

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18222 of 2010

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Kanchana Kumari W/O Vinay Kumar R/O Vill Nankhu Mandal Tola,
P.O.Durgapur, Distt-Khagariya

.... Petitioner/s

Versus

1. The State Of Bihar Through Principal Secretary(Primary Education)
Human Resource Development Department Bihar, Patna
2. The District Magistrate Khagariya, Distt-Khagariya
3. The District Superintendent Of Education P.O.&Distt-Khagariya
4. The Deputy Development Commissioner Khagariya, Distt-Khagariya
5. Block Development Officer Khagariya Block, Distt-Khagariya
6. Mukhiya, Gram Panchayat Raj Bachhauta, Block-Khagariya, Distt-Khagariya
7. Panchayat Secretary, Gram Panchayat Raj Bachhauta, Block-Khagariya,
Distt-Khagariya
8. Member , District Teacher Appointment Appellate Authority Khagariya
9. Anuja Kumari D/O Jaggan Das & W/O Nageshwar Ram R/O Vill &
P.O.Sanhauli,Distt-Khagariya

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Durga Nand Jha
For Respondent no.9		Mr. Ajay Kumar Thakur
		Mr. Md. Imteyaz Ahmad
		Mr. Ravi Ranjan
For the State		Ms. Kalpana, A.C. to S.C. 14

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR
MANDAL
ORAL ORDER

7 08-01-2015 The petitioner being an applicant for appointment as Primary Teacher under the scheduled caste (female) category for which selection process was undergone by the Selection Committee of Gram Panchayat Raj, Bachhauta in the district of Khagaria, has filed the present writ application challenging the order 28.06.2010 passed by the District Teachers' Employment Appellate Authority, Khagaria (for short 'the Authority') in



Appeal Case No.89-01/09 (Annexure-1). Respondent no.9 was also an applicant for the said post in the same category. Ten vacancies of Panchayat Teachers (for short 'PTs.') was allocated to the Panchayat in question. A roster was also provided. Roster point 932 and 940 were earmarked for the candidates belonging to the SC(male/female) and SC (female). A panel was prepared on the basis of Megha Aank acquired by the applicants by the Selection Committee, copy whereof has been enclosed as Annexure-4. The petitioner appears at sl. no.217 having 54% of Megha Aank, whereas respondent no.9 was placed at sl. no.281 having obtained 47.22%. It was followed by counseling and submissions of the consent letter and verification of the documents. Indisputably, earlier to the present one, five merit lists was/were prepared/drawn from the panel category-wise but the two posts under reserved category and one post under unreserved category remained unfilled. 6th merit list was therefore prepared for the remaining vacant posts and the selected candidates were required to give their consent within a specified date failing which their claim was to be forfeited. Notices were issued to all such selected candidates but the petitioner failed to appear and submit her consent till the last date. The Selection Committee in such circumstances, drew up the 7th merit list in



which respondent no.9 figured against the post reserved for SC (female). A copy of the said panel has been enclosed as Annexure-9. The notice thereof was given to the selected candidates requiring them to file their consent and the documents on or before 23.02.2007. It was by notice given under UCP as well as by pasting on the notice board of the Gram Panchayat. Respondent no.9 submitted the consent and the documents whereafter she was given the appointment to the said post of PT under the said category(untrained) vide order dated 19.02.2007 (Annexure-2). The petitioner raised a grievance against such selection of respondent no.9 overlooking her claim although she figured higher in panel/merit list (Annexure-4) before the Authority. After hearing the parties and perusing the records which were produced the Authority found no apparent illegality in such appointment of respondent no.9. It was held that the petitioner although found placed in the 6th merit list but did not respond to the notice and submit her consent letter as required under Rule 9(XI) of the Bihar Panchayat Primary Teachers (Employment and Service Conditions) Rules, 2006. The Selection Committee in such circumstances drew up the 7th list in which respondent no.9 figured and submitted her consent and after verification thereof she was appointed.

Heard Mr. Durga Nand Jha for the petitioner, Mr. A. K. Thakur for respondent no.9 and the counsel for the State. A counter affidavit has been filed on behalf of respondent no.9. The petitioner has filed rejoinder thereto.

