

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19090 of 2012

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1. Seema Kumari Daughter of Shri Pashupati Prasad, resident of village & P.O. Tari, Police Station- Raghunathpur, District- Siwan
 2. Indu Devi Wife of Shri Gyanchandra Singh Kushwaha Resident Of Village- Maidaniya, P.O. Sewatapur, Police Station- Mairwa, District- Siwan
 3. Ranjeet Kumar Son of Shri Krishna Ram Resident of Village- Chainchhapra, P.O. Visabar, Police Station- Guthani, District- Siwan
 4. Rudal Kumar Sahani Son Of Shri Jangal Sahani Resident Of Village- Maidaniya, P.O. Sewatapur, Police Station- Mairwa, District- Siwan
 5. Krishna Mohan Tiwari Son Of Om Prakash Tiwari Resident Of Village- Sannhula, P.O. Bakulari, Police Station- Guthani, District- Siwan

.... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Education Department, Government of Bihar, Patna
3. The Director, Primary Education, Education Department, Government Of Bihar, Patna
4. The District Magistrate, Siwan
5. The Deputy Development Commissioner-Cum-Chairman, District Education Establishment Committee, Siwan
6. The District Education Officer, Siwan
7. The District Programme Officer (Establishment), Siwan
8. The Block Education Officer, Mairwa, District Siwan
9. The Mukhiya, Gram Panchayat Raj English, Block Mairwa, District- Siwan
10. The Panchayat Secretary, Gram Panchayat Raj English, Block Mairwa, District- Siwan
11. The Member, District Teacher's Employment Appellate Authority, Siwan

.... Respondent/s

with

Civil Writ Jurisdiction Case No.21181 of 2013

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Subhash Chandra Shukla Son of Late Vishwanath Shukla Resident Of Village - Tenua, P.S. - Guthani, District - Siwan At Present Working As Panchayat Secretary, Gram Panchayat Raj English Block Mairwa, District Siwan

.... Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Human Resources Department, Bihar, Patna
2. The Director, Primary Education, Bihar, Patna
3. The Member, District Teacher Employment Appellate Authority, Siwan
4. The District Magistrate, Siwan
5. The Deputy Development Commissioner-Cum-Chairman, District Education Establishment Committee, Siwan
6. The District Education Officer, Siwan
7. The District Programme Officer (Establishment) Siwan
8. The Block Education Officer Mairwa, District Siwan

9. The Mukhiya, Gram Panchayat Raj English, Block Mairwa, District Siwan
10. Seema Kumari Daughter of Sri Pashupati Prasad Resident of Village and P.O. Tari, Police Station - Raghunathpur, District - Siwan
11. Indu Devi Wife Of Shri Gyanchandra Singh Kushwaha Resident Of Village - Maidaniya, P.O. Sawatapur, Police Station Mairwa, District - Siwan
12. Ranjeet Kumar Son Of Shri Krishna Ram Resident Of Village - Chainchhapra, P.O. Visabar, Police Station - Guthani, District - Siwan
13. Rudal Kumar Sahani Son Of Shri Jangal Sahani Resident Of Village - Maidaniya, P.O. Sewatpur, Police Station Mairwa, District - Siwan
14. Krishna Mohan Tiwari Son Of Om Prakash Tiwari Resident Of Village - Sanhula, P.O. Bakulari, Police Station - Guthani, District - Siwan
..... Respondent/s

Appearance :

(In CWJC No.19090 of 2012)

For the Petitioner/s : Mr. Umesh Kumar Mishra, Advocate.

For the Respondent/s : Mr. Avnish Nandan Sinha GP-11

For the N.C.T.E. : Mr. S.N.Pathak, Advocate.

(In CWJC No.21181 of 2013)

For the Petitioner/s : Mr. Upendra Kumar Singh, Advocate.

For the State : Mr. Kaushal Kumar Jha, AAG-14

For the Respondent : Mr. Umesh Kumar Mishra, Advocate.

For the N.C.T.E. : Mr. S.N.Pathak, Advocate.

CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

11 16-09-2015

Heard learned counsel for the parties.

