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17/6/13**IN THE HIGH COURT OF JUDICATURE AT PATNA****(Letter Patent Appellate Jurisdiction)****L.P.A. No. \_\_\_\_\_/Of 2013****(arising out of CWJC. No. 8051/10)****Bipendra Kumar .....Appellant / Petitioner****Vrs.****The State of Bihar & Ors.....Opp.Parties/Respondents.****Sub****SYNOPSIS****DATES****EVENTS**

May 2005

Advertisent published for Siksha Mitra.

30.7.2005

Petitioner appointed/Selected on the Post of

Siksha Mitra.

01.7.2006

Petitioner became the Panchayat Teacher as per

the Rule 2006.

11.12.2006

Private respondent filed a complaint against the

Selection of the appellant before the District Magistrate

Madhepura.

24.4.2007

District Supritendent of Education cancelled the

Selection of the Petitioner/Appellant.

07.10.2009 District Teacher Selection Appellate Authority  
Madhepura passed the order in favour of the Private respondent.

2010 Petitioner filed Writ before the Hon'ble High  
Court against the order dt. 07.10.2009.

10.5.2013 Hon'ble High Court allowed the Writ petition but  
rejected the I.A. Petition.

**HENCE THIS LETTER PETENT APPEAL.**

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**(Letter Patent Appellate Jurisdiction)**

**L.P.A. No. \_\_\_\_\_/Of 2013**

**(arising out of CWJC. No. 8051/10)**

**Bipendra Kumar .....Appellant / Petitioner**

**Vrs.**

**The State of Bihar & Ors.....Opp.Parties/Respondents.**

**Sub:**

**I N D E X**

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**V A K A L A T N A M A**

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

**L.P.A. No. \_\_\_\_\_ / Of 2013**

In the matter of an Memorendum  
of Appeal Under clause X  
Appendix of the Latter Patent  
Appeal .

And

In the matter of:

Bipendra Kumar Son of Sri Sajjan Prasad Yadav resident of  
Village- Gargapur, P.S. Murliganj, Distt-Madhepura.

....Appellant/Petitioner

Versus

1-The State of Bihar

2-District Magistrate, Madhepura.

3. District Superintendent of Education, Madhepura.
4. Block Development Officer, Madhepura.
5. Block Education Extension Officer, Madhepura.
6. Mukhiya Gram Panchayat Murliganj, Distt- Madhepura.
7. Panchayat Secretary Murliganj Panchayat, Distt- Madhepura.
8. Rajesh Kumar Son of Sri Upendra Prasad Yadav resident of Village- Ramm P.O. Gangapur, Block Murliganj, District- Madhepura.
9. Member, District Teacher Selection Appellate Authority, Madhepura. ....Opp. Parties/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 above named Appellants:

**MOST RESPECTFULLY SHEWETH:-**

1-That this Memorendum of Letter Patent Appeal is being filed by the Appellant against the part of order dt. 10.5.2013 passed by the Hon'ble Mr. Justice Ajay Kumar Tripathi in CWJC No. 8051/10 by which order the Hon'ble Single Judge had not interfered in the I.A. No. 3306 of 2013 filed by the petitioner with a prayer to also quash the order dt. 24.4.2007 passed by the District Supritendent of Education Cum District Programme Condinator vide memo no. 276 .By which order the respondents cancelled the Selection of the Petitioner from the Post of Panchayat Teacher. The Hon'ble Single Judge allowed the Writ petition.

A photo/typed copy of the order dt. 10.5.2013 is being annexed and marked as Annexure-1 to this petition.

2. That the fact of the case is that respondents published the advertisement for the Selection on the Post of Siksha Mitra in May 2005 in Gram Panchayat Gangapur Block Murliganj, Distt- Madhepura.

3. That as per the advertisement Appellant /Petitioner applied his application form for the Post of Panchayat Siksha Mitra.
4. That as per the procedure followed by the respondents petitioner/appellant selected for the Post of Panchayat Siksha Mitra in Gangapur Panchayat Block Murliganj Distt- Madhepura (vide Annex-2 of the Writ petition)
5. That the appellant/petitioner ~~found~~<sup>joined</sup> in the Primary School Ramani and worked continuously.
6. That as per the (Bihar Panchayat Primary Teacher Selection & Service condition) Rule 2006 all the Panchayat Siksha Mitra became the Panchayat Teachers<sup>on</sup> 01.7.2006 automatically.
7. That from 1.7.2006 <sup>petitioner</sup> automatically became the Panchayat Teacher.
8. That suddenly respondents District Supritendent of Education <sup>can</sup> Programme coordinator canceled the selection of the petitioner vide letter no. 270 dt. 24.4.2007 (I.A. petition)

A true photo copy of the letter no. 276 dt. 24.4.2002 is being annexed and marked as Annexure-2 to this petition.

