

**(2015) 08 PAT CK 0034**

**Patna High Court**

**Case No:** Letters Patent Appeal No. 32 of 2014 in Civil Writ Jurisdiction Case No. 7543 of 2012

Khurshid Alam

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

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**Date of Decision:** Aug. 10, 2015

**Hon'ble Judges:** I.A. Ansari, A.C.J; Chakradhari Sharan Singh, J

**Bench:** Division Bench

**Advocate:** Sanjeev Kumar Singh, for the Appellant; Abhay Shankar Jha, Advocates for the Respondent

**Final Decision:** Disposed off

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### **Judgement**

Chakradhari Sharan Singh, J

This Letters Patent Appeal arises out of an order, dated 02.07.2013, passed by learned Single Judge in C.W.J.C. No. 7543 of 2013, whereby the District Teachers Appointment Appellate Tribunal, East Champaran, Motihari, has been directed to rehear the matter pending before him and get merit list of all the 14 aspirants for the post of the Urdu Teachers under Khairwa Gram Panchayat Raj, prepared afresh on the basis of the respective assessment out of total marks of 1200 in Maulvi Examination instead of 1100 by including marks obtained by them in optional paper.

2. For filling up 08 posts of Urdu Teachers with Maulvi qualification in Gram Panchayat Raj, Khairwa, applications were invited. A merit list was prepared on the basis of which appointments were made. The appellant was appointed on the basis of merit list so prepared. The selection and appointment came to be challenged by some of the persons, who were not selected including respondent No. 7 herein, by filing a statutory appeal before the District Teachers Appointment Appellate Tribunal, East Champaran, Motihari. They took several grounds for challenge of the process of selection and appointment including the ground that the merit list was wrongly prepared on the basis of 1100 marks in Maulvi Examination excluding 100 marks of optional subject. According to them, the optional marks secured in Maulvi

Examination was required to be included for the purpose of preparation of merit list and accordingly, the merit list was required to be prepared on the basis of respective performance of the candidates in Maulvi Examination out of total 1200 marks and not 1100 as done by the Selection Committee. It was the specific case of the respondent No. 7 that whereas he had secured 987 marks out of 1200, the appellant had only 985 marks out of 1200 in Maulvi Examination. However, excluding marks in optional papers and assessing the merit of candidates on the basis of 1100 marks, the appellant was placed above respondent No. 7 wrongly in the merit list and was selected/appointed to the post of Urdu Teacher in a whimsical manner. By its order dated 14.03.2012, the Tribunal accepted this plea placing reliance upon a decision of this Court reported in [Md. Zabihullah Vs. The State of Bihar and Others](#), (2011) 59 BLJR 2660 : (2011) 2 PLJR 1039 . The Tribunal accordingly quashed the appointment of the appellant and directed making of appointment of some other persons including respondent No. 7 as Urdu Teachers.

3. The appellant herein, filed the writ application, giving rise to CWJC No. 7543 of 2012, challenging the said decision of the appellate Tribunal, dated 13.3.2012. Two other writ applications were filed seeking implementation of the said order of the Tribunal. The writ petition filed by the present petitioner and other writ petitions were heard together. Learned single Judge by the order under appeal upheld the reason assigned by the Tribunal that the merit list for appointment of Urdu Teacher was required to be prepared on the basis of respective scores of the candidates out of total 1200 marks in Moulvi examination and the marks secured in optional papers of the Moulvi Examination could not have been excluded. For taking this view, the Tribunal placed reliance on the Division Bench order dated 22.2.2012 of this Court in case of Fatima Jabeen alias Fatma Jabee (LPA 844 of 2011 and other analogous cases), which had arisen out of single judge's decision in case of Md. Mokhtar Alam (supra). The Division Bench, in the case of Fatima Jabeen (supra), upheld the decision of learned single Judge in case of Mokhtar Alam (supra) that the marks obtained in the 12th (optional) papers in Moulvi Examination could not have been ignored or omitted. The Division Bench, however, in case of Fatima Jabeen (supra), while holding that the merit list ought to have been prepared on the basis of 12 subjects in Moulvi Examination, also held as follows:--

"However, we are not inclined to uphold the judgment of the learned single Judge setting aside the entire merit list and directing the preparation of merit list afresh only because of the passage of time and the confusion created by the State Government. The appellants before us were recruited as Panchayat Shikshaks in Urdu subject as early as in 2006. Their appointment shall not be disturbed now after more than five years on account of confusion or ambiguity created by the aforesaid Circular dated 8th August 2006. If the highly qualified law makers are unable to notice ambiguity in their creation, we do not expect the Gram Panchayats or the Panchayat Secretaries to notice such ambiguity. Nor do we expect them to understand the intricacies of the law of interpretation. Suffice that the action is

bonafide.

