

THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10759 of 2010

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1. Ramakant Chaurasia S/O Shambhoo Nath Chaurasia R/O
Vill.- Jagaria, P.S.- Chainpur, Distt.- Kaimur

.... Petitioner/s

Versus

1. The State Of Bihar
2. The District Collector, Kaimur At Bhabua
3. The District Superintendent Of Education, Bhabua
4. The Block Development Officer, Chainpur Block, Kaimur
5. The Block Education Officer, Chainpur Block, Kaimur
6. The Panchayat Secretary, Sirbit Panchayat, Chainpur, Kaimur
7. The Mukhiya, Sirbit Panchayat, P.S.- Chainpur, Kaimur
8. Jitendra Prasad Keshari S/O Sri Badri Pd. Keshari Primary Teacher At Vill.- Kuraee, P.S. Chainpur, Distt.- Kaimur
9. Ravindranath Singh S/O Sri Sukhram Singh Primary Teacher At Vill.- Kuraee Primary School, P.S. Chainpur, Distt.- Kaimur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Janardan Prasad Singh, Sr. Advocate
With Ravi Shankar Sahay, Advocate

For the Respondents 8 & 9 Mr. Rajendra Pd. Singh, Sr. Advocate
With Mr. Rajiv Kr. Singh

For Respondent No.6 : Mr. Nawal Kishore Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

CAV JUDGMENT

Date: 23-06-2015

1. This is a peculiar case arising out of process of selection/appointment on the post of Panchayat Teacher under Bihar Panchayat Primary Teachers (Appointment & Service Condition) Rules, 2006 (hereinafter referred to as 2006 Rules) and gives an example as to the manner in which the records

relating to selection are maintained at the panchayat level which are prone to be tampered with impunity by persons having access to such records, polluting entire process of selection and appointment.

2. The petitioner, in the present writ application under Article 226 of the Constitution of India, has sought for a direction to the concerned respondent authority to appoint him as Panchayat Teacher in Gram Panchayat, Sirbit under Chainpur Police Station of Kaimur District as according to him, he has more merit percentage points than respondents No. 8 and 9.

3. From the facts stated in the writ application, it appears that the petitioner had approached the District Teachers Appointment Appellate Tribunal, Kaimur before approaching this Court for the relief as sought for in the present writ application, which gave rise to Appeal No. 92 of 2009 and finally rejected by an order dated 4.2.2010 (Annexure-5). From the order dated 4.2.2010, it appears that the Tribunal considered the claims of other persons also including the case of respondent no.9 with respect to their non-selection as Panchayat Teacher of the said Gram Panchayat on the basis of same process of selection. Upon considering the documents



relating to the process of selection, the Tribunal directed the appointing authority under the rules to appoint respondent no.9 as Panchayat Teacher, against the post reserved for backward class. The direction for appointment of Respondent No.9 Rabindra Nath Singh is on the basis that one Rakesh Kumar Gupta was appointed on the basis of forged certificate. Finding this allegation to be correct, the Tribunal by the said order dated 4.2.2010 cancelled the appointment of said Rakesh Kumar Gupta of backward class category. From the order of the Tribunal, it appears that though Rakesh Kumar Gupta belonged to backward class, he was appointed against unreserved post because of high merit percentage which he had fraudulently claimed. Upon cancellation of appointment of Rakesh Kumar Gupta, a B.C. category candidate, the Tribunal thought it proper to direct for appointing respondent no.9 as Panchayat Teacher since he belonged to the same category, is said to have participated in the counselling and had given his consent also, for appointment.

4. Initially, the petitioner had not sought formal relief of quashing of the said order of the Tribunal dated 4.2.2010. However, subsequently, by filing I. A. No. 5196 of 2014, the petitioner has sought for quashing of the said order of the

Tribunal dated 4.2.2010 by way of amendment. I. A. No. 5196 of 2014 stands allowed to challenge the said order of the Tribunal dated 4.2.2010.

