

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10106 of 2009

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Nasima Praveen, daughter of Shri Abdul Hasan, wife of Shri Nasruddin,
resident of Village Machhagara, P.O. Chorauly, P.S. Bhagwanpur Hat, Dist.
Siwan.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Human Resources Development Department, Government of Bihar, Patna.
2. The Director, Primary Education, Bihar, Patna.
3. The District, Primary Education, Bihar, Patna.
4. The Deputy Development Commissioner-cum-Chairman, District Education Establishment Committee, Siwan.
5. The District Superintendent of Education, Siwan.
6. The Block Development Officer, Bhagwanpur Hat, Dist. Siwan.
7. The Block Education Extension Officer, Bhagwanpur Hat, Dist. Siwan.
8. The Gram Panchayat Raj Baraka Gaon, Anchal- Bhagwanpur Hat, Dist. Siwan.
Wife of Shri Vijay Kumar Mahto resident of Village Baraka Goan, Sah Tola, P.O. Baraka Gaon, P.S. Bhagwanpur Hat, Dist. Siwan.
9. The Panchayat Secretary, Gram Panchayat Raj Baraka Gaon, Anchal Bhagwanpur Hat, Dist. Siwan.
10. Kumari Rita Pal, Wife of Shri Krishna Kumar, Resident of Village Nadua, P.S. Bhagwanpur Hat, Dist. Siwan.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Umesh Kr.Mishra, Adv.
For the State : Mr. A.K. Sharan, SC-20
For the Resp. No.10 : Mr. B.P. Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL ORDER

9 30-09-2015

Heard learned counsel for the parties.

The prayer of the petitioner in this writ application
reads as follows:-

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- “1(i) *For issuance of an appropriate writ in the nature of certiorari for quashing the order dated 14.4.2009 issued under the signature of the Member, District Teacher Employment Appellate Authority, Siwan by which the petitioner’s claim is being rejected on erroneous grounds without properly appreciating the facts and circumstances of the case by which the petitioner is being deprived to be selected even though is being deprived to be selected even though she has higher percentage of marks than the private respondent no.10 Kumari Rita Pal without properly appreciating the specific order passed by this Hon’ble High Court on 13.2.2009 passed in C.W.J.C. No. 2193 of 2009 (Nasima Praveen versus the State of Bihar and others).*
- (ii) *For issuance of an appropriate writ in the nature of mandamus for commanding and directing the respondent authorities concerned that as the petitioner has the higher percentage of marks, she has appeared in counseling for selection but wrongly denied her selection and private respondent no.10 Kumari Rita Pal has been selected and hence the petitioner is entitled to be selected/appointed instead of private respondent no.10 Kumari Rita Pal.*
- (iii) *For issuance of an appropriate writ in the nature of mandamus for commanding and directing the respondent authorities concerned to select/appoint the petitioner as Panchayat Teacher in Gram Panchayat Raj Baraka Gaon, Anchal-Bhagwanpur Hat, District -Siwan as the petitioner has higher marks than the respondent no.10 Kumari Rita Pal and she has appeared in*

counseling/verification of the documents but she has been wrongly deprived to be selected as Panchayat teacher.

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- (iv) *For issuance of an appropriate writ in the nature of mandamus for commanding and directing the respondent authorities concerned to issue selection letter/appointment letter favour of the petitioner as she has higher marks than the private respondent no.10 Kumari Rita Pal and entitle to be selected and appointed as Panchayat teacher without any further delay.*
- (v) *For issuance of an appropriate writ in the nature of mandamus for commanding and directing the respondent concerned to remove/cancel the selection of private respondent no.10, Kumari Rita Pal who has lesser marks than the petitioner.*
- (vi) *For issuance of an appropriate writ in the nature of mandamus for commanding and directing the respondent authorities concerned to consider her representation/application for selection and by considering her representation a reasoned and genuine order must be passed so that the petitioner might be able to get justice by her selection as Panchayat teacher without any further delay as she is the only eligible candidate against the private respondent from Gram Panchayat Raj Baraka Gaon, Anchal-Bhagwanpur Hat, Dist. Siwan.*
- (vii) *For issuance of an appropriate writ in the nature of prohibition for restraining the private respondent no.10, who has been wrongly selected in place of the petitioner and she is working as Panchayat teacher in Gram Panchayat Raj Baraka Gaon, Anchal-Bhagwanpur Hat, District-*

Siwan.”