9. That the reason mentioned in the letter no. 270 dt. 24.4.2007 is that Rajneesh Kumar (Private respondent) secured more Marks than the appellant.

10. That the Petitioner/Appellant submits that ~~certainly~~<sup>Certainly</sup> Rajneesh Kumar having more marks but he was not appeared before the Selection Committee (Counselling) and not given his consent for selection. Due to that Selection committee selected those candidates they are just below in merit list. (Annexure-1 of Writ petition.)

11. That the Post is still vacant and the private respondent joined in other service.

12. That the reason for delay in filing of Writ petition as well as I.A. petition is that the respondents authority always assured to the appellant that enquiry is going on and after the result of that enquiry your service has been reinstated.



13. That due to lack of proper knowledge appellant had not moved against this order of cancellation passed by the District Supritendent of Education.

14. That the petitioner/Appellant understanding was that the appellate authority decided the matter.

15. That at the time of filing of Writ application counsel for the Petitioner had not properly advised to challenged the letter no. 270 dt. 24.4.2007 along with order of the Teacher Selection appellate authority, Madhepura.

16. That due to wrong advise of the counsel for the appellant/petitioner he has filed the Writ petition against the order of appellate authority.

17. That the petitioner is a poor youth and living in the remote area.

18. That there is no intentional fault or latches on the part of the petitioner.

19. That the order passed by the District Supritendent of Education is completely out of Jurisdiction.

20. That as per the Bihar Panchayat Teacher(Selection and Service condition)Rule 2006 Block Development authority is the competent authority for the Panchayat teachers.
21. That the District Suprintendent of Education having no role in the Panchayat Teacher selection and cancellation of selection.
22. That at the time of cancellation of the Selection of the appellant District Teacher Selection Appellate authority was not established.
23. That as per Rule District Teacher Selection Appellate authority decided only those matters which is pending for the consideration before any competent authority.
24. That there is no alternative and effecious remedy to the appellant save and except to file this letter patent appeal.
25. That the Petitioner has not earlier filed any Letter Patent Appeal against this Impugned Order.

Being aggrieved and dis-satisfied with the part of the order dt. 10.5.2013 passed by the Hon'ble Single Judge Mr. Justice Ajay Kumar Tripathi in CWJC No. 8051/2010 appellant preferred this Memorendum of Appeal on amongst the following Grounds:-

- i) For that the part of the order passed by the Hon'ble Single Judge is bad in law as well as fact.
- ii) For that the Hon'ble Single Judge has not considered that the order of cancellation <sup>of Selection</sup> is out of Jurisdiction.
- iii) For that District Supritendent of Education (presently District Programme Officer )having no jurisdiction in the matter of Panchayat teacher.
- iv) For that as per the Rule 18 of the Bihar Panchayat Teacher Selection and Service condition Rule 2006. B. D. D. is the Competent authority .
- v) For that order of the District Supritendent of Education is violation of the Principle of natural justice.

vi) For that the Hon'ble Single Judge rejected the I.A. no.3306/13 holding that petitioner has remedy, Teacher Selection Appellate Authority established in the Year August 2008. Thus the authority only decided these matters which is arising out after his establishment or which is pending before the competent authority. Thus petitioner having no alternative remedy.

vii) For that due to improper advise by the local counsel that there is no limitation prescribed for filing the Writ, so appellant not moved earlier before the Hon'ble High Court.

viii) For that the petitioner/appellant is the victim of the heavy flood of Koshit River in which has house submerged in Koshi River and he became hand to mouth.

ix) For that due to lack of proper knowledge, improper advise and assurance provided by the respondent concerned petitioner has not moved before this Hon'ble High Court on time.

x)For that the appellant appointed in the Year June 2005 where as the private respondent filed his objection on 11.12.2006 before the District Magistrate Madhepura when the appellant became the Panchayat teacher.

xi)For that only 30 days time is prescribed for filing of the objection regarding the selection.

xii)For that the Private respondent has not filed the complaint/objection before the competent authority.

xiii)For that on the above mentioned facts and circumstances of the case it is fit to be allowed.

It is,therefore prayed that Your Lordships may graciously be pleased to admit this Memorendum of Appeal Issue notice to the Opposite Parties/respondents and after hearing all the parties set a side the part of the order dt. 10.10.2013 passed by the

Hon'ble Single Judge in CWJC No.  
8051/2010 (I.A. No.3306/13)

And/Or

Pass such other order/orders as Your  
Lordships may deem fit and proper.

