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20.12.2013

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(LETTERS PATENT APPELLATE JURISDICTION)**

L.P.A. No. OF 2013

Chhote Lal Yadav**APPELLANT.**

Versus

The State of Bihar & others **RESPONDENTS.**

SYNOPSIS OF THE CASE

This Letters Patent Appeal is against the part of the order dated 18.12.2012 passed in CWJC No. 12670 of 2009 by the Hon'ble Mr. Justice Dr. Ravi Ranjan (J) by which the Hon'ble Court has dismissed writ petition with respect to the petitioner which was filed for quashing the order impugned passed by Appellate Authority Muzaffarpur and reinstatement in service.

The appellant and one other had filed the writ application for quashing the order dated 01.08.2009 with respect to the petitioners mentioned in paragraph no.16 of the said order,

Facts of the Case :

2006 : The advertisement was made for the purpose of appointment to the post of Panchayat Teacher in the Gram Panchayat Raj, Unsar.

26.12.2006 : Reflecting the name of the petitioner at the top of merit list among backward male which was prepared on 26.12.2006,

30.12.2006 : The appellant was appointed vide common letter no. 57 dated 30.12.2006 , the appellant was directed to submit his joining in Primary School, Borbara .

15.10.2008: Complaints were made alleging therein that the appointment made in 2006 in the Gram Panchayat Raj, Unsar was not proper, taking into account the B.D.O. Bochahan

(II)

(respondent no.6) conducted an enquiry and submitted the report , the said report it has been stated that since Nagvanti Kumari has obtained 73.5% marks, therefore the appointment of this appellant in backward category is not proper and the receipt number of the appellant is "31K' it creates a doubt, in the further enquiry it has come out that Nagvanti Kumari had produced a fake and fabricated certificate as it is mentioned in the impugned order itself.

2.3.2009 : Again the B. D .O., Bochahan vide letter no. 219 dated 02.03.2009 made inquiry, in that report , non appointment of Nagwanti Devi was correct decision because after due enquiry it has come out in light that her certificate was fake though in that letter nothing has been said against appellant.

15.7.2009 : The appellant submitted representation before the appellate authority praying that he was bonafide candidates.

23.7.2009 : The Block Education Extension Officer, Bochahan also submitted his report before the Block Development Officer, Bochahan , in his report he mentioned that "K" has been added before some names it may be doubtful but cannot be illegal and only on this basis the appointment cannot be declared illegal.

1.8.2009 The Appellate Authority has declared the service of appellant illegal only on the reason that "K" was added before the receipt of the appellant, the appellant has been terminated from his service,

18.12.2012 : The Hon'ble Court has dismissed writ petition with respect to the petitioner which was filed for quashing the order impugned passed by Appellate Authority Muzaffarpur and reinstatement in service.

Hence, the present L.P.A.

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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 CWJC No. 12670 of 2009]

disposed of vide order dated 18.12.2012

Chhote Lal Yadav

Versus

.....APPELLANT.

The State of Bihar & others.

..... RESPONDENTS.

SUBJECT - L.P.A.

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& certifiante

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2.

Impugned judgment & order

3.

VAKALATNAMA

IN THE HIGH COURT OF JUDICATURE AT PATNA
(LETTERS PATENT APPELLATE JURISDICTION)
L.P.A. No. OF 2013

[Arising out of CWJC No. 12670 of 2009]

disposed of vide order dated 18.12.2012.

In the matter of an appeal under
clause-X of Letters Patent
Appeal under Patna High Court
Rules;

And

In the matter of :

Chhote Lal Yadav, Son of Darshan Rai, resident of village- Mahpur,
P.S.- Bochahan, District- Muzaffarpur.

.....APPELLANT.

VERSUS

1. The State of Bihar.

Filed through -
Adh
6/02/2013
ADR = 3026.

(2)

2. The Director Primary Education , Govt. of Bihar, Patna.
3. The District Magistrate, Muzaffarpur.
4. The Member, District Teacher Employment Appellate Authority, Muzaffarpur.
5. The District Superintendent of Education, Muzaffarpur.
6. The Block Development Officer, Bochahan.
7. The Block Education Extention Officer, Bochahan, District- Muzaffarpur.
8. The Panchayat Secretary, Gram Paqncayat Raj, Unsar, Block -Bochahan, District- Muzaffarpur.
9. The Mukhiya, Gram Paqncayat Raj, Unsar, Block -Bochahan, District- Muzaffarpur.

.....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 appellant above named.