Let it be noted that the main challenge of the petitioner to the order passed by the District Teacher Employment Appellate Authority, Siwan (in short ‘the Tribunal’) is that the Tribunal did not look into the relevant records for finding out the participation of the petitioner in the process of counseling for appointment on the post of Panchayat Teacher. As a matter of fact, the aforesaid submission was taken note of by this Court in the order dated 8.9.2009 and a direction was issued to the District Magistrate, Siwan to submit a report after examining the connected records of the appointment of Panchayat Teacher in Gram Panchayat Raj, Barka Gaon, Anchal Bhagwanpur Hat in the district of Siwan. The relevant portion of the order dated 8.9.2009 reads as follows:-

“In the meantime, the District Magistrate, Siwan will call for all connected records of Panchayat Teachers appointment in Gram Panchayat Raj, Baraka Gaon, Anchal Bhagwanpur Hat in the district of Siwan made in the year 2006. The District Magistrate, Siwan will examine all the records and submit a report before this Court stating whether the petitioner Nasima Praveen’s claim regarding participation in the counseling of teachers is correct or incorrect.”

The Collector of the district Siwan, thereafter, had submitted his enquiry report which was produced in the counter affidavit filed on behalf of the respondent nos. 3, 5 & 7. The report of the District Magistrate, Siwan reads as follows:-

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- “1. *That the District Magistrate, Siwan has conducted enquiry in the matter and has also examined the records of the appointment of Panchayat Teacher of Gram Panchayat Raj Barkganw, Block Bhagwanpur Hatt, Distt. Siwan of the year 2006.*
2. *That in pursuant to the order passed in C.W.J.C. No. 10106/09, the District Magistrate, Siwan issued a letter no. 1094/legal dated 20.09.10 to District Education Superintendent, Siwan to make available all the documents and papers relating to Panchayat Shikshak Niyojan, 2006 of Barkagawn Panchayat Raj for enquiry. Thereupon in compliance of the aforementioned letter, the District Education Superintendent, Siwan forwarded and sent the all the documents and papers relating to Panchayat Shikshak Niyojan, 2006 of Barkaganw with his forwarding letter no. 2556 dated 21.09.10. From the perusal of the record, it was found that the application dated 28.08.2006 submitted by the petitioner Nasima Praveen and as available in the record provided by the Gram Panchayat does not bear the signature of the candidate. Therefore the said application for the appointment of Panchayat Teachers submitted by Nasima Praveen appears to be incomplete. However, it is not explained why the incomplete application was entertained. Further the signature of Nasima Praveen on her photograph does not tally with her signature with on verification register. This facts creates contradiction and confusion.*

The photo state copy of the application of the Nsaima Praveen is attached herewith and marked as

annexure 'A'.

3. *That the application of the petitioner was received on 28.08.2006 and the same is entered on serial no. 176 of receiving register.*

The photo state copy of the receiving register is attached herewith and marked as annexure 'B'.

4. *That the name of the petitioner Nasima Praveen also find place on serial no. 55 of the verification register and it is mentioned therein that she has 55.88 percent marks in her intermediate result. She has been kept in female category of the said register and her full signature is thereon which is different from her signature on photograph pasted on application form.*

The photo state copy of the relevant page of the verification register is attached herewith and marked as annexure 'C'.

5. *That a merit list was prepared by the Selection Committee of Gram Panchayat Raj Barkaganw. The name of petitioner find place at serial no.4 in the E.B.C.F. category of female candidates of the said merit list.*

The photo state copy of the said merit list is attached herewith and Annexure 'D'.

