

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14708 of 2011

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1. Pushpa Kumari W/O Sri Sitaram Sah R/O Vill.- Mahda, P.S.- Rajaun,
Distt.- Banka

.... Petitioner/s

Versus

1. The State Of Bihar Through The Chief Secretary Government Of Bihar,
Old Secretariat, Patna
2. The Director (Primary Education) Human Resources Development
Department, Government Of Bihar, Patna
3. The District Superintendent Of Education, Banka, Distt.- Banka
4. The Gram Panchayat, Rajwar
5. Kapil Gavaskar S/O Not Known To The Petitioner R/O Vill.- Mahda,
P.S.- Rajaun, Distt.- Banka
6. Bipin Kumar Sah S/O Not Known To The Petitioner R/O Vill.- Mahda,
P.S.- Rajaun, Distt.- Banka

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajendra Prasad Singh, Sr. Advocate
For the Respondent/s : Mr. Deepak Sahay, AC to AAG-6
For the Respondent No.7 : Mr. Ajay Mukherjee
For the Respondent No.6 : Mr. Vivekanand Vivek

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

CAV ORDER

12 20-05-2015

1. Heard learned counsel for the parties.

2. The petitioner in the present writ application has sought for quashing of an order dated 02.08.2011 passed in Case No. 114/18-2011 by the learned Member, District Teachers Appointment Appellate Authority, Banka, whereby, he has allowed the appeal/application of one Bipin Kumar Sah (Respondent no.6) holding that he has better right to continue as Panchayat Teacher for Gram Panchayat Raj, Rajwar, Banka having better merit points of (72.11) than that of the petitioner

(70.8).

3. Facts are not in dispute. The entire controversy has because one Kapil Gavaskar (Respondent no.5) was initially not considered for appointment as Panchayat Teacher for the said Gram Panchayat in the selection made in the year 2006, since he had Intermediate qualification in vocational course which was not given recognition, for the purpose of appointment as Panchayat Teacher. Subsequently, this Court by a decision dated 21.8.2008 in case of Madan Paswan and others Vs. State of Bihar and ors. reported in 2008(4) PLJR 118 held Intermediate qualification in vocational course to be a valid qualification for appointment as Panchayat Teacher. There is no dispute about the fact that intermediate or equivalent qualification is the minimum educational qualification required for appointment as Panchayat Teacher. In the light of the said decision of this Court in case of Madan Paswan and others, the State authorities issued directive for appointing the candidates as Panchayat Teachers considering their respective merits.

4. This is not in dispute that before the decision of this Court in case of Madan Paswan and others came, selection process in the concerned Gram Panchayat was over and the petitioner and respondent no.6, both were appointed as Panchayat Teachers on



the basis of their respective merits, as per roster. Respondent no.6 on the basis of selection had joined on 5.1.2007 in Primary School, Ajamtullah (Harizantola) on 5.1.2007. Petitioner after her appointment had joined on 7.3.2007 in Primary School, Brindaban, of the said Gram Panchayat. In the light of decision of this Court in case of Madan Paswan and others (supra), the District Superintendent of Education, Banka appears to have written letters to the Employment Unit of the concerned Gram Panchayat to appoint respondent no.5 (Kapil Gawaskar) who had intermediate qualification in vocational course and had higher merit points. Naturally, one candidate having lower marks than respondent no.6 was required to be removed in terms of the directive of the District Superintendent of Education. This is also not in dispute that said respondent No.6 had higher merit points. The Appointment Unit of the Gram Panchayat in its wisdom decided to remove respondent no.6. Respondent no.6 approached the appellate authority against his removal pursuant to appointment of respondent no.5. He claimed that there were other persons below in the merit list of the concerned category, than the petitioner, who ought to have been removed, if some one was required to be removed consequent upon appointment of respondent no.5. It appears that petitioner, respondent no.5,



respondent no.6 and respondent no.7 were noticed. There is no dispute about the fact that respondent no.6 has 72.11 merit points and he was appointed against the post reserved for backward class whereas the petitioner who is a female, with 70.81 merit points was selected against the post meant for unreserved post. The said respondent no.5 Kapil Gavaskar had 75.7 merit points. Respondent no.7 has subsequently been added as respondent in the writ application, who upon notice has appeared and filed counter affidavit. There is no dispute about the fact that she has 70.3 merit points to her credit and she was appointed against the post meant for unreserved female.

5. The Tribunal, on the basis of a respective merits of the candidates came to the conclusion that the petitioner had lesser merit points than the respondent no.6 and therefore, she ought to have been removed in place of respondent no.6 consequent upon appointment of respondent no.5, Kapil Gavaskar.