Most Respectfully Sheweth :

1. That, this Letters Patent Appeal is against the part of the order dated 18.12.2012 passed in CWJC No. 12670 of 2009 by the Hon'ble Mr. Justice Dr. Ravi Ranjan (J) by which the Hon'ble Court has dismissed writ petition with respect to the petitioner which was filed for quashing the order impugned passed by Appellate Authority Muzaffarpur and reinstatement in service.
2. That the appellant has not filed any memo of appeal against the order dated 18.12.2012 passed in CWJC no. 12670 of 2009.
3. That, the petitioner and one other had filed the writ application for following reliefs :
 - (i) For issuance of an appropriate writ in the nature of Certiorari for quashing the order dated 01.08.2009 with respect to the petitioners mentioned in paragraph no.16 of the said order, whereby and whereunder the Appellate Authority has declared the service of petitioners illegal only on the reason that "K" was added before the receipt of the petitioners which creates a doubt rather " K" was added In the receipt by the Panchayat Secretary for the

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petitioners could not be punished.

(ii) For issuance of an appropriate writ in the nature of Mandamus, commanding and directing the Respondent Authorities to reinstate the service of the petitioners and a direction to the concerned Authorities not to disturb the petitioners in smooth discharging of their duties.

4. That, the advertisement was made for the purpose of appointment to the post of Panchayat Teacher in the Gram Panchayat Raj, Unsar comes under the District of Muzaffarpur in the year 2006. Pursuant to the advertisement the Appellant and others applied for the appointment to the post of Panchayat Teacher, thereafter merit list (Annexure-9 of the writ application) was prepared in which the name of the Appellant is reflecting at serial no.6.
5. That, it is stated that the vacant posts were 13, out of that one post was reserved for backward category and one was for backward female, the appellant is belonging from backward category, reflecting his name at the top of merit list among backward male which was prepared on

26.12.2006, thereafter the last counseling was made on 30-12-2006 in that counselling chart the respondent authorities mentioned '31K' as receipt member for appellant.

6. That, it is stated that thereafter the appointment letters were issued in favour of appellant and other selected candidates on 30.12.2006 the appellant was appointed vide common letter no. 57 dated 30.12.2006 (Annexure-2 of the writ application), the appellant was directed to submit his joining in Primary School, Borbara .
7. That, it is stated that complaints were made alleging therein that the appointment made in 2006 in the Gram Panchayat Raj, Unsar was not proper, taking into account the B.D.O. Bochahan (respondent no.6) conducted an enquiry and submitted the same before the District Superintendent of Education, Muzaffarpur (respondent no.5) vide contained in memo no. 1788 dated 15.10.2008 (Annexure-3 of the writ application).
8. That, in the said report it has been stated that since Nagvantl Kumari has obtained 73.5% marks, therefore the appointment of this appellant in backward category is not

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proper and the receipt number of the appellant is "31K' it creates a doubt in the further enquiry it has come out that Nagvanti Kumari had produced a fake and fabricated certificate as it is mentioned in the impugned order itself.

9. That, so far doubt is concerned, it is a very vague question for this it is submitted that vide letter No. 1114 dated 24.7.2006 (Annexure-4 of the writ application) issued under the signature of Principal Secretary, Human Resources Development Department, Govt. of Bihar, Patna by which Panchayat Secretary has responsibility to accept the application of the applicants make registration to prepare merit list having followed the procedure since the appellant submitted application before the said authority, it is up to the respondent that in which manner he accepts the application of the appellant.

10. That, it is pertinent to state here that as per clause 9 (Kh) of the Directive 2006 from the following members, a committee can be constituted (i) Mukhiya of the Gram Panchayat (ii) One Member from Education Samiti of the Gram Panchayat (iii) One member of Panchayat Samiti

(7)

(iv) Headmaster of nearest Middle School (v) Panchayat Secretary of the Committee was constituted by the said members and under their direction/decision penal was prepared, counseling was made even the entire process was done but the said Committee never raised a question of doubt particularly on the issue of 31K.

11. That again the block Development Officer, Bochahan vide letter no. 219 dated 02.03.2009 (Annexure-5 of the writ application) made inquiry pursuant to the letter no. 7661 dated 29.12.2008 and 1788 dated 15.10.2008 issued under the signature of the Respondent no.-5, in that report it has been made clear that non appointment of Nagwanti Devi was correct decision because after due enquiry it has come out in light that her certificate was fake though in that letter nothing has been said against appellant but it is mentioned In the enquiry report appointment of the appellant was considerable.