6. *That a notice dated 17.10.07 was issued by the Mukhiya, Gram Panchayat Raj Barkagawn with the joint signature of Panchayat Secretary to the petitioner Nasima Praveen mentioning therein to appear on 23.10.07 with her original certificates in counseling for the post of Panchayat Teacher,*

Gram Panchayat Raj Barkaganw. The said letter was sent to the petitioner through U.P.C.

The photostate copy of the notice dated 17.10.07 is attached herewith and marked annexure 'E'.

7. *That the petitioner did not appear on 23.10.07 in the counseling. Thereupon a next notice dated 24.10.07 was issued to the petitioner with a joint signature of Mukhiya and Panchayat Secretary, Gram Panchayat Raj Barkaganw to appear on 30.10.07 in counseling.*

The photo state copy of the notice dated 24.10.07 is attached herewith and marked as annexure 'F'.

8. *That Nasima Praveen, the petitioner did not appear on 23.10.07 in counseling. There was thin appearance of the candidate. Therefore the counseling could not be held and the next date for counseling was fixed for 30.10.07.*

The photo state copy of attendance register for counseling dated 23.10.07 is attached herewith and marked as annexure 'G'.

9. *That the next date was fixed on counseling was 30.10.07 as stated above. The petitioner did not appear in counseling on 30.10.07 and she remained absent. Therefore her application could not be considered.*

The photo state copy of the counseling register dated 30.10.07 is attached herewith and marked as annexure 'H'.

10. *That from the facts submitted above, it is clear that the application of the petitioner Nasima*

Praveen does not contain her signature. Further it is also clear that she has not appeared in the counseling on 23.10.07 and 30.10.07, the dates fixed for counseling.

*Sd./-
District Magistrate,
Siwan 28/9/10"*

This Court, on perusal of the report of the District Magistrate, would find that when the petitioner had filed her application on 28.8.2006, she had not put her signature in the application and, as such, her application was not only incomplete but also filed up by some other person by pasting the photograph containing the signature of the petitioner. Moreover, the District Magistrate, in his enquiry report, had also found that the petitioner had not appeared in course of counseling held on 23.10.2007 and 30.10.2007. When the counter affidavit of the District Magistrate was filed, learned counsel for the petitioner had contended the findings recorded in the enquiry report by taking a plea that the petitioner was eliminated despite having higher marks of 55.88% and appointing the respondent no.10 having 55.55%.

This Court, having noted the aforesaid submission in the order dated 21.2.2012, had passed the following order while issuing the notice to the respondent no.10.

"Learned counsel for the petitioner submits that the enquiry entrusted to the Collector of the District in fact has not been held in a proper manner and the conclusions reached by the Collector are absolutely



irrelevant, inasmuch as when the case of the petitioner was duly considered and also she was allegedly sent a notice to appear in counseling, the ground for ousting the petitioner that she did not put her signature in the first application for appointment on the post of Panchayat Teacher is of hardly any importance. He has also submitted that the notices sent by the Panchayat Secretary/ Mukhiya of the said counseling as has been discussed in the enquiry report of the Collector would itself reveal that all possible care was taken to ensure that the petitioner and yet another candidate Kumari Renu Pal having higher marks were safely omitted in the process of consideration for appointment on the post only for favouring respondent no.10. He would in this regard explain that while the petitioner had secured 55.88% marks whereas Kumari Renu Pal had secured 55.80% as against respondent no.10 securing 55.55%.

Inasmuch as the said aspect may adversely affect the selection and continuation of respondent no.10 this Court would direct for issuance of notice to respondent no.10 both under ordinary process as well as registered cover with A/D, for which requisite must be filed within one week, failing which this application, as against her, shall stand rejected without further reference to a Bench.

Counsel for the State is also directed to ensure production of the original records of preparation of the merit list and/or counseling of selection in question through the Collector of Siwan District.

Put up this case immediately after service of notice on respondent no.10, at the top of the list."

Thereafter, the matter was heard on 18.5.2012 and on perusal of the original records produced by the learned counsel for

the State, it had directed the Panchayat Secretary to file a supplementary counter affidavit on specific issue. The order of this Court dated 18.5.2012 reads as follows:-

“Heard learned counsel for the parties.

