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**(2016) 04 PAT CK 0162**

**In the Patna High Court**

**Case No :** Letters Patent Appeal No. 1738 of 2012 in Civil Writ Jurisdiction Case No. 10715 of 2009

Savita Kumari

APPELLANT

Vs

State of Bihar

RESPONDENT

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**Date of Decision :** 19-04-2016

**Acts Referred:**

Bihar Panchayat Elementary Teachers (Employment and Service Conditions) Rules, 2006 — Rule 9

**Citation :** (2016) 2 BLJud 337 : (2016) 3 PLJR 975

**Hon'ble Judges :** Mr. Navaniti Prasad Singh and Smt. Nilu Agrawal, JJ.

**Bench :** Division Bench

**Advocate :** Mr. S.B.K. Manglam, Advocate, for the Appellant; Mr. Awanish Nandan Sinha, GP-XI and Mr. Jay Prakash Sharma, AC to GP-XI, for the State

**Final Decision :** Allowed

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## Judgement

Mr. Navaniti Prasad Singh, J.(Oral)&mdash;This is an intra-court appeal from the judgment and order dated 19.10.2011, passed by learned Single Judge of this Court in C.W.J.C. No. 10715 of 2009. The appellant was the writ petitioner and she had challenged the order of the District Teachers Employment Appellate Authority, Jamui, (for short the Appellate Authority) by which upon application filed by respondent no. 10 herein, her selection was set aside and consequential direction to appoint respondent no. 10 was issued.

2. Heard the parties. Though notices have been issued to respondent no. 10 and on the last day respondent no. 10 also appeared through Advocate, but today none is present. There is counter affidavit filed on behalf of the State as also on behalf of the Panchayat Secretary. The facts are not much in dispute. Pursuant to first phase of appointment of Panchayat Teachers in respect of Khaira Gram Panchayat, Block Khaira, District Jamui an advertisement was issued and thereafter selection process completed. One vacancy remained. Considering the same the District Magistrate-cum-Collector, Jamui then issued a newspaper

advertisement on 07.10.2007, which is Annexure-2 to the writ petition. A reference to the said would show that the entire programme, in relation to the selection process, dates were already fixed. It appears, pursuant to the said advertisement several persons including the appellant applied, merit-list prepared and duly displayed. It contained seven candidates. The next event was filing of objections, that date having been crossed, 24.10.2007 was fixed as the date for considering objection and issuing appointment letters. There being no objection and only the appellant having appeared, she having suffered no disqualification, was appointed and appointment letter was accordingly issued to her on 26.10.2007. The appellant then joined the school, underwent training and continued to work. It, thereafter appears, that respondent no. 10 complained before the District Superintendent of Education, Jamui that though she had higher marks she had not been selected. This complaint was made after more than a year of selection of the appellant. The District Superintendent of Education, Jamui then forwarded this application to the Appellate Authority. The Appellate Authority without notice to the appellant passed an order on 31.03.2009 cancelling the appointment of the appellant. On coming to know, immediately the appellant filed a writ petition before this Court being C.W.J.C. No. 5735 of 2009, which was allowed on 05.05.2009 and the order of the Appellate Authority dated 31.03.2009 was set aside and the matter was remanded for fresh consideration after hearing the parties. The appellant filed a detailed representation but the Appellate Authority again, on 11.07.2009, virtually reiterated its order and set aside the selection of the appellant. The ground taken by the Appellate Authority was that as per the Bihar Panchayat Elementary Teachers (Appointment and Service Condition) Rules, 2006, when an applicant files an application he has to give two self-addressed envelopes. Thus, it is clear that this meant that every date has to be communicated to a candidate. This not having been done, the selection process would vitiate.

3. Being aggrieved, the appellant filed the present writ petition being C.W.J.C. No. 10715 of 2009 for setting aside the order of the Appellate Authority dated 11.07.2009. The writ petition was dismissed on similar grounds as stated by the Appellate Authority. Hence this appeal.

4. The State and the Panchayat Secretary have filed counter affidavits. In spite of opportunities granted, respondent no. 10 is neither present nor any counter affidavit has been filed on her behalf. In the counter affidavit filed by the State and the Panchayat Secretary there is no denial that there was a newspaper advertisement as Annexure-2 to the writ petition giving all the dates in advance. It is stated in the counter affidavit that on the date fixed for hearing objections and making final selection only the appellant turned up. No one else turned up. Accordingly, the appellant was selected and appointed. This fact thus admitted, in our view merely because postal information was not given, would not vitiate the selection process. In our view, this hyper-technicality serves no purpose. Respondent no. 10 in the writ proceedings and herein had made application pursuant to the newspaper advertisement itself. She was aware of the dates.

There was no change in the dates, then to say that she was waiting for postal information, none is to be blamed other than respondent no. 10 herself.

5. We may also note that it is not that immediately upon selection process being completed, she makes a complaint. The complaint was made almost after a year and, that too, to the District Superintendent of Education, Jamui who is nobody in the matter. He forwards the complaint to the Appellate Authority and the Appellate Authority then proceeded ex parte and granted her relief. These facts clearly show that so far as the writ petitioner-appellant is concerned, her selection cannot be faulted with. The idea of filing the self addressed envelope is where dates or communications are to be addressed, they may be used, but where dates are already fixed, no further communication is required to be done except if the dates are postponed. It is not a case where the date was postponed. Thus, if respondent no. 10 did not turn up and by that default writ petitioner-appellant got selected, it is respondent no. 10 who has to blame herself. It is a selection process and if on the day a candidate does not turn up, the latter cannot make a grievance that he/she was more meritorious and should have been selected. That being the position, in our view, the order of the Appellate Authority or that of the order of the writ Court cannot be sustained. Both are, accordingly, quashed. It is directed that the writ petitioner-appellant be reinstated in service forthwith, granting continuity, but, so far as the back wages are concerned, inasmuch as, she has not worked, she would only be entitled to 30% of the back wages while continuity is granted to her for all other purposes.

6. This appeal is, accordingly, allowed.