

GP. 21
15/5/12

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

L.P.A.NO. _____ OF 2012

Pradeep Kumar Arya Petitioner/
Appellant.

Versus

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

Sub:- L.P.A.

I N D E X

- 1-Memo of L.P.A. under Clause
10 of the Letters ~~Patent~~ Patent
of Patna High Court Rules with
affidavit and certificate.
- 2-Impugned order dated 3-5-2012.
- 3-Vakalatnama.

1 to 11

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. 8436 of 2012)

Pradeep Kumar AryaAppellant

Versus

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

S Y N O P S I S

Prayer:

For setting aside the order dated 3-5-12

passed by Hon'ble Mr. Justice Jaynandan

Singh, J. in C.W.J.C.No. 8436 of 2012

whereby the order of the District

Teachers Employment Appellate Authority

order 24-3-2012 has been affirmed .

FACTS AND DATES:

Facts with dates:

- 4-9-2006 Petitioner applied for appointment to the post of Panchayat Teacher in B.C. Category in Makdampur Panchayat.
- ~~26-2-2007~~
27-2-2007 Petitioner ~~appeared~~ in Counselling.
- 23-3-2007 Respondent no.11 having lesser marks was appointed.
- 3-4-2007 Petitioner made complaint.
- 17-4-2007 B.D. O. Puraini directed all the Panchayat to appoint the candidates having higher marks who has been illegally debarred.
- 2-5-2007 Camp was organised to examine complaints and petitioner was appointed.
- 24-3-2011 Respondents no.11 filed appeal before the Tribunal as per order of this Hon'ble Court vide Appeal No.158/2011 which was allowed.

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Against the order dated 24-3-2011 the

appellant preferred C.W.J.C.No. 8436/2011

which was dismissed by Hon'ble Mr. Justice

Jayanandan Singh, J.

Hence this L.P.A. is being preferred by

the appellant.

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. ~~84~~ 8436 of 2012)

In the matter of an
appeal under Clause 10 of
Letters Patent of Patna Hig
Court Rules,

AND

In the matter of
Pradeep Kumar Arya son of Basudeo Prasad Das,
resident of village and P.S.Udakishunganj, Distric
Madhepura.Petitioner/Appellan

Versus

1-The State of Bihar through the Principal
Secretary, Human Resources Development Department
Government of Bihar, Patna.

2-The Director, Primary Education,

Government of Bihar, Patna.

3-The District Magistrate, Madhepura.

4-The District Education Officer, Madhepura.

5-The District Programme Officer (Establishment)
Madhepura.

6-The Block Development Officer, Puraini,
District Madhepura.

7-The Block Education Extension Officer,
Puraini, Madhepura

8-The Member, District Teacher Employment Appellate
Tribunal, Madhepura.

9-The Mukhiya, Gram Panchayat Raj, Makdampur,
Madhepura.

10-The Panchayat Secretary, Gram Panchayat Raj
Makdampur, Madhepura.

11-Birendra Kumar Mandal s/o Ras Bihari Mandal
R/O Makdampur, P. S. & Puraini, District Madhepura.
.... Respondents/Respondents.

Being aggrieved by and dissatisfied with the judgement and order dated ~~3-5-2012~~ 3-5-2012 passed by Hon'ble Mr Justice Jay Nandan Singh in C.W.O No. 8436 of 2012 the appellant abovenamed begs to prefer this appeal on amongst the following

G R O U N D S :-

- i) For that the order under appeal is bad and illegal in the eye of law as well as on facts.
- ii) For that the approach of Hon'ble Single Judge in dealing with the facts, circumstances and evidence on record is erroneous and conclusion drawn are wholly unreasonable and perverse.
- iii) For that the learned writ court has not justified in holding that appellant had been

appointed only on the basis of oral orders of the Collector passed in Janta Darbar in as much as the finding is contrary to the material available on record.

v) For that the Hon'ble Single Judge has failed to consider and appreciate that in order to accomodate their favourites the employment unit ~~favoured~~ eliminated the suitable candidates having higher marks either by showing them absent in counselling or by not sending notice date of counselling or by manipulating the records and it was not happened in the Panchayat concern rather it was the case of almost all Panchayats and several complaints had been received by the Collector/D.S.E./B.D.O./B.E.E.O and in situation the Collector concern directed all the B.D.Os. who was the then competent authority to organised camp

and examine the complain and in compliance of such direction camp was organised, records were perused in presence of Panchayat Secretary and mistakes were rectified and suitable candidates having higher marks like appellant were appointed as Panchayat Teacher.

v) For that Hon'ble Single Judge was unjustified in holding that case of Rina Kumari was distinguishable. In this regard the learned single Judge failed to consider and appreciate that the case of Manju Sugam was considered in the Camp dated 2-5-2007 and her case was found genuine and accordingly Rina Kumari was removed and Manju Sugam was appointed and the learned appellate Tribunal held that the order passed in the camp is just and proper and it was also held that the D.M. had jurisdiction to interfere with such complaint and

accordingly the appeal of Rina Kumari was dismissed (Annexure-7 to the writ petition). The case in hand is based on similar facts and circumstances in which respondent no.11 was appointed ignoring the case of the appellant and on the order of D.M. camp was organised and by order dated 2-5-2007 appellate was appointed by removing respondent no.11 and the appellate tribunal while deciding the appeal of the respondent no.9 held that D.M. had no authority and as such order passed in Camp is illegal and without jurisdiction and allowed the appeal of respondent no.1 and as such the appellate tribunal adopted different yard stick in same and similar facts and circumstances which is not permissible in the eye of law.