This Court, having examined the original records produced by the learned counsel for the State, would feel necessity of the Panchayat Secretary to file a supplementary counter affidavit on the following issues:-

(i) The reason for recording of the proceedings as with regard to holding of the counseling on 23.10.2007 in a separate register without such decision being incorporated in the earlier meeting held on 17.10.2007.

(ii) The reason for not recording the proceedings of 23.10.2007 in the proceedings book and yet recording such proceedings in the date of 30.10.2007 in the register.

(iii) When the serial nos. 1, 2 & 3, namely, Rajia Khatoon, Jaibun Nesha and Chand Pravin of the panel were appointed on the post of Panchayat Teacher in any other block/school and if their appointment was already made prior to 30.10.2007, the reason for sending them also the notice to appear in counseling.

Put up this case on 1st of July, 2012 at the same position.

Let the original records produced by the learned counsel for the State be returned with a direction to the concerned Panchayat Secretary to produce the same on the next day.”

Thereafter, when the case was placed before another Bench, it has been directed to be listed before this Bench under the order of Hon’ble the Chief Justice.

From the counter affidavit filed by the Panchayat

Secretary in terms of the order of this Court, it becomes clear that counseling was held on 23.10.2007 and 30.10.2007 and to that extent, the explanation of the Panchayat Secretary in paragraph nos. 9, 10 & 11 reads as follows:-

- “9. That regarding the query no.1 and 2 made by this Hon’ble Court, it is stated that since the present incumbent has joined the post of Panchayat Secretary much after the selection process in question therefore unable to explain the query made by this Hon’ble Court. However it is stated that the meeting dated 17.10.2007 in the proceeding register declared the short listed candidates under U.R.F. and E.B.C.F. category, the counseling of which held on 23.10.2007 and the proceeding of the 23.10.2007 dealt with the counseling of the said candidates hence the same was recorded in the counseling register. It appears that inadvertently the decision of counseling to be held on 23.10.2007 was not incorporated in the proceeding register.
10. That in this connection it is further stated that the decision to take further counseling on 30.10.2007 was recorded in the counseling register because the same exclusively dealt with the counseling of the short listed candidates.
11. That regarding the third query made by this Hon’ble Court it is stated that after due verification by the present incumbent it has been reveled that the candidates stood at serial no. 1, 2 & 3 did not get the appointment in other block/school prior to 30.10.2007.”

This Court has also perused the counter affidavit filed

by the respondent no.10 and the reply affidavit filed by the petitioner and the affidavit filed by the official respondent as well as respondent no.10. Having regard to the materials on record, this Court would not find any error in the findings recorded by the Tribunal who, after considering the case of the petitioner at length, had held as follows:-

“2. सुनवाई के क्रम में श्रीमती नसीमा परवीन का तीन हस्ताक्षर का नमूना एवम् सादे आवेदन पत्र को उन्हीं के लिखावट में इस उद्देश्य के लिए लिया गया कि उनके लिखावट का मिलान उनके द्वारा दिये गये मूल आवेदन-पत्र से किया जा सके। मिलान करने के पश्चात् यह बात सामने आई कि उनके द्वारा दिया गया मूल आवेदन-पत्र एवं उनके द्वारा भरा गया सादा आवेदन-पत्र की लिखावट एक ही है अन्तर सिर्फ इतना है कि मूल आवेदन हस्ताक्षर विहीन है।”

As a matter of fact, once this Court would find that the petitioner had not even filed her application in the prescribed manner by putting her signature on the application as required in the prescribed proforma, there would be no difficulty in holding that the petitioner was not entitled to be considered. Simply because this defective application could be processed will not clothe any right to the petitioner for being considered. Even on merits of this Court, when there are sufficient records to show that the petitioner did not appear in course of counseling, it will not be

now inclined to disturb the appointment of the respondent no.10 who has only .03% marks less than the petitioner.

That being so, this application must fail and is, hereby, dismissed.

(Mihir Kumar Jha, J)

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