

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1018 of 2013

Chandan Kumar S/O Sangram Singh R/O Mohalla- Ramnagar, Near D.S. College,
Katihar, P.S.- Katihar Town, District- Katihar

.... Petitioner

Versus

1. The State of Bihar through Secretary, Human Resource Development Department
2. The Zilla-Shikshak-Niyojan Appeleya Pradhikar Katihar, Mirchaibari, District- Katihar
3. The District Superintendent of Education Cum District Programme Co-Ordinator Katihar, Mirchaibari, S.D.O. Campus, District-Katihar
4. The Block Development Officer, Korha, Block & P.S.- Korha, District- Katihar
5. The Block Education Extension Officer Korha, Block & P.S.-Korha, District- Katihar
6. Mukhiya, Gram Panchayat Raj- Mahinathpur, Block & P.S.- Korha, Dt.- Katihar
7. Panchayat Secretary Gram Panchayat Raj- Mahinathpur (Korha), At & P.O.- Mahinathpur (Korha) Block, District- Katihar
8. Nirbhay Kumar Singh S/O Janardhan Prasad Mehta, Panchayat Shikshak, at present posted at Primary School, Mahinathpur (Korha), Bangali Tola, Maheshwa, R/O Village & P.O.- Maldiha, P.S.- Barharakothi, District- Purnea

.... Respondents

Appearance :

For the Petitioner/s : Mr. Anshuman Jaipuriyar, Advocate

For the Respondent/s : Mr. Neeraj Nandan

CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

ORAL JUDGMENT

Date: 11-12-2015

Heard learned counsel for the petitioner, State as well as respondent no.8

2. The petitioner seeks quashing of the order dated 29.09.2007, passed by the Block Development Officer, Korha (respondent no.4), which was also affirmed on 15.10.2012 in Appeal Case No. 2242 of 2011 by the Appellate Tribunal, Katihar.

3. The petitioner along with respondent no.8 and others filed



application for appointment as Panchayat Teacher under Gram Panchayat Raj, Mahinathpur under Korha block, pursuant to advertisement dated 15.11.2006. The petitioner was selected and appointed as Panchayat Teacher in the 4th counseling held on 25.03.2007 under Backward Class category. The respondent no.8, who also belonged to Backward Class category and admittedly had higher marks than the petitioner, filed a complaint before the competent authority under 2000 Rules, namely, Block Development Officer, Korha. The respondent no.8 submitted that he did not have adequate notice of the counseling and as such he could not appear on 10.03.2007. Other objection is that the notice for 3rd counseling was issued on 29.02.2007 was a Sunday, and as such non-est in the eye. Any subsequent action pursuant to it, too would be void. The Block Development Officer, Korha accepted the complaint of respondent no.8 and appointed him in place of petitioner after cancelling the latter's appointment.

4. The petitioner in turn being aggrieved by the order of Block Development Officer, dated 29.09.2007, moved this Court in CWJC No. 15469 of 2007, which was heard analogous with batch cases, the lead case being CWJC No. 14660 of 2007. The learned Single Judge vide order dated 22.07.2011 granted liberty to the petitioner to move the appellate tribunal, which was constituted and

had become functioning by then. The petitioner consequently filed his appeal before the learned Tribunal, which was numbered as Appeal Case No. 2242 of 2011. Notice was issued to private respondent no.8, who appeared and filed his objection. After hearing the parties, the Tribunal rejected the appeal of the petitioner, hence this writ application.

5. I find that the Tribunal rejected the appeal of the petitioner primarily on the ground that respondent no.8 did not receive personal notice of the 3rd counseling scheduled for 25.03.2007. Furthermore, the notice, dated 29.02.2007 is non-est in the eye of law, as February, 2007 was only of 28 days.

6. Both State and respondent no.8 having appeared and filed counter affidavits and justified the impugned order passed by the Tribunal.

7. The respondent no.8 has justified the action of the Tribunal in rejecting the appeal of the petitioner against cancellation of his appointment by the Block Development Officer, Korha. He has supported the reasonings mentioned by the Tribunal in its order.

8. On the other hand, the petitioner submits that a notice would not become defective only because a wrong date of issuance of notice is mentioned in the letter, if the date fixed for appearance in the notice is otherwise correct and does not suffer from procedural error.



9. I find substance in the submission of the learned counsel for the petitioner that if the date fixed in the notice for appearance is a valid date, the same would not become defective ipso facto, if the date of the notice is result of a typographical error. There was no date like 29th February in the year 2007. The date fixed in the notice for appearance/counseling was 25.03.2007. It cannot be said that sufficient time was not given in the notice for counseling, as such mere typographical error would not invalidate the notice.

10. I will now examine the second reasoning given by the Tribunal dismissing the appeal of the petitioner against his termination. The Tribunal in its order, observed that respondent no.8 did not have notice for appearing in 3rd counseling fixed for 25.03.2007 vide notice dated 29.02.2007. He further observed that respondent no.8 was of a different district and as such he ought to have been given information about the 3rd counseling.

11. On the other hand, the petitioner submits that the panel was published on 29.02.2007 fixing 25.03.2007, as the date of counseling. The respondent no.8 was of the neighbouring district and had due information about the 3rd counseling, scheduled on 25.03.2007. He submits that there was no material before the Tribunal to come to a conclusion that respondent no. 8 did not receive notice. The petitioner submits that the Tribunal ought to have considered the

relevant materials as well as the relevant records before forming a conclusion that respondent no. 8 did not have any information.

12. Having regard to the facts and circumstances of the case, I am inclined to grant one opportunity to the petitioner to establish his case before the Tribunal that respondent no.8 had information about the date of counseling. The matter is accordingly remitted to the Appellate Tribunal for hearing on the matter. The impugned order passed by the Appellate Tribunal would be subject to the final outcome of the appeal, bearing Appeal Case No. 2242 of 2011.

13. With the aforesaid observation, this application stands disposed of.

(Samarendra Pratap Singh, J.)

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