

(2016) 09 PAT CK 0005

In the Patna High Court

Case No : Letters Patent Appeal No.646 of 2015 Arising out of Civil Writ Jurisdiction Case No. 15096 of 2013

Sulochana Ravi @ Sulochana Devi

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 06-09-2016

Acts Referred:

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

Citation : (2017) 1 PLJR 28

Hon'ble Judges : Mr. Hemant Gupta And Mr. Ahsanuddin Amanullah, JJ.

Bench : Division Bench

Advocate : Mr. Raghwanand, G.A. 11, for the Respondent; Mr. Umesh Kumar Mishra and Mr. Bhim Sen Prasad, Advocates, for the Appellant

Final Decision : Disposed Off

Judgement

Mr. Hemant Gupta, J.(Oral) - Re.:I.A. No. 2800 of 2015

The application is for condonation of delay of 185 days in filing the Letters Patent Appeal.

2. For the reasons mentioned in the Interlocutory Application, we are satisfied that the appellant has shown sufficient cause to seek condonation of delay of 185 days in filing the present Letters Patent Appeal.

3. Consequently, Interlocutory Application No. 2800 of 2015 is allowed and delay of 185 days in filing the Letters Patent Appeal is condoned.

Re.: L.P.A. No. 646 of 2015

4. Heard learned counsel for the parties.

5. The challenge in the present Letters Patent Appeal is to an order passed by the learned Single Bench of this Court on 9th of May, 2014 in C.W.J.C. No. 15096 of 2013 whereby, a writ application filed by Niku Kumari was allowed and the

Panchayat Secretary of Gram Panchayat Raj Billo, Block-Ramgarh Chowk, District-Lakhisarai was directed to verify the certificates and testimonials of all the candidates and then to place the matter before the Selection Committee to take a decision regarding appointment of the best of the candidates.

6. One Gita Kumari was appointed as Panchayat Teacher on 14th of August, 2010 although she was possessing degree of Up-Shastri which was not a qualification for appointment in terms of Bihar Panchayat Elementary Teacher (Employment and Service Condition) (Amendment) Rules, 2008 notified on 25th of August, 2008. In view of the fact that she was not possessing the requisite qualification, her appointment as Panchayat Teacher was set aside by the District Teachers Employment Appellate Authority and the appellant was ordered to be appointed having obtained 75.89 per cent marks including 20 per cent of weightage. Such order was challenged by Gita Kumari in a separate writ application which was dismissed and a Letters Patent Appeal was also dismissed.

7. On the other hand, Niku Kumari, the writ applicant, challenged the said order on the ground that she is more meritorious than the present appellant having obtained 77 per cent marks, therefore, the appellant could not be appointed in preference to her. It is the said writ application which has been allowed by the learned Single Bench with a direction to the Panchayat Secretary to re-frame the merit-list after examining the testimonials. While giving such direction, the learned Single Bench has passed further order that the appellant can continue to work but she will not be paid salary unless she is selected and appointed in the selection process. 5.8.

8. Admittedly, after the said order was passed by the learned Single Bench, the appellant stand appointed as a Panchayat Teacher in High School. Therefore, the surviving grievance of the appellant is that she should be paid salary for the period she has worked as a Panchayat Teacher and that direction of the learned Single Bench declining such salary is not fair and reasonable.

9. We have heard learned counsel for the parties and find that the appellant is entitled to the salary for the period she has worked as no employee can be asked to work without payment of salary. Therefore, the order passed by the learned Single Bench which directed that the appellant shall not be paid salary cannot be sustained as the appellant cannot be denied wages for the period she actually worked as Panchayat Teacher.

10. In view thereof, the present Letters Patent Appeal is disposed of with direction to the respondents to verify the actual period for which the appellant has worked and to pay salary in accordance with law. The respondents shall complete the exercise expeditiously, preferably within a period of six months from the date of receipt/production of a copy of this order by the respondents.