5. There are several disputed question of facts which I would be indicating in my present order as regards preparation of merit list. So far as the case of the petitioner is concerned, the main disputed question of fact is as to whether he had participated for counselling or not. On the one hand, it is petitioner's case that on the basis of he having participated in the process of selection during the counselling. He was placed in the merit list prepared by the concerned Committee of the Gram Panchayat with his score of 56.88%, he has brought on record a merit list prepared on 18.11.2006 by way of Annexure-A to second supplementary affidavit filed on behalf of the petitioner on 13.5.2014. In the said merit list, the name of the petitioner is shown at serial No.8 as B. C. candidate. The first name in the said merit list is of one Gopal Kumar Patel.

6. A counter affidavit has been filed on behalf of Block Development Officer, Chainpur, Kaimur, bringing on record a merit list which does not contain the name of the petitioner and at the top of the said merit list name of one Rabindra Kumar Singh, son of late Ramayan Singh appears.



Name of Respondent No.8 is at serial No. 29 and respondent no.9 at serial no. 15 with 59% and 56.55% merit points respectively. The petitioner has brought on record another merit list which is part of information supplied to him under the Right to Information Act by way of Annexure to “reply to the counter affidavit filed on behalf of the private respondent Nos. 8 and 9 and the State Respondent no.4”. According to the petitioner, bunglings were committed by the functionaries at the time of counselling and more than one counselling Registers were being maintained. In the said merit list name of petitioner is not there nor the name of respondent nos. 8 and 9. Some degree of emphasis has been given on an enquiry report, wherein the District officials found tampering with the merit list by forging the signatures of the Mukhiya and B.D.C. of the Gram Panchayat. This is with reference to the said merit list brought on record by way of Annexure A/9 by the petitioner. The Respondent Nos. 8 and 9 have also brought on record the merit list by way of Annexure-D to the “rejoinder to the reply of the petitioner to the counter affidavit on behalf of respondent Nos. 8 and 9” filed on 22.7.2014. In this merit list, name of respondent no.8 figures at serial No.10 and Respondent no.9 at serial No. 15. This merit list is said to have been sent by



Mukhiya of the Gram Panchayat on 18.11.2006 to the Block Education Officer, Chainpur, Bhabua. If I compare this merit list, with the copy of the counselling register which have been brought on record by way of Annexure-A to the counter affidavit filed on behalf of Respondent no.4, I find that in Annexure-A Respondent no.8 has been shown to have scored 59% (531), whereas respondent No. 9 has been shown to have scored 56.55% (509) and in the merit list (Annexure-D) they have been shown to have scored 59.77% (502) and 53.66% (433). Faced with the conflicting merit lists being brought on record by the parties, in support of their respective claims, following order was passed by me on 12.8.2014:-

“A letter No. 1457 dated 12.06.2014 issued by the District Programme Officer (Estb.), Kaimur, Bhabua, said to have been issued under the Right to Information Act, 2005, addressed to the petitioner furnishing certain information has been brought on record by the petitioner as annexure to his reply to a counter affidavit filed on behalf of respondents Nos. 8 and 9 and the State respondents. Along with the said letter dated 12.06.2014, a merit list for appointment to the post of Panchayat Teacher for Sirbit Panchayat under Kaimur district has also been brought on record.

Learned senior counsel, Mr. Rajendra Prasad Singh, appearing for the respondents Nos. 8 and 9 has contended that the petitioner has forged the merit list and the merit list said to have been issued under the Right to Information Act along with the said letter dated 12.06.2014 is not one

which has been brought on record along with the said reply.

Learned senior counsel appearing on behalf of the petitioner submits that in order to arrive at a proper finding, the concerned file relating to issuance of letter No. 1374 dated 13.11.2007 issued by the District Superintendent of Education-cum- Sub divisional Education Officer, Bhabua may also be called for.

