

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14049 of 2015

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Sidheshwar Jha, son of Babuan Jha, resident of Village- Rupaulia, Police Station-Baheri, District-Darbhanga.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Govt. of Bihar, Patna.
2. The Director, Primary Education, Education Department, Government of Bihar, Patna.
3. The District Magistrate, Darbhanga
4. The District Programme Officer, Darbhanga
5. The Block Development Officer, Baheri, District- Darbhanga
6. The Block Education Extension Officer, Baheri, District-Darbhanga
7. The Member, District Teachers Employment Appellate Tribunal, Darbhanga
8. The Mukhia Gram Panchayat Raj Hathauri South, P.S. Baheri, District-Darbhanga.
9. The Panchayat Secretary, Gram Panchayat Raj Hathauri South, P.S. Baheri, District-Darbhanga
10. Manoj Kumar, son of Sita Ram Mandal, Resident of Village- Akhatwar (Chhapki) P.O. Bhataura, P.S. Hathauri, District-Samsatipur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Kripa Nand Jha

For the Respondent/s : None

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
ORAL ORDER

2 04-09-2015 Heard learned counsel for the petitioner. No one appears for the State.

The writ application has been filed challenging the order dated 12.8.2015 passed by the District Teachers Employment Appellate Authority, Balbhadrapur, Laheriasarai, Darbhanga in Objection Case No.10 of 2014, by which the appeal of respondent No.10 was allowed after reaching the conclusion that the decision of this Court is inter parte between the petitioner



and respondent No.10 and it has been held by order dated 27.3.2014 passed in C.W.J.C. No.10716 of 2011 that the moment a person falls under the category of handicappedness, it goes without saying that the appointment has to be made on the basis of percentage of marks obtained by him and, accordingly, respondent No.10, who has obtained higher percentage of marks than the petitioner, should be appointed to the post of Panchayat Shikshak reserved for Orthopaedic handicapped.

This is the third round of litigation. In the year 2006, applications were invited for appointment on the post of Panchayat teacher for Gram Panchayat Raj, Hathauri, South of Baheri Block in the District of Darbhanga and one post was ear-marked for Orthopaedic handicapped person. Both the petitioners and respondent No.10 applied under the said category and they produced their respective certificates of handicap, the respondent No.10 showing him as 70% handicapped and the petitioner as 50%. The respondent No.10 was selected on the ground of higher degree of disability. The matter was taken by the petitioner to the District Teachers Employment Authority, which decided in his favour by its order dated 30.11.2009 cancelling the appointment of respondent No.10 and directing the petitioner to be appointed to the said post. Aggrieved by the same, respondent No.10 moved



this Court by filing C.W.J.C. 18568/2009 and by order dated 9.11.2010 this Court, upon agreement of the parties that the percentage of disability of both the petitioner and respondent No.10 be determined and a report be submitted by the Medical Board on the basis of which the Appellate Authority may take a fresh decision, remitted back the matter to the Appellate Authority which was directed to request the Civil Surgeon-cum-Chief Medical Officer to constitute a Medical Board of competent doctors for examination of disability of both the petitioner and respondent No.10. Thereupon, the Medical Board was constituted and it was found that the petitioner has 50% disability and the respondent No.10 had 40% disability. The Appellate Authority finding that the petitioner had higher disability of 50% vis-à-vis the respondent No.10 directed for cancellation of the appointment of respondent No.10 and for the appointment of petitioner on the said post by its order dated 16.5.2011. Again the respondent No.10 approached this Court by filing C.W.J.C. No.10716 of 2011 and this Court by its order dated 27.3. 2014 held that the earlier order passed by this Court did not specifically lay down the principle to be applied in the appointment of handicapped nor did it say that the appointment would be made on the basis of physical handicappedness, rather it was an open remand, the direction was



given to the Civil Surgeon to verify the physical handicappedness of the party and submit the report and further it was held that the moment a person falls under the category of handicappedness, it goes without saying that the appointment has to be made on the basis of percentage of marks obtained by him and for the said reason, the order of the Appellate Authority was quashed and the matter was remitted back for fresh consideration. Thereafter, the impugned order dated 12.8. 2015 has been passed by the Appellate Authority.

Learned counsel for the petitioner has sought to challenge the order of the Appellate Authority including that the respondent No.10 does not belong to the handicapped category.

In my view, the issue between the petitioner and respondent No.10 had been settled by this Court by its order dated 27.3.2014 passed in C.W.J.C. No.10716 of 2011, in which it was held that the appointment has to be made on the basis of percentage of marks obtained by them, which finding and decision of this Court operates as res judicata and it is not open to the petitioner to challenge the same in any fresh proceedings before this Court. The Appellate Authority by the impugned order dated 8/12.8.2015 has merely followed the law which was laid down by this Court in the previous writ application and held that it is the

respondent No.10, who is entitled to the appointment and not the petitioner.

This Court does not find any illegality in the said order, which is on the basis of the earlier decision of this Court inter parte between the petitioner and the respondent No.10.

The writ application, being devoid of merit, is accordingly dismissed.

(Ramesh Kumar Datta, J)

V.P.Sinha/-

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