

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12957 of 2010

Lusy Bharti, D/o Kshitish Mandal, resident of Village-Auliyabad, P.O.-
Jhandapur, P.S.-Bihpur, District-Bhagalpur.

..... **Petitioner/s**

Versus

1. The State of Bihar.
2. The Principal Secretary, Human Resource Development Department,
Bihar.
3. The Deputy Director (Primary Education), Bihar.
4. The Secretary, District Teacher Employment Appellate Authority,
Bhagalpur.
5. The District Education Officer, Bhagalpur.
6. The Block Development Officer, Bihpur.
7. The Block Education Extension Officer, Bihpur.
8. The Secretary, Gram Panchayat Madawa East.
9. The Mukhiya, Gram Panchayat Madawa East.
10. Bharti, D/o Jagdish Das, resident of Village-Auliyabad, P.O.-
Jhandapur, P.S.-Bihpur, District-Bhagalpur.

..... **Respondent/s**

Appearance :

For the Petitioner/s : Mr. Arjun Kumar, Advocate
For the Respondent No.10 : Mr. Ravi Verma, Advocate
For the Respondents-State : Mrs. Babita Kumari (A.C. to S.C.-18)

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI

SHARAN SINGH

C.A.V. ORDER

6 29-04-2015

The petitioner seeks quashing of an order, issued
vide Memo No. 321, dated 28.05.2010 passed in Appeal



Case No. 23 of 2010 by the Member, District Teachers Employment Appellate Authority, Bhagalpur, whereby, he has held the petitioner's appointment as Panchayat Teacher of Gram Panchayat Madawa, East, under the district of Bhagalpur, to be illegal and accordingly has cancelled her appointment.

2. I have heard learned counsel appearing on behalf of the petitioner as well as the contesting respondent no. 10. Learned A.C. to S.C.-18 has also been heard on behalf of the other respondents.

3. The facts appeared to be not much in dispute. It appears that the petitioner as well as respondent no. 10 and others were applicants for the post of Panchayat Teacher for Gram Panchayat Madawa, under the district of Bhagalpur, in the first phase of Teacher's Employment, 2006. There is no dispute that the respondent no. 10 possessed 59.66 merit points for the purpose of appointment, whereas, the petitioner possessed 55.77. The respondent no. 10 appears to have presented herself on 11.10.2007. The petitioner and respondent no. 10, both belong to extremely backward



class (female) and for the females of extremely backward class, a date for second counselling was fixed on 31.07.2007. This is not in dispute that respondent no. 10 had presented herself on the said date of counselling on 31.07.2007, as per the case of the petitioner herself, though she was present for counselling on 31.07.2007, but she could not mark her attendance in token of her presence because of shortage of certain documents. This is not in dispute that the petitioner marked her signature on attendance on 01.08.2007.

4. From the facts recorded in the order under challenge, which are not in dispute, it appears that one merit list was prepared on 31.07.2007 of the candidates, who had presented themselves for counselling on 31.07.2007. As has been noted above, the petitioner, who had put her signature on 01.08.2007, was allowed to put her signature on 01.08.2007, though the merit list was already prepared on 31.07.2007. The Tribunal observed that this indicated irregularity in preparation of the merit list. In any case, in the said merit list,

prepared on 31.07.2007, respondent no. 10 was placed above the petitioner as she had more merit points than the petitioner.

5. It appears that, thereafter, one of the selected candidates, namely, Rubi Kumari, who was appointed as Panchayat Teacher, resigned. This causes the vacancy and for the purpose of filling up the said vacancy, the Selection Committee of the Gram Panchayat started second round of counselling, for which 29.11.2007 was the date fixed. In the second round of counselling, said to have done on 29.11.2007, the petitioner appeared and respondent no. 10 could not. The Employment Committee of the Gram Panchayat, accordingly, appointed the petitioner.

6. Alleging irregularity in the process of selection, respondent no. 10 approached Lokayukt as well as Director, Primary Education, Government of Bihar, Patna, who referred the matter to the District Teachers Employment Appellate Authority, Bhagalpur, giving rise to institution of Appeal Case No. 23 of 2010. She appears to have asserted before the Tribunal that



she was not given any notice as regards, second counselling and through back door, the Employment Unit of the Gram Panchayat ensured presence of the petitioner on 29.11.2007, being the date of second round of counselling. She took specific plea that it was an act of gross irregularity on the part of the Employment Unit to have included the name of the petitioner in the merit list prepared on 31.11.2007, though on 31.07.2007, the petitioner had not appeared for counselling and by back dating her signature, she was included in the merit list.

7. The Tribunal after hearing the petitioner and respondent no. 10 and after considering the records of the selection process, concluded that it was illegal on the part of the Employment Unit to have included the name of the petitioner in the merit list, which was already prepared on 31.07.2007, whereas, she had put her signature in the concerned register on a subsequent date, i.e., 01.08.2007. The Tribunal disbelieved the stand of the petitioner that she had appeared on 31.07.2007 for the purpose of counselling and because she did not bring all the documents, her counselling

could not be done on that very date.

8. As has been noted above, there is no dispute about the facts that respondent no. 10 has higher merit points than the petitioner. The findings arrived at by learned Member, District Teachers Employment Appellate Authority, Bhagalpur, cannot be said to be without any basis. The learned Member, on due application of mind, appears to have passed the impugned order, which does not require any interference by this Court in a proceeding under Article 226 of the Constitution of India.

9. It further appears that respondent no. 10 had approached this Court by filing C.W.J.C. No. 13463 of 2010 for implementation of the order of the Tribunal, which is under challenge in the present writ application. This Court disposed of the said writ application in following terms:-

“In view of the judgment of the Apex Court aforesaid, I direct the Mukhiya to take action in accordance with the order of the Tribunal forthwith within fifteen days from the day of production of a copy of this order before him. He

must immediately look into the records and find as to who was the person wrongly deprived of appointment at that stage of appointment of the said Lucy Bharti.

With the aforesaid observations and directions, the writ petition stands disposed of.”

10. I do not find any merit in this application. This application is, accordingly, dismissed. The respondents are directed to proceed accordingly and particularly in the light of the order of this Court dated 19.11.2010 passed in C.W.J.C. No. 13463 of 2010.

(Chakradhari Sharan Singh, J)

Praveen-II/-

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