

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

L. P. A. No. _____ / of 2013

Bandana Kumari Appellant.

VERSUS

The State of Bihar and others Respondents.

Sub- L.P.A.

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IN THE HIGH COURT OF JUDICATURE AT PATNA
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L. P. A. NO. _____ / OF 2013

Bandana Kumari Appellant.

VERSUS

The State of Bihar and others Respondents.

S Y N O P S I S

This Memorandum of Appeal is being filed against the order dated 18.03.2013 passed in C.W.J.C. No. 2510 of 2010 by Hon'ble Mr. Justice Ajay Kumar Tripathi on the ground that the Hon'ble Single Judge at one hand appreciated and accepted the contentions and the documents attached with the I.A. No. 3360 of 2010 filed by the Intervener/Appellant even on the face value that illegalities in course of appointment of the writ petitioner has committed ignoring the high marks of the intervener/appellant but has set aside the order passed by S.D.O., Madhepura wherein on 27.01.2010 he has made the recommendation to cancel the illegal appointment of the writ petitioner Dejee Kumari but unfortunately the Hon'ble Single Judge has not only quashed

the said order of the S.D.O., Madhepura but the Hon'ble Single Judge has allowed to perpetuate illegality by allowing the writ petition to continue on the post for which neither the writ petitioner was entitled nor any law of the land allow such type of illegalities to sustain. However the order passed by the Single Judge appears to be perverse and the same is required to rectify by the Hon'ble Appellate Court.

2004	The intervener/appellant has got 541 marks in the Intermediate Examination and passed with First Division whereas the writ petitioner has got only 502 marks in the Intermediate Examination and passed with Second Division and writ petitioner is also untrained. But unfortunately the Selection Committee has over looked the same and appointed the writ petitioner as Panchayat Teacher (Annexure-A to the Intervener Petition).
03.08.2006	The petitioner has submitted an application for appointment on 03.08.2006 within the stipulated period and the acknowledgement

	receipt was granted vide Receipt No. 273 (Annexure-B to the Intervener Petition).
15.12.2009	From perusal of Annexure-3 to the main writ application is clear that the appointment letter of the writ petitioner speaks that she is untrained but the Selection Register shows that she was a trained teacher who has got 67.87% marks. Even B.D.O. has also found the allegation of the intervener/appellant to be true which may be seen from the letter no. 566 dated 15.12.2009 (Annexure-C to the Intervener Petition).
	From perusal of order contained in Annexure-10 to the writ application there is no any ambiguity or infirmity appears but the writ petitioner by suppressing the facts s narrated above has got the order stayed as a result, the case of the intervener/appellant remained pending. Even the fraud committed in course appointment of the writ petitioner has been

	reported in the daily News-paper which is self explanatory (Annexure-D to the Intervener Petition).
2010	The Respondent No.10 filed C.W.J.C. No. 2510 of 2010.
18.03.2013 Impugned Order.	C.W.J.C. 2510 of 2010 has been heard and allowed the aforesaid writ application. Hence this Memorandum of Appeal is being filed against the order dated 18.03.2013.

IN THE HIGH COURT OF JUDICATURE AT PATNA

(LETTERS PATENT APPELLATE JURISDICTION)

L. P. A. No. _____/of 2013

(Arising out of order dated 18.03.2013 of Hon'ble Mr. Justice Ajay Kumar Tripathi passed in C.W.J.C. No. 2510 of 2010)

In the matter of a
Memorandum of Appeal
Under Clause 10 of Letters
Patent Appeal of High
Court Rules.

AND

In the matter of

Bandana Kumari daughter of Sudarshan Prasad Yadav,
resident of Village + Post Office-Jorgama, Police Station-

Murliganj, District-Madhepura Intervener
in C.W.J.C. No. 2510 of 2010 Appellant.

VERSUS

1. The State of Bihar
2. The Principal Secretary, Primary Secondary and Adult Education, Bihar, Patna.
3. The District Education Employment Appellate authority, Madhepura, District-Madhepura.
4. The Sub-Divisional Officer, Madhepura, District-Madhepura.
5. The District Superintendant of Education-cum-District Programme Convener, Madhepura.
6. The Block Education Extension Officer, Murliganj, Madhepura.
7. The Block Development Officer, Murliganj, District-Madhepura.
8. The Mukhiya of Gram Panchayat Jorgama Block-Murliganj, District-Madhepura.

9. The Secretary of Gram Panchayat-cum-Gram Sevak,
Jorgama, Block-Murliganj, District-Madhepura
.....Respondents in C.W.J.C. No. 2510 of 2010.

10. Dejee Kumari, daughter of Shivnandan Yadav,
resident of Village-Jorgama, ward No.1, Police Station-
Murliganj, District-Madhepura..... Petitioner in
C.W.J.C. No. 1510 of 2010 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.

