

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18775 of 2012

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1. Sarita Kumari Wife Of Radhe Prasad Singh Resident Of Village- Pawai, P.S.-
Suryagarha, District- Lakhisarai

.... Petitioner

Versus

1. The State Of Bihar through Secretary, Primary Education Govt. Of Bihar, Patna
2. Secretary, Primary Education, Govt. Of Bihar, Patna
3. District Magistrate, Lakhisarai
4. District Education Officer, Lakhisarai
5. Block Development Officer, Piparia
6. Block Education Officer, Piparia
7. District Teacher Employment Appellate Tribunal, Lakhisarai through Its
Secretary
8. Mukhia, Gram Panchayat Raj Saidpura, Lakhisarai
9. Panchayat Secretary, Gram Panchayat Raj Saidpura, Lakhisarai
10. Raju Mahto, The Then Panchayat Secretary, Gram Panchayat Raj Saidpura,
Lakhisarai
11. Laxmi Kumari Wife Of Ramesh Kumar Resident Of Village- Rahatpur, P.S.-
Suryagarha, District- Lakhisarai

.... Respondents

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Appearance :

For the Petitioner : Mr. Naresh Dixit, Advocate
Mr. Lallan Kumar, Advocate
For the State: Mr. S. K. Singh, AAG6
For Resp. 11: Mr. Nityanand Mishra, Advocate

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

CAV JUDGMENT

Date: 23 -03-2015

The petitioner in the present application under Article
226 of the Constitution of India seeks quashing of an order dated
05.09.2012 passed by the District Teachers Appointment Appellate
Authority, Lakhisarai (hereinafter referred to as the Tribunal)
whereby, the petitioner's appointment as Panchayat Teacher has
been ordered to be terminated and the Appointment Unit of Gram

Panchayat Saidpura in the district of Lakhisarai has been directed to appoint respondent No. 11 as Panchayat Teacher whose case, according to the Tribunal's order, was not considered by the selection committee.

2. It is the petitioner's case that the second phase of appointment of Panchayat Teachers in the State of Bihar started in the year 2008. This is not in dispute that in terms of Rule 9(iii) of Bihar Panchayat Teachers Appointment Rules, 2006 the Panchayat Secretary of the concerned Gram Panchayat is the competent person to receive applications from the aspirants. It is the case of the petitioner, as stated in the writ application, that the Panchayat Selection Committee in its meeting held on 27.10.2008 had decided that the application forms shall be collected by one Pankaj Kumar, a teacher of Primary School, Saidpura since Raju Mahto, the Panchayat Secretary, had absented himself from work. It is the petitioner's case that application forms for the purpose of appointment as Panchayat Teacher in the concerned Gram Panchayat were collected at two places one at the Panchayat level and other at Prakhanda level. At the Panchayat level, the said Pankaj Kumar, a teacher of Primary School, had collected the forms and total 293 applications were received, which were taken into consideration by the Selection Committee. Upon culmination of the

process of selection, on the basis of merit, the petitioner was selected as Panchayat Teacher against unreserved female category post. The appointment letter was, accordingly, issued to her on 14.08.2009.

3. In the meanwhile, respondent No.11 had filed an appeal before the District Teachers Appointment Appellate Authority, Lakhisarai vide appeal No. 75/08-09 with the claim that she had submitted an application to the Panchayat Secretary, Raju Mahto, but her name was not considered by the concerned Mukhiya. By an order dated 09.07.2009 the Appellate Authority considered the appeal of respondent No. 11 and cancelled the merit list for appointment to the post of Panchayat Teachers for the concerned Gram Panchayat. It is the petitioner's case that the order was passed by the Tribunal without hearing the concerned Gram Panchayat. Thereafter, the Panchayat approached the Tribunal and produced before it the list of applications received at the Panchayat level and block level. Accordingly, by an order dated 12.08.2009, the Appellate Authority withdrew its earlier order dated 09.07.2009 and directed the Panchayat Secretary and Mukhiya of the concerned Gram Panchayat to ensure appointment on the basis of merit list prepared by the Selection Committee. In the order dated 12.08.2009 the Tribunal observed that respondent No. 11, Laxmi



Kumari, might have submitted her application form to Panchayat Secretary, Raju Mahto. In the said order dated 12.08.2009, the Tribunal also observed that respondent No. 11 might have submitted her application to said Raju Mahto, the Panchayat Secretary but since he had absented himself from 29.10.2008, he was restrained from receiving applications.

4. I must point out here itself that as per pleadings in the writ application, it has been alleged that the Selection Committee held its meeting on 27.10.2008 and on that date it was decided that the application forms would be collected by Pankaj Kumar, a teacher of Primary School, Saidpura on the ground that the Panchayat Secretary, Raju Mahto, was absenting himself. On the other hand, in the order dated 12.08.2009, the Tribunal recorded that the said Panchayat Secretary, namely, Raju Mahto, was debarred from receiving application forms as he had absented himself from 29.10.2008. The application forms were to be received between 29.10.2008 to 17.11.2008. In the order dated 12.08.2009 the Tribunal observed that Laxmi Kumari, respondent No. 11, might have submitted her application to Raju Mahto, who failed to get the application forms deposited before the employment Unit of the Gram Panchayat. There was, thus, no finding by the Tribunal in the order dated 12.08.2009 that respondent No. 11 did not submit her

application at all.