Counsel for the petitioner has submitted that there is no material on record to indicate that after drawing up the 6th select panel (Annexure-7) notices were given to the selected candidates for submission of their consent letter and document within the time fixed therein. It was a ploy only to deny the petitioner her claim of being appointed. The petitioner has thereafter been pursuing her grievance before the concerned Authority inasmuch as a representation dated 04.06.2007 was filed before the DSE, Khagaria as well as DDC Khagari (Annexures-5 and 5/A) respectively. When no relief was granted to her she filed the claim/application before the Tribunal.

Mr. Thakur counsel for respondent no.9, on the other hand, submitted that the application before the authority was barred. The order by which the Authority was constituted in October, 2008. 30 days time was granted to file any such claim/application before the Authority. Admittedly, respondent no.9 was offered appointment on 19.02.2007 and such application was filed before the authority in the year 2009. The Authority



having heard the parties and perused the concerned record produced by the Gram Panchayat found that the petitioner was an applicant along with the respondent no.9 for the post and both of them had participated in the counselling whereafter a Megha Suchi was prepared in which petitioner figured above respondent no.9. 10 vacancies were available in the Panchayat for appointment as PT out of which roster point 934 was earmarked for SC category (male/female) and roster point 940 was earmarked for SC (female). Upto drawing up 5th merit list the post in question remained unfilled. The Selection Committee thus drew up the 6th list in which the petitioner figured but she did not appear to give her consent for the said appointment whereafter Selection Committee drew up the 7th merit list which included the respondent against the post in question and upon notice she appeared and submitted the consent letter as required under Rules and was offered appointment.

In the original Niyamawali as framed in 2006 the Block Development Officer was the competent authority to enquire into any such allegation/grievance which after amendment in Niyamawali vested in Authority by virtue of the amendment of Rule 18 of the Niyamawali. In the writ petition there is no statement that any such grievance was raised before the Block



Development Officer. There is no order passed by the Block Development Officer providing cause of action to the petitioner to approach the authority belatedly. The Authority thus could not have entertained her application filed at least two years after such selection and appointment.

I have considered the rival submissions and perused the records.

Indisputably, the appointment on the post of PT was offered to respondent no.9 on the basis of 7th merit list drawn from the Megha Suchi as per the roster against the available vacancy wherein she figured against the post reserved for SC female category. Nothing has been stated in the writ petition about filing of any grievance application against such selection and appointment of respondent no.9 before the then Competent Authority i.e. Block Development Officer of the concerned Block. When an issue was raised in this regard by the contesting respondent no.8 by filing counter affidavit the petitioner along with the rejoinder has enclosed a plain typed copy of an application said to have been filed before the Block Development Officer. It does not appear therefrom that the same was filed under receipt. This Court would therefore not rely on the said document for the resolution of the dispute. The authority



not only heard the parties but also perused the relevant records produced by the concerned Gram Panchayat only to find that the notice under UPC to the candidates who found placed in the said merit list was issued besides pasting the same on the notice board of the Panchayat. This was considered as valid notice. This Court would therefore accept the said finding of the Authority in the impugned order. It has not been disputed by the petitioner and rightly so that filing of the consent letter and production, if original, was necessary before offering the appointment. Admittedly, the petitioner did not submit her consent and furnished the documents for verification within the time. It also does not appear from the pleadings on record that immediately thereafter she raised any such grievance before the competent authority. In paragraph 8 of the writ petition the petitioner has stated that one such application was filed on 04.06.2007 before the D.S.E. Khagaria as well as D.D.C. Khagaria, respectively. Firstly, it was not before the competent authority and secondly it was not filed immediately after the appointment of respondent no.9 on the post in question. The petitioner apparently approached the Authority after much delay. On this count alone the application of the petitioner before the authority was liable to be rejected. However, the Authority considered the case of the petitioner on

merit and held that in spite of notice she did not turn up to submit her consent letter within time fixed therefor. It was a requirement of law. This Court under writ jurisdiction would not disturb such finding(s) of fact recorded by the Authority. The petitioner has therefore failed to make out a case where extraordinary and discretionary writ jurisdiction of this Court can be invoked to set aside the order passed by the Authority which is the final court of fact.

The application is devoid of merit. It is accordingly dismissed.

(Kishore Kumar Mandal, J)

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