MOST RESPECTFULLY SHEWETH :-

1. That this Memorandum of Appeal is being filed against
the order dated 18.03.2013 passed in C.W.J.C. No.
1510 of 2010 by Hon'ble Mr. Justice Ajay Kumar
Tripathi on the ground that the Hon'ble Single Judge at

one hand appreciated and accepted the contentions and the documents attached with the I.A. No. 3360 of 2010 filed by the Intervener/Appellant even on the face value that illegalities in course of appointment of the writ petitioner has committed ignoring the high marks of the intervener/appellant but has set aside the order passed by the S.D.O. Madhepura wherein on 27.01.2010 he has made the recommendation to cancel the illegal appointment of the writ petitioner Dejee Kumari but unfortunately the Hon'ble Single Judge has not only quashed the said order of the S.D.O. Madhepura but the Hon'ble Single Judge has allowed to perpetuate illegality by allowing the writ petition to continue on the post for which ~~matter~~^{neither} the writ petitioner was entitled nor any law of the land ~~any law of the land~~ allow such type of illegalities to sustain. However the order passed by the Single Judge appears to be perverse and the same is required to rectify by the Hon'ble Appellate Court.

2. That the appellant has not moved before this Hon'ble Court earlier in the matter.
3. That the writ petitioner/Private Respondent No.10 has filed C.W.J.C. No. 2510 of 2010 for issuance of writ of certiorari for quashing the Letter dated 27.01.2010 issued by the S.D.O., Madhepura wherein he has hold that the selection of the writ petitioner was illegal as she having the less marks to the intervener/appellant has been appointed under vested interest by the Appointing Unit showing the writ petitioner to be under training for which there is no provision under the law and the said proceeding has been initiated on the sole complaint of the appellant.
4. That it is relevant to submit here that since the appointment of the Respondent No.10 was made illegally by the concerned authority infringing the legal right of the appellant as such the writ petitioner/Respondent No.10 has not made the appellant as the party respondent and forthwith the appellant came to know about such fact of the

Respondent No.10 she filed an intervention petition bearing ~~ES~~ ^{I.A. No -} 3360 of 2010 annexing the relevant documents vide Annexure-A i.e. the copies of the intermediate of the appellant to show that she was having high marks to the private Respondent No.10, Annexure-B was the receipt of the application, Annexure-C was the relevant page of the selection register as well as the Letter No. 566 by which the B.E.O. Murliganj has clearly stated that the writ petitioner was appointed under trained female category whereas she was completely untrained and her appointment was completely illegal.

5. That the case was placed before the Hon'ble Single Judge on 15.03.2013 and the counsel for the intervener/appellant pressed the intervention application as mentioned above and drawn the attention of the Single Judge on the apparent illegalities in course of appointment and the Hon'ble Single Judge was going to affirm the order by quashing the appointment of writ petitioner/Respondent No.10 and

the counsel for the writ petitioner short adjournment for the ^{order} deny and the case was again taken up on 18.03.2013 and unfortunately the Hon'ble Single Judge ignoring all the document suggesting apparent illegalities in course of appointment of writ petitioner instead of quashing the appointment of the writ petitioner and affirming the order dated 27.01.2010 passed by the S.D.O. Madhepura has authenticated the illegal appointment of the writ petitioner by setting aside the order of the S.D.O. as referred the above adopting the hipper technical ground of jurisdictional error as a result of which the illegalities committed in course of appointment of the writ petitioner has virtually been allowed to perpetuate which is not sustainable in the eye of law.

Being aggrieved by and dissatisfied with judgment and order dated 18.03.2013 of Hon'ble Mr. Justice Ajay Kumar Tripathi passed in C.W.J.C. No. 2510 of 2010 the

appellant above named begs to prefer
this Memorandum of Appeal amongst
other the following

G R O U N D S,

- (i) For that the Hon'ble Single Judge has neither appreciated case of the Intervener/Appellant in its entirety nor has considered any of the documents which suggest about the perversity of the impugned order.
- (ii) For that the Hon'ble single Judge has over looked that the High Court may not be supposed to allow the illegalities if apparent on the face of records itself.
- (iii) For that the Hon'ble Single Judge has ignored that if any appointment being made by playing fraud or the appointment is illegal or ab-initio void that could be declared to be null-n-void at any stage of the proceeding.
- (iv) For that the Hon'ble Single Judge has not appreciated the writ petitioner was ^{initially} initiating

shown to be under trained category under female and ignored the claim of the intervener/appellant for appointment and when the proceeding initiated challenging her appointment then the respondents-authorities shown the Respondent No.10 under training for which there is no provision laid down for appointment after having less marks to the intervener/appellant.