And for this the Appellant shall ever pray.

AFFIDAVIT

I, Bipendra Kumar aged about 30 Yrs Son of Sri Sajjan Prasad Yadav resident of Village- Gargapur, P.S. Murliganj, Distt- Madhepura, do hereby solemnly affirm and state as follows:

1. That I am Appellant of the Petitioner in this instant case and as such am well acquainted with the facts and circumstances of this case.
2. That the contents of this application which have been read over and explained to me in Hindi which I have fully understood the same.
3. That the Annexures are true/typed/photo copies of their respective originals.

बिपेन्द्र कुमार

13.

**CERTIFICATE**

It is certified that the grounds set forth above are good grounds for above L.P.A.

It is further certified that there is no necessity to serve notice either upon the Attorney General of India or to the Advocate General of Bihar order XXVIII-A Rule-1 of the C.P.C.

It is my instruction that the matter out of which this appeal has never come before this Hon'ble Court of Judicature at Patna.

*S. P. Singh*  
Advocate for Appellant.

17/06/2013.

AOR00318



Annex-1

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.8051 of 2010**

Bipendra Kumar S/O Sri Sajjan Prasad Yadav R/O Vill Gargapur,  
P.S.Murliganj, Distt-Madhepura

.... .. Petitioner/s

Versus

1. The State Of Bihar
  2. District Magistrate, Madhepura
  3. District Superintendent Of Education, Madhepura
  4. Block Development Officer, Madhepura
  5. Block Education Extension Officer, Madhepura
  6. Mukhiya Gram Panchayat Murliganj, Distt- Madhepura
  7. Panchayat Secretary, Murliganj Panchayat , Distt-Madhepura
  8. Rajneesh Kumar S/O Sri Upendra Prasad Yadav R/O Vill Ramni,  
P.O.Gangapur, Block Murliganj, Distt-Madhepura
  9. Member District Teacher Selection Appellate Authority, Madhepura
- .... .. Respondent/s

**Appearance :**

For the Petitioner/s : Mr. Dinesh Pd.Verma

For the Respondent/s : Mr. (Sc9)

**CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI**  
**ORAL ORDER**

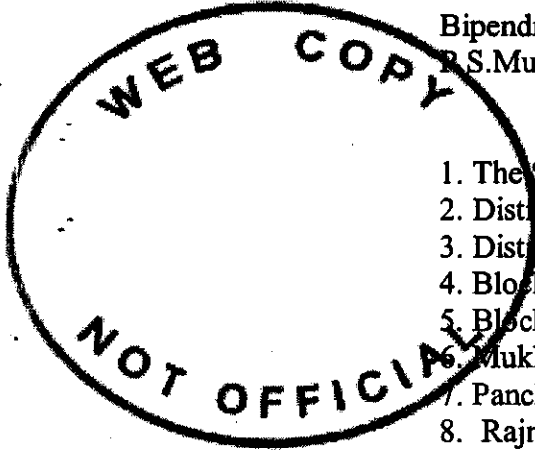
3 10-05-2013

IA No.3306 of 2013 is rejected since there is a fresh cause of action for which petitioner has remedy.

So far as challenge to Annexure- 3, dated 7.10.2009 is concerned, this is order of the District Teacher Employment Authority, Madhepura passed in Appeal No.65 of 2009.

The stand of the learned senior counsel is that there was no occasion or business for the Tribunal to give any order for appointment of any person on the post of Panchayat Shiksha Mitra since that post does not remain any more after 1.7.2006.

Since applicant was not on the post of Panchayat



Shiksha Mitra on the deeming day i.e. 1.7.2006, he now cannot be appointed on the post of a Panchayat Shiksha Mitra nor can he be appointed by treating on the post of Panchayat Teacher because for that there are set of rules, which can only be done after he satisfies those requirements.

The order of the Tribunal, therefore, is exceeding its jurisdiction and un-called for. Annexure- 3 is quashed.

Writ is allowed.

**(Ajay Kumar Tripathi, J)**

sk

Annex 5  
Annex-2

## बिहार शिक्षा परियोजना, मधेपुरा।

पत्रांक- 276 / .....