12. That, the Block Education Extension Officer, Bochahan also submitted his report before the Block Development Officer, Bochahan pursuant to letter no. 1137 dated 21.07.2009 in

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his report he mentioned that "K" has been added before some names it may be doubtful but cannot be illegal and only on this basis the appointment cannot be declared illegal this effect of letter was issued vide letter no. 397 dated 23.07.2009 (Annexure-6 of the writ application).

13. That, the appellant submitted representation before the appellate authority making it clear that he was bonafide candidates, therefore, he was appointed, the representation was submitted on 15.07.2009 (Annexure-7 of the writ application).
14. That, it is painful to state here that the appellate authority having received the enquiry reports of the concerned Authorities pass an order vide memo no. 1491 dated 01.08.2009 (Annexure-8 of the writ application) by which the appellant has been terminated from his service.
15. That, without taking into account of the fact that it was total responsibility of Panchayat Secretary, whether he added "K" or nothing before the receipt number for that the appellant cannot victimized all the aforesaid reports were made available for the Appellate Authority to pass final order but

(9)

at the time of passing the final order the Appellate Authority failed to appreciate these things :

- (a) The Block Education Extension Officer, Bochahan had reported that addition of "K" before receipt number may be doubtful but not illegal vide letter no. 397 dated 23.07.2009.
- (b) Vide memo no. 1788 dated 15.10.2008 the Block Development Officer alleged that the appointment of the appellant was illegal because one Nagvanti Kumari was not appointed having higher marks, but when it has come out that certificate of Nagvanti Kumari was fake then in the second report vide letter No. 219 dated 02.03.2009 did not say anything against the appellant rather felt considerable.
- (c) That, except the reason that "K" was added before the receipt of the appellant, no other irregularities have come out in light.

16. That, it is submitted that the appellate authority has also mentioned regarding resignation by the appellant but the fact is that when he was returning form Muzaffarpur town,

the then Panchayat Secretary forcibly obtained signature on resignation paper with help of five unknown persons against said action the appellant submitted representation to the Block Development officer with request to reject such letter.

17. That, having considered the representation the block Development Officer, Bochahan vide Memo No. 2108 dated 27.11.2008 (Annexure-10 of the writ application) rejected the said registration.

18. That, the appellate authority in the impugned order mentioned the letter no. 1788 dted 15.10.2008 (Annexure-3 of the writ application) saying that by this letter the respondent no.6 has cancelled the appointment of the appellant and declared the appointment of the appellant as illegal, it is a wrong interperatation of the said letter shows the oblique motive of the then respondent no.8 who placed before the appellate authority and the respondent who did not bother to go through the content of the said letter, rather by said letter the respondent no.6 remanded the matter to the respondent no.5 and requested for taking proper action with respect to payment of working period and providing

allotment for that and action for cancellation of appointment.

19. That, after issuance of Annexure-3 of the writ application , the appellant submitted representation before the respondent no.6 who stayed the operation of Annexure-3, till final order of Appellate Authority vide Memo No. 2156 dated 03.12.2008 (Annexure-11 of the writ application) and thereafter the appellant continued.
20. That from the perusal of the letter dated 18.4.12 which has been produced during the hearing of the writ application the District Magistrate, Muzaffarpur has also admitted that out of 13 vacant posts one post was reserved for backward category and one for backward female category.
21. That, the merit-list which has been produced by the respondent State it is also clear that the appellant is the highest marks, fetcher in the category of backward male class, so to say that, his appointment was made against reserved post of female is out of comprehension.
22. That, out of 13, six post were reserved for the female and 7 for the male candidates then there was no question for appointment of the appellant on reserved category of B.C. (female).

23. That, the comments of the respondent no.3 giving the reference of Annexure-3 of the writ application is also incorrect because no such report has come out, but the authorities have admitted that one post was reserved for male and female backward candidates, there should be rationally behind the finding but the letter dated 18.4.2012 no such reasonable facts have come out on surface, so far statement given regarding deletion of the name of one Pramila Kumari the appellant has nothing to do with that because he has no role to play in the appointment process and Pramila Kumari never raised objection before any of the forum from 2006 till date.

Being aggrieved and dissatisfied with the order dated 18.12.2012 passed in CWJC No. 12670 of 2009 by Hon'ble Dr. Ravi Ranjan (J) the appellant begs to prefer the appeal on amongst others the following

Grounds :

- (I) For that, the Hon'ble Single Judge did not appreciate that as per reservation roaster one post was reserved for backward category and one for backward female category.