2. Learned counsel for the parties agree that the cases in hand will be covered by an order of this Court dated 03.03.2014 in C.W.J.C. No. 21792 of 2012 as well as C.W.J.C. No. 21843 of 2013 wherein also exactly similar situation has arisen inasmuch as the Panchayat Secretary, namely Deena Nath Choudhary, Gram Panchayat Raj-Makriyar, Block-Siwan, District- Siwan, had come out to assail the order passed by the District Teacher Employment

appellate authority, Siwan dated 28.12.2011 in case No. 949 of 2011 wherein a direction was given to appoint Pushpendra Kumar, Sharda Devi, Anju Kumari and Shiwbrat Yadav, who had also filed their separate writ application, C.W.J.C. No. 21792 of 2012 for implementation of the aforementioned order of the Tribunal.

3. Here also, there is a similar situation inasmuch as in C.W.J.C. No. 21181 of 2013, the Panchayat Secretary has assailed the order of the District Teacher Employment appellate authority, Siwan dated 29.06.2012 in C.W.J.C. No. 482 of 2011, whose implementation has been sought by the petitioners, namely, Seema Kumari, Indu Devi, Ranjeet Kumar, Rudal Kumar Sahani and Krishna Mohan Tiwari.

4. Thus, as prayed for by Mr. Umesh Kumar Mishra, learned counsel appearing on behalf of the petitioners in C.W.J.C. No. 19090 of 2012 and also private respondents in C.W.J.C. No. 21181 of 2013, the impugned order of the Tribunal dated 29.06.2012 in case No. 482 of 2011 is quashed and the matter is remitted back to the Tribunal to take its fresh decision strictly in accordance with law after giving opportunity of hearing to all the parties of both these writ applications.

5. The Tribunal, while doing so, shall keep in mind that the main issue is with regard to strict adherence and absorption to the procedure for preparation of panel in terms of Rule 9 of the



Bihar Panchayat Elementary Teacher (Employment & Service Conditions) Rules, 2006 (hereinafter referred to as 'the 2006 Rules') and, therefore, unless the Tribunal is satisfied from the records that the procedure, as laid down in Rule 9 of the 2006 Rules, was followed in letter and spirit, it will never issue any order in favour of the petitioners because if the panel was not prepared, as per the procedure prescribed in Rule 9 of the 2006, there would be no question of appointment from such panel.

6. As a matter of fact, the Tribunal shall also go into the aspect as to whether the vacancies have remained or they have become non-existent on account of new rules under which the candidates are required to also pass Teachers Eligibility Test Examination for being appointed on the post of Panchayat Teacher. In other words, if the petitioners do not have the qualification under the new rules and the Tribunal comes to a finding that the earlier procedure followed for appointment was not in accordance with Rule 9 of the 2006 Rules, it will straightway reject the case of the petitioners by directing the Panchayat Unit to fill up those vacancies by way of fresh exercise in view of new requirement of the rules. Only when the Tribunal will find that the selection of the petitioners was strictly in accordance with the rules prevailing at the time of preparation of the panel and that vacancies have also remained, it will proceed to

issue any order for appointment to the petitioners.

7. The Panchayat Secretary, who is the petitioner in one of the two cases, therefore, will be under obligation to produce the documents, which are still available after removal of the Mukhiya and the earlier Panchayat Secretary and if there is no such document available, this fact will also be made known to the Tribunal by the Panchayat Secretary. The absence of the documents, however, shall not weigh in favour of the petitioners because the present Panchayat Secretary had come out but, in fact, made an allegation against the earlier Mukhiya and the Panchayat Secretary and, therefore, the onus will shift in this case on the petitioners to establish that the procedure under Rule 9 of the 2006 Rules was followed in letter and spirit in course of preparation of panel and selection on the post of Panchayat Teacher.

8. With the aforementioned observation and direction, both these writ applications are disposed of.

9. This Court expects the Tribunal to dispose of remitted matter expeditiously preferably within a period of six months from the date of receipt of a copy of this order.

(Mihir Kumar Jha, J)

Sujit/-

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