6. Learned senior counsel appearing on behalf of the petitioner has submitted that in any event, the petitioner's appointment as Panchayat teacher could not have been disturbed by the Tribunal on the basis of relative merits of the candidates, their being absolutely no dispute about the fact that she had more merit points than at least respondent no.7. He has submitted that

whereas the petitioner was appointed on the basis of her merit points of 70.8, respondent no.7 had only 70.03 merit points, who was selected against unreserved female post.

7. A counter affidavit has been filed on behalf of the respondent nos. 5, 6 and 7. Respondent no.6 has supported the decision of the Tribunal asserting that petitioner was appointed against the general post and not against post reserved for backward class candidates and accordingly, the Tribunal rightly directed to appoint respondent no.5 replacing respondent no.6 after his intermediate qualification for vocational course came to be recognized as valid qualification for appointment as Panchayat Teacher by this Court, in case of Madan Paswan and others (supra).

8. Learned counsel appearing on behalf of respondent no.6 has also referred to a decision of this Court in case of ***Vishal Pratap Singh Vs. State of Bihar and others reported in 2013 (3) PLJR 209*** that as a matter of fact, the respondent no.5 ought not to have been appointed as the decision of the High Court in case of Madan Paswan and others (supra) to recognize intermediate qualification in vocational course was to be given prospective effect and which could not have been applied to 2006 selection of Panchayat Teachers. He has relied upon paragraphs 10, 11 and 12

of the decision of this Court in case of Vishal Pratap Singh (supra) which read thus:-

“10. Any appointment of any person on the post of a Panchayat Teacher by virtue of holding an Intermediate degree in vocational subjects could never have been made, at least prior to 21.8.2008. If that was done, then there was no necessity to restore them on the post on the basis of judgment dated 21.8.2008. An illegality or ineligibility will remain so.

11. Counsel for the petitioners is correct in taking a stand that there was no occasion to remove them from their service and make way for holders for vocational degree, because the time when these petitioners were appointed, they did not suffer from any ineligibility, whereas ineligibility of the private respondents are writ large on the face of the record.

12. The Court comes to a considered opinion that any direction issued in Annexures 5,6 and 7 or Annexures 3,4 and 5 in the two writ applications would confer an illegal benefit upon the private respondent of continuance on a post as they were ineligible to be appointed in the very first place. So far as future is concerned, it can very well beget them appointment on the basis of their degree but it could only be after 21.8.2008. But any appointment to the post made by the Panchayat in the year 2007 is of no avail to them.”

9. He has also submitted that as a matter of fact, the respondent no.5 has submitted his resignation now, which has been accepted by the competent authority.

10. Upon reading of the impugned order passed by the appellate authority, I am of the view that the Tribunal apparently missed to take notice of the fact that respondent no.7 had lesser

merit points than the petitioner and in no circumstance, the appointment of petitioner could have been disturbed consequent upon appointment of respondent no.5, both being females.

11. I also find substance in submission made on behalf of the respondent no.6 while relying on a decision of this Court in case of Vishal Pratap Singh (supra), wherein this Court specifically held that this court's decision dated 21.8.2008 in case of Madan Paswan and others (supra) was to be applied prospectively, after the date of the judgment dated 21.8.2008 and, it was not proper on the part of the authorities to have undertaken an exercise of removal of candidates, already appointed as Panchayat Teachers in the year 2007 for accommodating those who held intermediate qualification in vocational course and whose cases were not considered at the time of selection by treating the said qualification not to be recognized one.

12. In view of the above, the impugned order dated 2.8.2011 passed by the learned Member, District Teachers Appointment Appellate Authority, Banka in case of 115/18- 2011 is set aside to the extent it relates to cancellation of appointment of the petitioner. I find from the order dated 6.3.2012 passed in this case that the impugned order passed by the appellate authority was kept in abeyance. It has been stated that the petitioner has

continued on the strength of the interim order of this Court as Panchayat Teacher. She will be continuing accordingly and shall be entitled for all consequential benefits, as if she continued as Panchayat Teacher.

13. The appellate authority is directed to consider the merit list afresh and decide whether respondent no.7 can be allowed to be continued as Panchayat Teacher in view of the observations made hereinabove, as well as the decision of this Court in case of Vishal Pratap Singh (supra). The authority will be required to give the parties due opportunity of hearing before passing any order and pass an order within three months from the date of receipt/production of a copy of this order.

(Chakradhari Sharan Singh, J)

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