vi) For that the Hon'ble Single Judge failed to consider and appreciate that the order dated

31-3-2010(Annexure-7 to the writ application) is under challenged in C.W.J.C.No.10700/2010 and same is pending and as such validity of order passed in Camp dated 2-5-2007 is subjudice before this Hon 'ble Court.

vii) For that the Hon 'ble Single Judge failed to consider and appreciate that letter dated 17-4-2007(Annexure-2 to the writ application) wherein the B.D.O. Puraini had directed all the employment units to appoint the candidates having higher marks but were purposely eliminated to ~~any~~ engage the candidates having lower marks.

viii) For that the Hon 'ble Single Judge failed to consider and appreciate that counselling for the post of Panchayat Teacher was held on 26-2-2007 and 27-2-2007 and the petitioner and several others were participated on 26-2-2007 but record of said

date was removed in order to debar the candidate like appellant having higher marks and this fact was considered in the camp dated 2-5-2007.

ix) For that the Hon'ble Single Judge failed to consider and appreciate that the appellant has higher marks than respondent no.11 and when the appellant was not appointed he made complaint at early stage which was entertained by the competent authority and action was taken in time in accordance with law.

x) For that the Hon'ble Single Judge was unjustified in affirming the order of appellate authority & had delivered justice and prevent the miscarriage of justice.

xi) For that the Hon'ble Judge failed to consider and appreciate that the employment unit adopted pick and choose method in the matter of appointment which is villation of the Article 14

and 16 of the Constitution of India .

xii) For that the order under appeal is otherwise bad and illegal leading miscarriage of justice.

It is therefore, prayed that your Lordship may graciously be please to admit this appeal, issue notice to the respondents, call for the records of C.W. J.C.No. 8436 of 201 and after hearing the parties set aside the order dated 3-5-2012 passed by Hon 'ble Mr. Justice Jayanandan Singh, J. in C.W. J.C.No 8436 of 2012.

AND/OR

Pass such other order/orders as your Lordship may deem fit and proper.

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AND

During the pendency of this appeal
the operation of order dated
3-5-2012 passed in C.W. J. C. No. 843
and order dated 24-3-2012 (Annexu
-5 to the writ petition) may
kindly be stayed.

And for this the appellant shall ever pray.

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C E R T I F I C A T E

Certified that the grounds set forth above are good grounds for this L.P.A. and under take to support it at the time of hearing.

It is further certified that there is no need to serve notices either upon the Attorney General of India or upon the Advocate General Bihar, Patna under Order 27A Rule 1 of the C.P.C.

My instruction is that out of which this L.P.A. arises has never come before this Hon'ble Court in this matter earlier.

Advocate for appellant.



IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8436 of 2012

1. Pradeep Kumar Arya S/O Basudeo Prasad Das R/O Village-
 Udakishunganj, P.S.- Udakishunganj, District- Madhepura

..... Petitioner/s

Versus

1. The State Of Bihar Through The Principal Secretary Human Resources Development Department, Government Of Bihar, Patna
2. The Director, Primary Education, Government Of Bihar, Patna
3. The District Magistrate, Madhepura
4. The District Education Officer, Madhepura
5. The District Programme Officer (Establishment), Madhepura
6. The Block Development Officer, Puraini, Madhepura
7. The Block Education Extension Officer, Puraini, Madhepura
8. The Member, District Teacher Employment Appellate Tribunal, Madhepura
9. The Mukhiya, Gram Panchayat Raj Makdampur, Madhepura
10. The Panchayat Secretary Gram Panchayat Raj Makdampur, Madhepura
11. Birendra Kumar Mandal S/O Rasbihari Mandal R/O Villge-
 Makdampur, P.S.-Puraini, District- Madhepura

..... Respondent/s

Appearance :

For the Petitioner/s : Mr. Bholu Prasad

For the Respondent/s : Mr. Rajesh Kumar Gp21

CORAM: HONOURABLE MR. JUSTICE JAYANANDAN SINGH
ORAL ORDER

2 03-05-2012 Petitioner has filed this writ application against the order of the Appellate Authority dated 24.03.2012, as contained in Annexure-5. The Appellate Authority by the said order, has allowed the appeal of respondent no.11 on the findings that the petitioner's appointment was wholly illegal as his name did not appear in the counselling register and other documents and the respondent no.11 had been terminated and the petitioner had been appointed only on the basis of oral orders of the Collector passed

in Janta Darbar.

Learned counsel for the petitioner submits that the Collector had passed orders in respect of other Panchayat Teachers also in Janta Darbar which was also considered by the Appellate Authority in the case of one Rina Kumari and its found order as valid, vide Annexure-7.

From the impugned order it appears that the earlier order of the Appellate Authority was brought to his notice by the petitioner while considering the appeal of respondent no.11 and it found that the case was clearly distinguishable on merits.

In the circumstances, this Court does not find any error in the order of the Appellate Authority and, therefore, does not find any merit in the writ application and the same is dismissed.

Arvind/-

Sd/- (Jayanandan Singh, J)

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Done
 10-5-2012
 For Joint Registrar (J)
 Patna High Court
 Registered U/S 16 Act 1

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20.2.2012