5. Aggrieved by the order dated 12.08.2009, respondent No. 11 approached this court by filing CWJC No. No. 15300 of 2010. This court allowed the said writ application by an order dated 29.04.2011 and quashed the order of the Tribunal dated 12.08.2009 and remitted the matter back to the Tribunal with following observation:-

“In the totality, therefore, both Annexures 6 and 7 are quashed. Matter is remitted back to the appellate authority that he shall now hear the petitioner again, issue notice to the concerned respondent as well and after verifying the records will pass a clear and categorical order irrespective of the order he has passed in the past without being influenced by such orders because per say this Court expresses unhappiness in the manner in which this proceeding has been conducted.

Writ is allowed”.

6. Thereafter, the Tribunal, after issuing notices to all concerned, passed the impugned order dated 05.09.2012 holding that respondent No. 11 was wrongly denied of consideration for her appointment as Panchayat Teacher though she had submitted her application to the Panchayat Secretary, Raju Mahto. The Tribunal



held that merit point of respondent No. 11 was 83, which was highest among the aspirants belonging to unreserved female category and, therefore, she had a right to be considered for appointment as Panchayat Teacher and as a matter of fact she had a right to be appointed as persons having lower merit points were appointed by the concerned Gram Panchayat.

7. Questioning the legality of the impugned order of the Tribunal, the petitioner in the present writ application, has contended that the said Raju Mahto had in fact not received any application form of respondent No. 11. It has been stated in paragraph 21 of the writ application that the Raju Mahto, Panchayat Secretary, had complained before the Block Development Officer, Piparia that certain anti social elements had obtained his signature on the receipt of part of applications said to have been submitted by so called applicants, total 17 in number, at gun point and such applications should not be considered while making selection.

8. From the impugned order of the Tribunal, I find that the Tribunal took into account this stand taken on behalf of the petitioner and disbelieved it in the background of fact that the said Raju Mahto never got any first information report registered with respect to such allegation. The Tribunal considered the claim raised on behalf of Selection Committee that Mukhiya of the concerned



Gram Panchayat had written to the Block Development Officer with respect to authorization upon Pankaj Kumar to receive the applications in absence of Panchayat Secretary, Raju Mahto and upon perusal of the records found that such letter did not bear any date. The Tribunal disbelieved the story that Pankaj Kumar was authorized to receive applications because of prolonged absence of Raju Mahto as the respondents failed to produce before the Tribunal any document to show that any departmental action was recommended against the Panchayat Secretary for his alleged unauthorized absence.

9. A counter affidavit has been filed on behalf of respondent No. 11. It has been asserted that in terms of Rule 9(iii) of Bihar Panchayat Teachers Appointment Rule, 2006 and 2008, the Panchayat Secretary of the concerned Gram Panchayat is the Member Secretary of the Selection Committee constituted for the purpose of appointment of Panchayat Teachers. It has been asserted that the Mukhiya or any other functionary did not have any jurisdiction to assign the work of the Member Secretary of the Committee to any other person.

10. An interlocutory application being I.A. No. 9023 of 2013 has been filed for impleading one Nigam Kumari as party respondent No. 12. She is being sought to be impleaded as a party



on the ground that the said Nigam Kumari has been wrongly selected as Panchayat Teacher and had she not been selected, the petitioner would have been appointed. It has been asserted in the interlocutory application that either the Intermediate degree obtained by the said Nigam Kumari, which is basis for her appointment or the experience certificate of, “Vidyalaya Chalo Kendra” has been obtained by her fraudulently. It has, accordingly, been contended that Nigam Kumari should be impleaded as a party respondent in the present writ application.

11. I find no justification to allow I. A. No. 9023 of 2014 for impleading Nigam Kumari as a party respondent in the present proceeding on the grounds mentioned in the interlocutory application. What has been asserted in the interlocutory application is completely a separate cause of action which can be agitated by the petitioner in a separate appropriate proceeding before the competent authority. Such claim, in my opinion, cannot be raised for the first time in the present proceeding, which was never raised earlier.

12. I. A. No. 9023 of 2014 is, accordingly, rejected.

13. I have heard learned counsel for the parties at length. There is no denial of the fact that respondent No. 11 had 83 merit points. This is also not in dispute that a receipt was issued in the



signature of Panchayat Secretary in token of receiving her application for appointment as Panchayat Teacher. The claim that some anti social elements had obtained signature on receipts by the Panchayat Secretary at gun point appears to have been rightly rejected by the Tribunal, in the facts and circumstances of the case, when neither the Panchayat Secretary nor any other authority made a complaint or got a first information report registered with respect to the alleged occurrence. In any view of the matter, it is purely a disputed question of fact which cannot be agitated in a proceeding under Article 226 of the Constitution of the India. The Tribunal, upon perusal of the records and rival submissions, has come to a finding that respondent No. 11 was wrongly denied consideration for her appointment as Panchayat Teacher. The finding of the Tribunal cannot be said to be perverse, without material, contrary to material or without application of mind. The finding of the Tribunal that respondent No. 11 had submitted her application cannot be interfered with, in the facts and circumstances of the case. I do not find any infirmity in the order of the Tribunal by which it directed the Appointment Committee of concerned Gram Panchayat, in the facts and circumstances of the case, to appoint respondent No. 11 as Panchayat Teacher and remove the petitioner from the said post as admittedly respondent No. 11 has higher merits point than all other

candidates belonging to female unreserved category. The impugned order of the Tribunal dated 05.09.2012 needs no interference.

This writ application is, accordingly, dismissed.

(Chakradhari Sharan Singh, J)

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