- (II) For that, the Hon'ble Single Judge did not appreciate that the appellant was appointed against the post which was reserved for backward candidate.
- (III) For that, the Hon'ble Single Judge did not appreciate that among the backward male candidate the appellant had highest marks.
- (IV) For that, the Hon'ble Single Judge did not appreciate that the appellant had no role in appointment process.
- (V) For that, the Hon'ble Single Judge did not appreciate that no one had ever challenged the candidature of the appellant claiming that he/she had higher marks than the appellant.
- (VI) For that, appellant had no role in appointment process, therefore he has nothing to do with the struck off the name of one Pramila Kumari.
- (VII) For that, the Hon'ble Single Judge did not appreciate that mere on doubt the appellant is being ousted.
- (VIII) For that, the Hon'ble Single Judge did not appreciate that in the subsequent enquiry report the B.D.O. has observed that the appointment of the appellant is considerable.
- (IX) For that, the Hon'ble Single Judge did not appreciate that as it is held by the Hon'ble High Court that either regarding

(14)

reservation roaster or irregularities in process employee can not be punished.

It is, therefore, most respectfully prayed that your Lordships would graciously be pleased to admit this appeal, issue notice to the respondents and call for the records of the case and after hearing the parties, allow this appeal and partly set aside the impugned judgment and order only with respect to the appellant under appeal and be pleased to quash the order dated 01.08.2009 with respect to the appellant mentioned in paragraph no.16 of the said order, and further comand the Respondent Authorities to reinstate the service of the Appellant .

And/or

Be pleased to pass such other order/ orders or direction as Your Lordships may deem just and proper in the facts and circumstances of the case.

And for this, the appellant shall ever pray.

AFFIDAVIT

I, Chhote Lal Yadav, aged about 30 years, Son of Darshan Rai, resident of village- Mahpur, P.S.- Bochahan, District- Muzaffarpur do hereby solemnly affirm and state as follows :

1. That I am appellant in the present case and as such am fully conversant with the facts and circumstances of the instant case.
2. That I have myself gone through the the contents of this Memo of Appeal which I fully understood the same. The statements made in pragraph nos.....
.....are true to my knowledge and those made in paragraph nos.
.....are true to my information derived from the relevant records of the case or the sources mentioned therein and rest are mere submissions before this Hon'ble Court.
3. That the Annexures are true/x'erox copies of their respective originals.

CERTIFICATE

Certify that the grounds set forth above are good grounds for the Letters Patent Appeal.

Further Certify that no notice either to the Attorney General of India or Advocate General of Bihar is necessary to be served under the provisions of Order 27A, Rule-1 of the Code of Civil procedure.

Further Certify that the matter out of which the present appeal arises has never come before this Hon'ble Court at any stage previously.

Advocate for Appellant.

IN THE HIGH COURT OF JUDICATURE AT PATNA
 Civil Writ Jurisdiction Case No.12670 of 2009

1. Chhotelal Yadav, son of Darshan Rai, Resident of village Mahpur, P.S. Bochahan, District Muzaffarpur.
 2. Chandra Shekhar Rajak, son of Makeswar Rajak, Resident of village Mahpur, P.S. Bochahan, District Muzaffarpur.
- Petitioners

Versus

1. The State of Bihar.
 2. The Director, Primary Education, Government of Bihar, Patna.
 3. The District Magistrate, Muzaffarpur.
 4. The Member, District Teacher Employment, Appellate Authority, Muzaffarpur.
 5. The District Superintendent of Education, Muzaffarpur.
 6. The Block Development Officer, Bochahan, District Muzaffarpur.
 7. The Block Education Extension Officer, Bochahan, District Muzaffarpur.
 8. The Panchayat Secretary, Gram Panchayat Raj, Unsar, Block-Bochahan, District Muzaffarpur.
 9. Mukhiya, Gram Panchayat Raj, Unsar, Block-Bochahan, District Muzaffarpur.
- Respondents

Appearance :
 For the Petitioners : Mr. Chittaranjan Sinha, Senior Advocate
 Mr. Shashi Bhushan Singh, Advocate
 For the State : Mr. Dilip Kumar, A.C. to G.A.2

CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
ORAL ORDER

16 18-12-2012 I have heard the parties and perused the records of the case.
 This writ application has been filed for quashing the order dated 1.8.2009 as contained in Annexure-8 by which the Appellate Authority has declared the services of the petitioners illegal and has cancelled the appointment.

