

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13067 of 2012

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1. Punam Kumari @ Punam Devi, W/o Pramod Kumar Sharma, R/O Village- Baijnathpur, P.S- Chhauradano, Distt- East Champaran.
 2. Archana Kumari, D/O Nawal Kishore Thakur, resident of Village- Dhabdhabwa, P.S- Adapur, Distt- East Champaran.

.... Petitioners

Versus

1. The Secretary-Cum- Pradhan Shiksha Padadhikari, Chhauradano Block Teacher's Employment Committee, Distt- East Champaran.
2. The State of Bihar.
3. The Principal Secretary, Human Resources Department, Govt. of Bihar, Patna.
4. The Director, Primary Education, Govt. of Bihar, Patna.
5. The District Magistrate, East Champaran at Motihari.
6. The District Education Officer, East Champaran at Motihari.
7. The Member, District Teacher's Employment Appellate Authority, East Champaran.
8. The District Program Officer, East Champaran, Motihari.
9. The Block Development Officer, Chhauradano, Distt- East Champaran.
10. The Block Education Officer, Chhauradano, Distt- East Champaran.
11. The Pramukh, Panchayat Samittee Chhauradano, Distt- East Champaran.
12. Nitu Kumari, D/O Dasai Sah, Village- Mahmada, P.S- Chhauradano, Distt- East Champaran.

.... Respondents

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Appearance :

For the Petitioners : M/S. Bindhyachal Singh & Manish Prakash, Advocates.

For the Respondents : Sri Rajendra Kumar Singh, Sr. Advocate, Mr. Mukesh Kumar Singh, Advocate & Miss. Aparna Pandey, Advocate.

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
ORAL ORDER

6 08-07-2015 The two petitioners have filed the writ application to quash the order 06.06.2012, passed in Case No. 793 of 2011 by the Member, District Teacher's Employment Authority, East Champaran, by virtue of which, appointment of both the

petitioners as Prakhanda Teachers in Chhauradano Block has been held to be illegal. The Tribunal has further held the right of appointment of respondent no. 12 as a teacher and has also now stands appointed.

The impugned order is Annexure-4 to the writ application. It is evident from perusal of the said order that a large number of persons approached the Tribunal making a grievance against selection of some and non-selection of some other applicants, on one pretext or the other by the appointing authorities. Because of a large number of claimants and respondents involved in the said litigation a rather detailed kind of order, running into several pages, came to be passed.

Counsel for the petitioners attacks the order of the Tribunal on the ground that no fault lay with the petitioners. Their selection was rightly made in the category of E.B.C. because the State Government removed these persons from the category of BC-II to E.B.C. and they are entitled to the benefit of the notification so issued in the alternative. It is also argued that the petitioners can not lose their real status or advantage of B.C. if they can not be granted benefit of E.B.C.

Yet another submission on behalf of the petitioners is that no evidence on record has come to show about participation

of the private respondent in counselling, therefore, she can not acquire a right for consideration. The reason for non-participation can be one to many and she can not acquire a right by presumption.

The appointment in question relates to second phase of appointment which was initiated in the year 2008. At the relevant time, both the petitioners fell in the category of B.C. and thus ought to have been considered and appointed in that category only. If any change took place vide notification issued by the State Government putting such class of people into E.B.C. category that notification will be prospective in nature and the process once initiated will be completed on the basis of status so declared by the candidates at the threshold.

Despite the law being what it is these petitioners were given advantage of their changed/alterd status of reservation and obviously if a dispute is raised then the advantage so drawn by these petitioners would be required to be tested within the settled principle of law. The Tribunal, therefore, to that extent has rightly held that their selection and appointment was erroneous.

Once the selection and appointment process reaches its finality there will be no option left to reopen the issue and direct the authorities to reconsider the claim of the petitioners under BC



category. Right have already accrued in favour of candidates already selected years ago and who actually belonged to BC category. A right, so vested, cannot be diverted at this belated stage to accommodate the petitioners since appointment is of the year 2010. Petitioners cannot be allowed to get opening under the B.C. category now.

Yet another submission of the counsel is that there is no evidence of the private respondent participation in counselling. The Tribunal has very rightly taken into consideration the fact that for 83 vacancies, only 122 applicants came up for counselling in these days of unemployment. This is clear indicator of manipulation especially when the name of the private respondent figures everywhere except counselling register

There are other materials to show about participation of private respondent. The Court can take judicial notice of various writ applications, which have come before this Court that whenever a candidate who was otherwise eligible by higher percentage of marks were mysteriously shown not to have participated in counselling process. It cannot be the same story every time.

This Court has also seen that counselling registers have been created to deny benefit to otherwise more meritorious

candidates. It is also not co-incidence that in 1000's of cases which have come before this Court for adjudication most of the beneficiaries are mediocre and left out are either trained or first divisioners having high percentage of marks. This cannot be a co-incidence. Mukhiyas and the Gram Panchayat Secretaries have recommended undeserving candidates, obviously for a reason.

In view of above, no interference is warranted with the decision of the Tribunal which, in the opinion of the Court, is well considered and logical based on facts.

The writ application is, therefore, dismissed.

(Ajay Kumar Tripathi, J)

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