongst the specified field of candidates of Art, Craft, Physical Education, Medicine and Vocational Training to be suitable for such job of part time teacher and District Committee accordingly falling in lien with the decision of the Directorate had decided to scrap the panel with a decision to go for a fresh

advertisement, there would be sufficient reason for this Court to hold that the said decision was wholly justified in view of the requirement of the employer of appointing qualified persons. Merely, because the name of the petitioner was included in the panel after undergoing selection cannot be a ground for issuing writ of mandamus, if the employer would find the services of the petitioner to be of no avail on the post of part time teacher.

In this background, this Court would find no merit in the claim of the petitioners and their prayer seeking direction for their appointment is hereby rejected.

Since, the respondents have themselves indicated in their counter affidavit that a decision was taken for holding their selection after issuance of advertisement and the clause of right to cancel the advertisement on any ground was reserved with Bihar Shiksha Pariyojana, Madhepura, was included. This court taking into account the submission of learned counsel for the petitioners that some of the petitioners

have crossed the maximum age limit for employment on the post of part time teacher would indicate that as and when the post of part time teacher as per the revised guideline and qualification is advertised in the district of Madhepura, the petitioners would file an application for the said post and if they would possess the relevant qualification, would be allowed condonation of age. Such relaxation will be given only to those petitioners who have approached this Court with the aforementioned grievance.

Subject to the aforementioned observations and direction, this application is dismissed.

Ranjan

Self

(Mihir Kumar Jha, J)

CERTIFIED TO BE TRUE PHOTO COPY

Ranjan
16.7.2012
For Joint Registrar (J)
Patna High Court
Established U/S 76 Art 1 of 1950

Rakesh Kumar
Ty

16/7/2012

24/8/2012