

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6583 of 2011

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1. Santosh Kumar Pathak S/O Sri Bindeshwari Pathak Resident Of Village Padedih, P.O. Kumhaila, P.S. Charpokhari, District Bhojpur (Ara).

.... Petitioner

Versus

1. The State Of Bihar.
2. The Principal Secretary, Human Resources Development Department, Govt. Of Bihar, Patna.
3. The District Superintendent of Education, Bhojpur (Ara).
4. The Block Development Officer Charpokhari, Bhojpur (Ara).
5. The Block Education Officer Charpokhari, Bhojpur (Ara).
6. The Mukhiya, Grampanchayat Sonbarsha Block Charpokhari, District Bhojpur (Ara).
7. The Panchayat Secretary Gram Panchayat Sonbarsha Block Charpokhari, District Bhojpur (Ara).
8. The Member Teacher Employment Appellate Tribunal Bhojpur (Ara).
9. The Head Master Primary School Janeyadih Block Charpokhari, District Bhojpur (Ara).
10. Nagesh Kumar S/O Sri Surendra Tiwary Resident Of Village And P.O. Bihiya Chaurasta P.S. Bihiya, District Bhojpur (Ara).

.... Respondents

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Appearance:

For the Petitioner : Mr. Sanjay Singh, Advocate
For the Respondent No.10 : Mr. R.S. Roy, Sr. Advocate
For the State : Mr. Sushant Praveer, AC to SC-27

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR
MANDAL
ORAL ORDER

5 25-08-2015 Heard Mr. Sanjay Singh counsel for the petitioner,

Mr. Ram Suresh Roy for the respondent no.10 and the counsel for

the State.

Parties have exchanged pleadings.

The petitioner calls in question the legality

/pregnability of the order dated 07.12.2010 passed by the District

Teachers Employment Appellate Tribunal, Bhojpur (for short ‘the

Tribunal') in Appeal case no. 9 of 2010 whereby the Tribunal directed to stay the engagement/appointment of the petitioner as Panchayat Teacher (for short 'the P.T.') and to undertake fresh exercise and thereafter appoint the candidate in accordance with the rule provisions.

The grievance of the applicant of the appeal (respondent 10) was that he had higher percentage of marks and there was earlier direction of the Tribunal for permitting him to participate in the counselling which opportunity was not granted to him.

Counsel for the petitioner placed the entire order passed by the Tribunal (Annexure-3) and submitted that without affording an opportunity of hearing to him the order was passed which is contrary to the principles of natural justice as by virtue of Annexure-2 offer of appointment was made in favour of the petitioner which acquired him with legal rights. He also claims to have joined the post.

Per contra, Mr. Roy, supported the impugned order and has contended that the controversy with regard to the appointment in the said Gram Panchayat had been the subject matter of several litigations. Even the Mukhiya had to file a writ petition in this Court which was dismissed with cost. Earlier, on



a petition filed by the respondent no.10 a direction was issued by the Tribunal for his counselling in the selection process initiated by the Gram Panchayat. In order to give undue advantage to the writ petitioner letter informing him to participate in the counselling was not sent under registered post and the respondent no.10 was denied the opportunity to participate therein although he had more percentage of marks than the writ petitioner and most suited for the post.

I have considered the submissions of the parties. It appears to this Court that in the counselling which was done by the Selection Committee of the Gram Panchayat, the respondent no.10 was also required to be noticed to participate as his name figured in the select panel. It is not so done and offer of appointment was issued in favour of the writ petitioner which propelled the respondent no.10 to file the proceeding/appeal which was considered and disposed of by the Tribunal in the manner noticed hereinabove. However, in doing so, the Tribunal failed to consider that by virtue of Annexure-2 a right had accrued in favour of the writ petitioner and he was required to be heard. From the pleadings on record including the impugned order, it does not appear that the petitioner was made a party and heard. Looking to the matter in this angle, this Court is unable to uphold

the order passed by the Tribunal in Appeal no. 09 of 2010. A patent flaw in the order which the Tribunal crept in. The Court would, therefore, direct a fresh hearing in the matter to be done by the Tribunal in presence of the petitioner. It has been stated that pursuant to the counselling the respondent no.10 being the most eligible person who furnished the consent letter was appointed after removal of the writ petitioner. The petitioner, on the other hand, states that by virtue of the present order his appointment was cancelled.

Considering the rival submissions, this Court only observes that until fresh hearing and disposal of the matter by the Tribunal the status quo as existing today shall be maintained by the respondents with respect to the post in question.

Let the petitioner appear before the Tribunal along with a copy of this order in appeal no. 09 of 2010 and file his reply, if any, within 03 weeks from today. The Tribunal will fix a date for hearing of the matter and thereafter proceed to dispose of the appeal afresh in accordance with law. In doing so, the Tribunal shall neither be precluded nor prejudiced by the order dated 07.12.2010 as contained in Annexure-3.

(Kishore Kumar Mandal, J)

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