- (v) For that the Hon'ble single Judge has completely over looked that if the respondent no.10 was untrained then her appointment could only to made if she was acquiring high marks to the intervener/appellant who was also one of the candidate in the said selection process and admittedly the appellant was acquiring high marks to the Respondent No.10 such a intervener/appellant has got 541 marks in the Intermediate Examination whereas the writ petitioner has got only 502 marks in the Intermediate Examination and she passed the

examination in Second Division, whereas the intervener/appellant has passed the said examination with First Division.

- (vi) For that the impugned order passed by the Hon'ble single Judge is bad in law and is against of the materials on the records.
- (vii) For that the Hon'ble Single Judge has failed to consider that the Private Respondent No.10 was not selected properly as the post of Panchayat Teacher.
- (viii) For that if the impugned order shall not be allowed to stand it shall come heavy loss and suffer to the appellant.

It is, therefore, prayed that your Lordships may graciously be pleased to admit this appeal, issued notice, call for the records and after hearing the parties be please to set aside the order dated 18.03.2013 of the Hon'ble Mr. Justice Ajay Kumar

~ 11 ~

Tripathi passed in C.W.J.C. No. 2510 of 2010 or pass such other order or orders which may be deemed fit and proper.

And for this, the petitioner shall ever pray.



AFFIDAVIT

I, Bandana Kumari, aged about 27 years, daughter of Sudarshan Prasad Yadav, resident of Village-+ P.O. Jorgama, P.S. Murliganj, District-Madhepura, do hereby solemnly affirm and state as follows:-

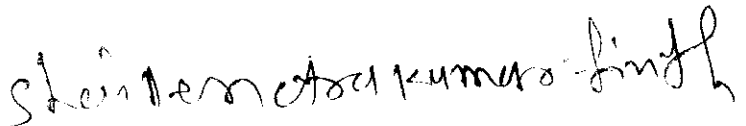
1. That I am appellant in the instant appeal and as such am well acquainted with the facts and circumstances of the case.
2. That the contents of this appeal have been read over and explained to me in Hindi which I fully understood and they are true to my knowledge and belief.

CERTIFICATE

Certified that the above grounds are good grounds for appeal and I shall support the same at the time of hearing.

Certified further that my instructions are that the matter out of which this appeal arises never came up earlier before this Hon'ble Court.

Certified further that no notice Under Order XXVIA Rule 1 of the Code of Civil Procedure is necessary to the Attorney General of India or the Advocate General of Bihar.



Advocate for the appellant

Dated: 18.04.2013

AOR No. 0855

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 2510 of 2010

Dejee Kumari D/O Shivnandan Yadav R/O Vill.- Jorgama, Ward No. 1, P.S.
Murliganj, Distt.- Madhepura

Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Primary, Secondary And Adult Education, Bihar, Patna
3. The District Education Employment Appellate Authority, Madhepura, Distt.- Madhepura
4. The Sub-Divisional Officer Madhepura, Distt.- Madhepura
5. District Superintendent Of Education-Cum-District Programme Convenor, Madhepura Distt.- Madhepura
6. Block Education Extension Officer, Murliganj, Distt.- Madhepura
7. Block Development Officer, Murliganj, Distt.- Madhepura
8. Mukhya Of The Grampanchayat Jorgama Block- Murliganj, Distt.- Madhepura
9. Secretary Of Grampanchayat-Cum-Gramsevak Jorgama, Block-Murliganj, Distt.- Madhepura

Respondent/s

Appearance :

For the Petitioner/s : Mr. Sharda Nand Mishra
Mr. Dhananjay Kumar Gupta
Mr. Alok Ranjan

For the Respondent/s : Mr. (Gp14)
Mr. Dinesh Prasad Verma
Mr. Shailendra Kumar Singh

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
ORAL ORDER

03. 18.03.2013

I. A. No. 3360 of 2010

The said Interlocutory Application is allowed.

Even if the contention of the private-respondent is accepted on the face value that appointment of the petitioner was for extraneous considerations, not on the basis of the marks or in the category of trained or under training, as has been simultaneously shown by the

GOVT. OF BIHAR
REGISTRATION, EXCISE & PROHIBITION DEPT.
PATNA SCORE PATNA
COURT FEE

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25 3 2013

Authorization No. 2673

INDIA

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3017 882 1245

appointing authority is correct, the fact stands that the Sub-divisional Magistrate, Madhepura has no business to entertain a complaint on behalf of the private-respordent and pass any order or direction. In the scheme of things, there has never been any rule, by virtue of which power was vested in a Sub-divisional Magistrate across the State of Bihar to decide such iis.

The order, contained in Annexure- 10, prima facie being beyond jurisdiction, is quashed. Writ Application is allowed.

sd/-

(Ajay Kumar Tripathi, J.)

SKM/-

CONFIRMED TO BE TRUE PHOTO COPY

14/04/2013

For Joint Registrar (J)
Patna High Court

Rakesh Kumar
TJ

01/04/2013

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