

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1369 of 2012
IN
Civil Writ Jurisdiction Case No. 19614 of 2011**

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Salamat Ansari S/O Jainul Ansari Resident Of Village- Kharati, P.O- Kuddi, P.S-
Chand, District- Kaimur At Bhabhua.

.... Appellants

Versus

1. The State Of Bihar through the Principal Secretary, Human Resources Development Department, Bihar, Patna.
2. The Director, Primary Education, Bihar, Patna.
3. The District Teacher Employment Appellate Tribunal Kaimur (Bhabua) through its Member, Kaimur (Bhabua)
4. The District Magistrate, Kaimur (Bhabua)
5. The District Superintendent Of Education, Kaimur (Bhabua)
6. The Block Development Officer, Durgawati, Kaimur (Bhabua)
7. The Block Education Extension Officer, Durgawati, Kaimur (Bhabua)
8. The Mukhiya Gram Panchayat Chhaon, P.S- Durgawati, District- Kimur (Bhabua)
9. The Panchayat Secretary, Gram Panchayat Chhaon, P.S- Durgawati, District- Kaimur (Bhabua)
10. Tufail Ahmad Khan S/O Jamil Ahmad Khan Resident Of Village- Kharari, P.S- Durgawati, District- Kaimur (Bhabua)

.... Respondents

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Appearance :

For the Appellant : Mr. Prabhakar Singh, Advocate.
For the State : Mr. Harish Kumar, G.P.32
For the Respondent No.10 : Mr. Kumar Sunil, Advocate.

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

and

HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 31-03-2015

Respondent No. 10 in the writ petition is the appellant.

The selection of respondent no. 10 as Urdu Teacher in the Panchayat School was challenged by the writ petitioner who is respondent no.10 in this appeal. Both the writ petitioner and respondent no.10 in the writ petition, who is appellant before us, have appeared and have been heard as also the State and with their consent the appeal is being

finally disposed of.

In our view this appeal calls for interference with the order of the learned single Judge. The facts are not in dispute and are noted hereunder.

The writ petitioner Tufail Ahmad Khan and the appellant who was respondent no.10 in the writ petition Salamat Ansari had both applied for one post of Urdu Teacher in respect of the Panchayat School at Gram Panchayat Chhaon, P.S. Durgawati, District- Kaimur (Bhabua). Respondent no.10 Salamat Ansari was selected and appointed as Urdu Teacher. This selection and appointment was challenged by the writ petitioner Tufail Ahmad Khan before the District Teacher Employment Appellate Tribunal, Kaimur (Bhabua). The Tribunal refused to interfere and upheld the appointment of Salamat Ansari. It is this decision that Tufail Ahmad Khan challenged before the writ court. The challenge which was accepted by the learned single Judge was that Salamat Ansari had passed his intermediate examination from Uttar Pradesh. Despite the main subject which did not include Urdu as permitted by the rules in Uttar Pradesh, in the next year he sat for Urdu examination at intermediate level as an additional subject. He passed. Thus, at intermediate level he had Urdu as an additional sixth subject. When the matter for appointment came he applied for the post of Urdu Teacher. Rule-6 of the Bihar Panchayat Primary Teachers (Appointment and Service

Condition) 2006 clearly provides that for appointment for the post of Urdu Teacher the candidate must have Urdu as one of the subject. All we need to note is that it makes no distinction between the main subject, subsiding subject and additional subject. Salamat Ansari, the writ petitioner, fulfilled these criteria. He was thus eligible for consideration. But then we have a circular issued by the Human Resources Development Department, Government of Bihar dated 08.08.2006 (Annexure-1 to the writ petition) which states that marks of any additional subject would not be taken into account for reckoning merit, it is not Urdu specially. What was sought to be done by the circular was, where persons had more than five subjects, it was five subjects of main alone which was taken into account for reckoning merit for the purpose of selection. It is not in dispute that while making merit list Urdu marks of additional subject of Salamat Ansari was not taken into account. Yet he beat the writ petitioner Tufail Ahmad Khan on merit. He was thus appointed.

On behalf of the writ petitioner Tufail Ahmad Khan it is submitted that once the circular provided that the additional subject would not be taken into account for calculating merit and if by that reason Urdu was discarded he (Respondent no. 10 in writ) became ineligible for consideration. The learned single Judge has accepted the submission.

We having considered the matter are unable to agree. In

our view there is distinction between eligibility and selection. From the facts noted above it is clear that the appellant who was respondent no.10 in the writ petition was eligible. The writ petitioner and the State also did not contest this. Once he became eligible how could he become ineligible for selection. What the circular has done is that it has provided a solution, where persons have more than five subjects. It is at this stage having become eligible, at the stage of selection only five main subjects have to be taken into account to reckon the merit. The marks of additional subject would not be reckoned for determining the merit. Therefore, once respondent no.10, the appellant before us, becomes eligible, Urdu was discarded for reckoning merit. That, thus, does not make him ineligible because he had crossed the eligibility criteria then he reached at the stage of selection.

Thus, in our view respondent no.10 of the writ and appellant before us cannot be held to be ineligible. That would be a contradiction in terms. We, therefore, uphold the order of the Tribunal by setting aside the order of the learned single Judge and allow this appeal. The writ petition is liable to be dismissed and is dismissed as such.

(Navaniti Prasad Singh, J)

(Jitendra Mohan Sharma, J)

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