In view of submission made by learned senior counsel, I direct the District Programme Officer (Estb.), Kaimur, Bhabua to file affidavit dealing with said communication dated 12.06.2014 and will supply to this court the merit list, which was supplied to the petitioner along with the said letter dated 12.06.2014, to ascertain whether the merit list brought on record by the petitioner along with the said letter dated 12.06.2014 has been forged by the petitioner himself. The District Programme Officer (Estb.), Kaimur, Bhabua is also directed to produce before this court the original records relating to the communication No. 1374 dated 13.11.2007 issued by the District Superintendent of Education-cum- Sub divisional Education Officer, Bhabua. In spite of valid service of notice upon respondent No.6, the Panchayat Secretary, Sirbit Panchayat, Chainpur, Kaimur he has not appeared and, thus, no counter affidavit has been filed on his behalf. This has created a serious obstruction in adjudication of the matter.

In order to ensure his presence before this court, I direct the Superintendent of Police, Kaimur, Bhabua to ensure his production on the next date fixed for this case, i.e., 02.09.2014. On that date the affidavit, as directed, must be filed and records must also be produced.

Put up this matter under the same heading on 02.09.2014.”



7. The District Programme Officer (Establishment), Kaimur at Bhabua was directed to produce before this Court, the original records relating to the said communication dated 13.11.2007. I need not refer to other orders which were passed in the present proceeding expressing displeasure over the manner in which the records at Panchayat Level are maintained in the State of Bihar. In compliance of the said order dated 12.8.2014, the District Programme Officer, (Establishment), Kaimur at Bhabua has stated that on 28.8.2004, another information under Right to Information Act had been supplied to Respondent no.9, the entire copy of which has been brought on record. It has been stated by him that there are two merit list available in the concerned file, one is photo copy and another is original hand written. He has stated in paragraph 9 that the file is not maintained properly and it is not an original file. He has also stated that the original file by which the DSE-cum-SDO, Kaimur had placed before the District Magistrate, Kaimur through which the merit list was verified has not been produced by the In-charge Clerk, Sri Hareram Gupta. He has also stated, regarding original record of the inquiry conducted by DSE-cum-SDO dated 10.12.2007 that original file is not available but only photo copy of the same was available in "Zila



Sikshak Niyojan Apiliya Pradhikar Office” which has been made available to the office on request. The photo copy of the note-sheet of DSE and merit list available in the office of Zila Shikshak Niyojan Apiliya Pradhikar, Kaimur had been brought on record by way of Annexures to the said counter affidavit filed by the District Programme Officer, Kaimur. This is how the records have been maintained at the District Level.

8. Respondent Nos. 8 and 9 have also filed “supplementary rejoinder to the reply of the petitioner filed on behalf of Respondent Nos. 8 and 9”, whereby they have brought on record the documents supplied to them under the Right to Information Act including the merit list. Two merit lists of the same date i.e. 18.11.2006 are there which are substantially different. The merit list which does not contain names of respondent nos. 8 and 9, according to them has been said to have been fraudulently prepared as I find that there is noting to this effect on the back of the said merit list. The merit list on which Respondent nos. 8 and 9 placed reliance does not contain the petitioner’s name.

9. I have perused the records produced before me. The original copy of the merit list, which is the basis for grant of relief in favour of respondent no.9 is not available on record,



though a photo copy of such merit list dated 18.11.2006 is available. It appears that even the Tribunal proceeded on the photo copy of the merit list, from the affidavit filed by the District Programme Officer(Establishment), Kaimur at Bhabua. The other merit list which, is there on record is original copy but on the back of the said merit list there is noting by the Mukhiya of the Gram Panchayat that the said merit list has been forged and submitted in the office of Deputy Superintendent of Education. From the records it appears that the said noting is in the light of enquiry conducted regarding the genuineness of the merit list. In none of the merit lists, however, the petitioner's name figures. Except in the photo copy of the merit list that the petitioner has brought on record by way of Annexure-8 to his second supplementary affidavit filed nearly four years after filing of the writ application, name of petitioner does not appear anywhere.

10. A plea has been taken on behalf of respondent Nos. 8 and 9 by the learned senior Counsel appearing on their behalf that the petitioner, in order to obtain an order in his favour, has fraudulently incorporated petitioner's name in the photo copy of the merit list, original of which is not there on record.