The grievance expressed by the writ petitioner being legitimate his grievance also needs to be redressed.

In the above circumstances, we direct the respondent No. 1, the State of Bihar in its Human Resources Development Department and the respondent No. 3 the District Education Officer, Sheohar to offer appointment to the writ petitioner-Respondent No. 9 Md. Zabihullah as Panchayat Shikshak in Urdu subject on any available vacancy in the district of Sheohar within two months from today. In the event no vacancy is available in Sheohar district the petitioner-respondent No. 9 be offered such appointment in any other district in the State of Bihar. The offer of appointment as Panchayat Shikshak made under this order will be binding to the petitioner."

4. Learned Single Judge considering the decision of the Division Bench has directed the Tribunal to get prepared a fresh merit list on the basis of 1200 marks and directed that appointment of such persons, who find their place in the revised merit list, will not be disturbed, but those who do not figure in such revised merit list will have to make way for the persons, who are found more meritorious on the basis of 1200 marks in the said examination. Admittedly, the appellant has two marks less than respondent No. 7 herein, and in terms of the order of the learned Single Judge, he will be required to be removed from the post of Urdu Teacher, which he has been, admittedly, holding from the date of his initial appointment in the year 2010.

5. Mr. Akhtar, learned counsel appearing on behalf of the appellant, drawing our attention to the Division Bench decision of this Court, dated 22.2.2012, passed in LPA No. 844 of 2012 (Fatima Jabeen, supra), contends that order under appeal passed by the learned Single Judge is not in consonance with the said Division Bench decision, wherein the Division Bench of this Court had refused to uphold the direction of the learned single Judge in that case setting aside the entire merit list and directing preparation of merit list afresh, because of the passage of time and the confusion created by the State Government. He has laid great emphasis on the observations made by the Division Bench, as has been quoted above, that if highly qualified law makers were unable to notice ambiguity in their creation, it was not expected of the Gram Panchayats or the Panchayat Secretaries to notice such ambiguity and had held the action of preparation of merit list on the basis of 1100 marks in Moulvi examination to be bona fide. He accordingly contends that the status of the petitioner as Urdu Teachers should not be disturbed after several years of his appointment. He has also contended that one vacancy of Panchayat Teacher is available in the same Schools where respondent No. 7 can be accommodated without disturbing appointment of petitioner as Urdu Teacher.

6. Learned counsel, appearing on behalf of the Panchayat Secretary, has raised no objection if this Court, in special facts and circumstances of the present case, allows

the Mukhiya and Panchayat Secretary to appoint respondent No. 7 as Urdu Teacher against the vacant post, when, admittedly, he has higher merit points than the appellant in Moulvi examination if all the 12 papers of moulvi examination are taken into account.

7. There can be no two opinions on the legal issue as decided by the learned Single Judge in the order under appeal that for the purpose of preparation of merit list, marks, scored by candidates in Moulvi examination out of 1200, ought to have been the basis. However, apparently, the merit list was prepared by the Selection Committee of the Gram Panchayat bona fide on the basis of marks scored by the candidates in 11 papers (1100 marks) of Moulvi examination. This is admitted fact if the merit list is revised on that basis for appointment in Khairwa Gram Panchayat and marks scored by candidates of selection in question in 12th paper is also taken into account, appellant will be placed below Respondent No. 7 and in that case, he will have to be removed from the post in order to appoint respondent No. 7. It is admitted by the parties that except this, there will be no change in the merit list upon revision as directed by learned Single Judge.

8. In the given facts and circumstances of the present case and taking a cue from decision of Division Bench of this Court in the case of Fatima Jabeen (supra), we intend to modify the order passed by the learned Single Judge by directing the respondents not to disturb the appellant's appointment as Urdu Teacher and to consider the case of the respondent No. 7 for his appointment against the post said to have fallen vacant in the same school.

9. We, therefore, direct that if respondent No. 7 is not found, otherwise, disqualified, he would be appointed against the said post of Urdu Teacher by the competent authority within a period of one month from the date of receipt/production of a copy of this order as, admittedly, he has better merit points than the appellant out of 1200 marks in Moulvi Examination. The order under appeal, dated 02.07.2013, passed in CWJC No. 7543 of 2012, stands modified to this limited extent.

10. The appeal stands disposed of with the observation and direction as above.