प्रेषक :- जिला शिक्षा अधीक्षक  
-सह-  
जिला कार्यक्रम समन्वयक  
सर्व शिक्षा अभियान, मधेपुरा।

सेवा में,  
पंचायत सचिव,  
ग्राम पंचायत- गंगापुर (मुरलीगंज)  
मधेपुरा, दिनांक 24-04-07

विषय :- विपेन्द्र कुमार पंचायत शिक्षा मित्र (पंचायत शिक्षक) के नियोजन को निरस्त करने के संबंध में।

महोदय -  
उपरोक्त विषय के संदर्भ में अंकित करना है कि जस शिक्षा पत्रांक-  
८७२ दिनांक- ११.१२.०६ के संदर्भ में ग्राम पंचायत- गंगापुर प्रखंड- मुरलीगंज में पंचायत  
शिक्षा मित्र के नियोजन २००५ से संबंधित अभिलेखों की समीक्षा की गई। समीक्षापरंत प्राप्त  
गया कि अधिक अंक प्राप्त श्री रजनीश कुमार पिता- श्री उपेन्द्र प्रसाद यादव ग्रा० रमणी  
पो०- गंगापुर का नियोजन नहीं करके इनसे कम अंक प्राप्त श्री विपेन्द्र कुमार पिता श्री  
सज्जन प्र० यादव ग्रा० पंचायत- गंगापुर का नियोजन किया गया जो त्रुटिपूर्ण है।  
अतः निदेश दिया जाता है कि त्रुटिपूर्ण दंग में नियोजित श्री विपेन्द्र कुमार  
पंचायत शिक्षा मित्र (पंचायत शिक्षक) के नियोजन को रद्द करते हुए इनके मानदेय एवं कार्य  
करने पर रोक लगाई जाय।

विश्वरामभाजन

जिला शिक्षा अधीक्षक

-सह-

जिला कार्यक्रम समन्वयक  
सर्व शिक्षा अभियान, मधेपुरा।

ज्ञापक- 276 / मधेपुरा, दिनांक- 24-04-07

प्रतिलिपि :- प्रखंड शिक्षा प्रसार पदाधिकारी मुरलीगंज / प्रधान शिक्षक प्रा०  
वि० रमणी एवं संबंधित पंचायत शिक्षा मित्र (पंचायत शिक्षक) को सूचनार्थ एवं आशयक  
कार्यार्थ प्रेषित।

जिला शिक्षा अधीक्षक

-सह-

जिला कार्यक्रम समन्वयक  
सर्व शिक्षा अभियान, मधेपुरा।

बिहार शिक्षा परियोजना, मधेपुरा

पर्यांक 276/

पृष्ठक 1-

जिला शिक्षा अधीक्षक

सह

जिला कार्यक्रम समन्वयक

सर्वे शिक्षा अभिमान, मधेपुरा ।

सेवा में,

पंचायत सचिव,

ग्राम पंचायत गंगापुर । मुरलीगंज ।

मधेपुरा, दिनांक 24.4.07

विषय:-

विप्रेन्द्र कुमार पंचायत शिक्षा मित्र/पंचायत शिक्षक । के  
नियोजन को निरस्त करने के संबंध में ।

महोदय,

उपरोक्त विषय के संबंध में अज्ञात करना है कि जब शिक्षा  
कुमांक 072 दि० 11.12.06 के संदर्भ में ग्राम पंचायत गंगापुर पुरखी मुरलीगंज  
में पंचायत शिक्षा मित्र के नियोजन 2005 से संबंधित अभिलेखों को समीक्षा  
को गई । समीक्षापरत पाया गया कि अधिक अंक प्राप्त की राजनीश कुमार  
पिता की उपेन्द्र पुराद यादव गा० समी पी० गंगापुर का नियोजन नहीं  
करके इनसे कम अंक प्राप्त की विप्रेन्द्र कुमार पिता की सज्जन पु० यादव  
गा० पंचायत गंगापुर का नियोजन किया गया जो सुविधुर्ण है ।

अतः निर्देश किया जाता है कि सुविधुर्ण इन से नियोजित  
की विप्रेन्द्र कुमार पंचायत शिक्षा मित्र/पंचायत शिक्षक । के नियोजन को  
रद्द करते हुए इनके मान्येय सर्व कार्य करने पर रोक लगाई जाय ।

विद्ययासभाजन

हठ अस्पष्ट

जिला शिक्षा अधीक्षक

सह

जिला कार्यक्रम समन्वयक

सर्व शिक्षा अभियान समन्वयक

सर्व शिक्षा अभियान, मधेपुरा ।

आपत्क 276/मधेपुरा, दिनांक 24.4.07

युतिलिपि पुरेक शिक्षा प्रसार पदाधिकारी, मुहलोगर/

पुधोन शिक्षक प्रा० वि० रमणी एवं संबंधित पंचायत शिक्षा मित्र

। पंचायत शिक्षक । को सूचनायै एवं आवश्यक कार्ययै प्रेषित ।

हठ अस्पष्ट

जिला शिक्षा अधीक्षक

सह

जिला कार्यक्रम समन्वयक

सर्व शिक्षा अभियान, मधेपुरा ।