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**(2012) 08 PAT CK 0077**  
**In the Patna High Court**  
**Case No : LPA No. 1040 of 2012**

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|-----------------------------------------------|------------|
| Kumari Gayatri Devi @ Gayatri Devi and Others | APPELLANT  |
| Vs                                            |            |
| The State of Bihar and Others                 | RESPONDENT |

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**Date of Decision :** 01-08-2012

**Acts Referred:**

**Citation :** (2012) 08 PAT CK 0077

**Final Decision :** Dismissed

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## Judgement

Shiva Kirti Singh, J.—Heard the parties in both the appeals. On behalf of appellants the order under appeal dated 23.4.2012 has been challenged mainly on the ground that the learned Writ Court did not consider the individual defence of the appellants as to whether their appointment could be saved on account of marks obtained by them in their respective categories. A plea was also raised that the learned Single Judge has not appreciated that no document was available to show proper notice to the appellants for appearing before the Tribunal. Lastly it was submitted that Rule 18 of the Bihar Panchayat Elementary Teachers (Employment and Service Conditions) Rules, 2006 (hereinafter referred to as the "Rules") was amended in 2008 with effect from 25.8.2008 and hence the Tribunal under the amended Rule 18 will have no jurisdiction in relation to a dispute arising out of appointment made earlier. Related to this issue there was a further submission that before the amendment in Rule 18, Block Development Officers were competent authority to decide such disputes/appeals and hence a dispute earlier decided by the Block Development Officer could not have been reconsidered and reopened by the Tribunal constituted under the amended Rule 18.

2. So far as marks and claims of individual appellants are concerned we find that the Tribunal has come to a considered opinion and finding on the basis of materials and documents produced before it that the appointments were vitiated on account of large scale irregularities and illegalities such as tearing away of original applications, preparation of fraudulent applications, preparation of

fraudulent counseling register, merit list and select list by leaving out persons with higher marks who claim to have applied for the post and effecting appointment of persons with lesser marks. The Rules of reservation were also not followed and against the posts of teachers for general category appointments were made of persons who had qualifications of, Urdu/Maulvi. From the order sheet of the Writ Court it has been shown that the Court on 5.4.2012 noticed the findings of the Tribunal and felt the necessity of looking into the relevant records relating to the selection and appointment. For this purpose the records were ordered to be produced and the Panchayat Secretary appeared with the original records as recorded in the order dated 19.4.2012. The order under appeal dated 23.4.2012 in its opening paragraph records that the parties were heard and original documents of selection and appointment were perused and then the final conclusion of the Tribunal was extracted alongwith a finding that the Writ Court was in complete agreement with the views recorded by the Tribunal that the appointments were vitiated by fraud, interpolation and a number of fatal infirmities.

3. In view of nature of findings given by the Tribunal and the Writ Court in our view the entire selection process must be held to be vitiated and therefore, the Writ Court has rightly held that it would not go into the question as to whether the appointment of individual petitioner could still be saved.

4. So far as issue of notice and appearance before the Tribunal is concerned, the order of the Tribunal in paragraph-2 categorically records that keeping in view the allegations both the parties were directed to appear with evidence and on different dates persons from both sides appeared and they included the teachers appointed/working, the category to which the appellants belong. The statement and evidence on behalf of all the persons were taken on record. Even if one or few working teachers did not appear before the Tribunal, in the facts of the case where entire selection process has been found to be vitiated, defect in notice to an individual could not be material. The Tribunal's findings are based upon the original records and materials available before it and the Writ Court has expressed full agreement with the findings of the Tribunal after going through the original records. In such circumstances we are not persuaded to go further into same issues of facts.

5. Some letters of Block Development Officer and Sub-Divisional Officer are available on record to show that prior to appointment there were some allegations leading to an enquiry by Block Education Extension Officer, Jokihat. The outcome of that enquiry was communicated to the Block Development Officer, Jokihat, who in turn forwarded the matter to the Sub-Divisional Officer, Araria with a request to lift the ban on appointment. It appears that appointments under challenge were made after the ban was lifted under the orders of Sub-Divisional Officer, Araria. The documents and letters showing the aforesaid transaction cannot lead to a conclusion that any appeal was preferred before the Block Development Officer against the appointments in question nor

there is any order of the Block Development Officer deciding such appeal or dispute. Hence on facts there is no material to support the submission that the Tribunal constituted under the amended Rule 18 of the Rules could not have interfered with a decision rendered by the erstwhile competent authority, the Block Development Officer, in respect of same controversy.

6. The last submission that the Tribunal cannot look into an appeal against appointments made prior to formation of the Tribunal is required to be noticed only for rejection. There is no such limitation in the Rules that no appeal can be preferred before the Tribunal for a cause of action which arose earlier. Once the Tribunal replaced the earlier appellate authority, the Block Development Officer, it will have jurisdiction to entertain appeals which were could have been entertained by the Block Development Officer.

7. In the result we find no merit in these appeals, they are accordingly dismissed. We feel no difficulty in expressing the view that if any of the individual teachers affected by the impugned order has sufficient merit and eligibility he/she will have a good chance of getting reappointed on the post in question. Hence, no real prejudice will be caused to the meritorious individuals because the process of selection has to be done afresh in which all eligible persons will be entitled to apply. The fresh process must be conducted fairly under proper supervision of responsible officials authorized by the District Magistrate, Araria.