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 REGISTRATION EXCISE & PROVISION FOR GOVT.
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On 27.2.2012, this Court has directed the Collector of the District to file affidavit answering the queries raised in the order. The Collector of the District has held enquiry and filed show cause appending therewith his opinion as contained in Annexure-D. In view of Annexure-D has been passed during the pendency of this application taking stand against the petitioner no.1 that his appointment has been found to be illegal, the petitioner has filed I.A. No.5464 of 2012 seeking leave to challenge the report dated 18.4.2012 of the Collector, Muzaffarpur. I have heard the petitioners on that issue also and have permitted them to assail the aforesaid report also at the time of hearing.

It has been submitted on behalf of the petitioners that their appointments have been held to be invalid only on the ground that '(Ka)' has been inserted against their sl.nos. in the concerned register. On

Authorization No. 2675

COURT FEE

GOVT OF BIHAR
REGISTRATION, EXCISE & PROMOTION DEPT.
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presumption that the same has been added later on allowing the petitioner to illegally participate in selection process, their appointments along with others have been cancelled.

Learned counsel for the petitioners has submitted that the petitioners had applied for appointment and had appeared in counselling and were, thereafter selected and had joined as Panchayat Teacher. It has been submitted that except suspicion there is nothing against the petitioners as no other candidate having higher marks in the concerned category, who was in the merit list, has been left out. Petitioner no.1 has been appointed on the post reserved for the backward caste category while petitioner no.2 has been appointed under Scheduled Caste category.

Learned counsel has drawn attention of this Court towards Annexure-5, which is the report submitted by the Block

Development Officer, Bochahan to demonstrate that, so far one Nagvanti Kumari is concerned who had applied under Backward Caste category (female), her mark sheet was found to be forged and, thus, her appointment was illegal. However, the Appellate Tribunal has found the petitioner no.1 to have been appointed on the post reserved for a female candidate.

Counter affidavit has not been filed on behalf of the respondents. However, a detailed show cause has been filed on behalf of the respondent no.3, the District Magistrate-cum-Collector, Muzaffarpur dealing with the matter in full detail. It appears that after the orders passed on earlier occasion by this Court directing the District Magistrate-cum-Collector to file counter affidavit, some sort of enquiry was held by him and a report has been appended with the show cause as Annexure-D. The respondent no.3 has pointed out the

irregularity committed in the appointment by the Appointment Committee. It has been pointed out that from the register containing application form submitted about 1252 candidates, against four persons "(Ka) has been inserted against the sl.nos. for 17(ka) Chandra Shekhar Rajak (petitioner no.2), 31(ka) Chhotelal Yadav (petitioner no.1), 58(ka) Lalan Kumar Mishra and 98(ka) Ratnakar Mishra. It prima facie appear that they had not filed application forms within time and subsequently, their application forms have been received by giving sl.nos. just below the sl.nos.17, 25, 31, 58 and 98 by adding (ka). Out of the aforesaid five candidates, four have been appointed. That apart, it has also been stated that Chhotelal Yadav has been appointed against the post reserved for female in the Backward Caste category in view of the fact that Nagvanti Kumari was having 73.5% marks was on the top of the list and should have been

appointed against Backward Caste category. Thereafter, only post that remained vacant was for female candidate in the aforesaid category.

In above view of the matter, the petitioner no.1 Chhotelal Yadav could not have been appointed but, for adjusting him, Nagvanti Kumari has been shown to have been appointed as Backward Caste female category. That apart, the name of one Pramila Kumari, who was having marks of 61.8%, was illegally cut and erased in the concerned verification register only to adjust the aforesaid Chhotelal Yadav. Though learned counsel for the petitioners has challenged this report, but he has not been able to show as to under what circumstances the name of Pramila Kumari was cut off or erased from the verification register and also as to how he could have been appointed on the post earmarked for female candidate under Backward Caste category.

The earlier report submitted by the Block Development Officer as contained in Annexure-3 also reveals the aforesaid fact. However, so far the petitioner no.2 Chandra Shekhar Rajak is concerned, it does not appear that, except the fact that (ka) has also been added against his sl.no., any other irregularity has either been pointed out or has been considered in the impugned order. The report of the District Magistrate is also silent about him nothing has been pointed out regarding any irregularity other than the aforesaid.

Accordingly, the impugned order dated 1.8.2009 stands quashed so far the petitioner no.2 is concerned. However, the writ petition stands dismissed so far the petitioner no.1 is concerned.

As a result, this writ application is allowed in part in the aforesaid terms.

Sd/-
(Dr. Ravi Ranjan, J)

N.H./

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For Joint Registrar (J) 09/01/13
Patna High Court
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