11. Five registers said to have been maintained by the Gram Panchayat Raj, Sirbit with respect to Panchayat Teachers appointment, 2006 have been brought on record. The first register contains list of 345 candidates which includes the name of the petitioner, respondent no.8 and 9. Second register is in support of the stand that the candidates who had applied and were found eligible after scrutiny were communicated to participate in counselling on 14.10.2006. It also contains the name of the petitioner, respondent nos. 8 and 9. The third register is the counselling register which contains names and signatures of the candidates who are said to have participated in the process of counselling. The said register does not contain the name of the petitioner, though the names of Respondent Nos. 8 and 9 figure at serial no.13 and 15. Fourth registered is the proceeding book of the Gram Panchayat relating to appointment of teachers, which contains list of such candidates who, after having participated in counselling, had given their consent for their appointment. In the said register, name of respondent No.8 is at serial no.5 and that of Respondent no.9 at serial no.8 at page 4 and is dated 25.11.2006. Respondent no.9 was apparently a wait listed candidate as there were only six posts to be filled up and two



posts were required to be filled up by backward class candidates. No original merit list on the basis of which the appointments were finally made has been brought on record or produced by the Mukhiya or Panchayat Secretary. Different photo copies of different merits lists have been annexed with the various pleadings by respective parties as noted above, but the original merit is missing and it is still an enigma where the original records disappeared.

12. It is true that there is no conclusive evidence brought by the petitioner nor there is any material in the records produced by the respondents that the petitioner had in fact appeared in the process of counselling. He does not dispute the fact that he had knowledge about the date of counselling but the dispute is only whether he had participated in the counselling or not. Writ proceeding are decided on affidavits and disputed question of facts, of the nature as in the present case cannot be gone into in a proceeding under Article 226 of the Constitution of India and, therefore, I am of the opinion that no relief can be granted to the petitioner.

13. However, this Court will not shut its eyes over the reckless, irresponsible, casual and cavalier manner in which the records have been maintained and original records have



been allowed to disappear apparently with ulterior purpose and motive. I would, therefore, direct the Chief Secretary of Bihar to come out with specific scheme so that some sanctity may be attached to the records maintained at Panchayat Level and some degree of accountability on the persons who maintain the records. Least said the better, about the way of the records have been maintained even in the district Headquarters, which facts had been admitted in the counter affidavit filed by the District Programme Officer (Establishment), Kaimur at Bhabua. I expect the Chief Secretary of Bihar to look into these aspects frame the scheme as early as possible, preferably, within a period of two months from the date of receipt/production of a copy of this order.

14. The way in which the selection process relating to appointment of Panchayat Teachers in Sirbit Gram Panchayat in the year 2006-07 has taken place gives rise to reasonable suspicion over fraudulent acts at the behest of the selected candidates in connivance with the persons involved in the process of selection. I will, therefore, direct the Additional Director General, Vigilance, Investigation Bureau to first cause a preliminary enquiry into the manner in which the selection has been made and the original records got disappeared. After

having held the preliminary enquiry, if it is found that, prima facie, criminal case is made out, an FIR will be immediately lodged thereafter. The preliminary enquiry must be done within a period of two months from the date of receipt/production of a copy of this order.

15. Pursuant to an oral observation made by this Court on 22.6.2015, the Superintendent of Police, Vigilance Investigation Bureau, Patna is personally present. Let the original records relating to selection in question be handed over to him, for the purpose of compliance of the present order of this Court.

16. Let a set of the entire pleadings of the present proceeding be prepared and handed over by the Registry to Mr. Rama Kant Sharma, learned Senior Counsel appearing on behalf of Vigilance Investigation Bureau, for the purpose of its transmission to the Additional Director General, Vigilance Investigation Bureau, Patna within a week.

17. In the result, this application is dismissed, but with the directions as above.

18. There shall be no order as to costs.

(Chakradhari Sharan Singh, J)

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