

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.550 of 2012

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Bibi Firdosun Nisha, D/O Late Hakimuddin R/O Vill.- Maheshmara, P.O- Panasi,
P.S- Paharkatta, District- Kishanganj.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Human Resources and Development Department, Bihar, Patna.
3. The Director, Primary Education, Bihar, Patna.
4. The Member, District Teacher Employment Appellate Tribunal, Kishanganj.
5. The District Programme Officer, (Establishment), Kishanganj.
6. The Block Education and Extension Officer, Pothia, Kishanganj.
7. The Mukhiya, Jahangirpur Panchayat, Pothia, Block- Kishanganj.
8. The Panchayat Secretary, Jahanagirpur Panchayat, Block- Pothia, District- Kishanganj.
9. Smt. Nazada Khatoon, D/O Tasiruddin R/O Vill. Maheshmara, P.S- Paharkatta, District- Kishanganj.

.... Respondent/s

With

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Miscellaneous Jurisdiction Case No. 3817 of 2012

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Bibi Firdosun Nisha, D/O Late Hakimuddin, R/O Vill-Maheshmara, P.S.-
Paharkatta, P.O.-Panasi, District-Kishanganj.

.... Petitioner/s

Versus

1. The State of Bihar
2. Mr. Amarjeet Sinha, the Principal Secretary, Human Resources and Development Department Bihar, Patna.
3. Mr. Ashutosh, the Director, Primary Education, Bihar, Patna.
4. Mr. Ram Deo Singh, the Member, District Teachers Employment Appellate Tribunal, Kishanganj.
5. Mr. Chandra Shekhar Prasad, the District Programme Officer (Establishment) Kishanganj.
6. Mr. Nand Kishore, the Block Education and Extension Officer, Pothia, Kishanganj.
7. Sahhin Ara Begum, the Mukhiya, Jahangirpur Panchayat, Pothia Block, Kishanganj.
8. Md. Salimuddin, the Panchayat Secretary, Jahangirpur Panchayat , Block Pothia, District-Kishanganj.
9. Smt. Nazeda Khatoon, D/O Md. Tasiruddin, R/O Vill-Maheshmara, P.S.- Paharkatta, District-Kishanganj.

.... Respondent/s

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Appearance :

(In CWJC No.550 of 2012)

For the Petitioner/s : Mr. Pramod Kumar, Advocate
For the Respondent-State : Dr. Anil Kr. Upadhyay, SC-2

For the Private Respondents : Mr. Naresh Prasad, AC to SC-2
Mr. Arun Prasad Ambastha

(In MJC No.3817 of 2012)

For the Petitioner/s : Mr. Pramod Kumar
For the Respondent/s : Mr. Kaushal Kr. Jha SC-4
For Respondent No.7 : Mr. Sanjay Parasmani, Advocate

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL JUDGMENT
Date: 22-08-2016

Heard Mr. Pramod Kumar, learned counsel appearing for the petitioner, Dr. A.K. Upadhyay, S.C.-2 for the State and Mr. Arun Kumar Ambastha, for the respondent no.9.

The petitioner is aggrieved by the order dated 10.9.2011 passed by the Member, District Teachers Employment Appellate Authority, Kishanganj (hereinafter referred to as 'the Appellate Authority') in Case No.305(A) of 2011, whereby the appeal filed by the petitioner has been dismissed and which was circulated vide memo No.988 dated 13.9.2011.

Facts of the case briefly stated is that following initiation of a selection process for appointment of Panchayat Teachers, the petitioner, the respondent no.9 and some others applied and in the appointment process the petitioner succeeded. The appointment order was issued on 24.10.2007, a copy of which is placed at Annexure-3 and the petitioner gave her joining on 28.10.2007 vide Annexure-4. A complaint was filed by the respondent no.9 before the Block Development Officer, Pothiya, Kishanganj, a copy of



which is placed at Annexure-6 and was registered as case no.2 of 2007-08. The Block Development Officer who was vested with appellate powers to consider any complaint against appointment of Panchayat Teachers at the relevant time under the Bihar Elementary Panchayat Teachers (Appointment and Service Condition) Rules, 2006 (hereinafter referred to as 'the Rules') considered the complaint and taking note of the fact that the private respondent no.9 possessed higher marks than the writ petitioner, upheld the complaint on being satisfied that the respondent no.9 was deprived of participating in the counselling process. The Block Development Officer has noted that despite the decision of the Appointment Committee for personal service of the letters on the candidates, informing them about the date of counselling fixed on 19.7.2007 but this decision of the Appointment Committee was not followed and the candidates were informed by post which unfortunately did not reach the respondent no.9, thus depriving her from participating in the counselling. The Block Development Officer has also taken note of the fact that though the counselling was fixed on 6.9.2007, the letter intimating the date of counselling was posted under a certificate of posting only on 30.8.2007 leaving all possibilities open for a delayed service. The Block Development Officer in the circumstances upheld the complaint and set aside the



appointment of the writ petitioner. The writ petitioner being aggrieved by the order of the Block Development Officer filed an appeal before the 'Appellate Authority' giving rise to Case No.305(A) of 2011 and since the same was not being disposed of that she came before this Court in CWJC No.6109 of 2010 and a Bench of this Court vide order placed at Annexure-9 disposed of the writ petition with a direction to the 'Appellate Authority' to dispose of the complaint so filed by the petitioner. The complaint of the petitioner was considered along with the complaint filed by the respondent no.9 and the rival claims being tested, the 'Appellate Authority' concluded in favour of the respondent no.9 and orders have been issued to the appointment authority to issue appointment orders in favour of the respondent no.9. The petitioner being aggrieved is before this Court.

I have heard learned counsel for the petitioners and I have perused the records.

Although it has been extensively argued by Mr. Pramod Kumar, learned counsel for the petitioner that no notice was issued by the Block Development Officer while passing the order placed at Annexure-7, he admits that the respondent no.9 is possessed with higher marks. The explanation given by Mr. Pramod Kumar regarding non-participation of the respondent no.9, is that she was



engaged in another selection process relating to appointment of Panchayat Teachers at Gram Panchayat, Panasi in the district of Kishanganj. He makes a reference to Annexure-12 to canvass the position but in my opinion neither of the issues so raised by the petitioner merits consideration. The factual position stands explained in the order of the Block Development Officer placed at Annexure-7 and which position is reiterated in the order impugned passed by the 'Appellate Authority'.

It is undisputed that the respondent no.9 is possessed with higher marks. It is also not in contest that the letter intimating the date of counselling was sent to the candidates by post. There is nothing on record which would show that the letter was delivered to the respondent no.9 prior to the date of counseling. There is again nothing on record which would show that the respondent no.9 participated in the counseling held on 6.9.2007 in respect of the appointment process initiated by Appointment Committee, Gram Panchayat, Panasi vide Annexure-12. On the contrary it is the specific case of the respondent no.9 that the call letter was never delivered to her and though she tried to participate but was precluded from participation. The issue which clinches the contest in favour of the respondent no.9 is that while the Appointment Committee had taken a decision for personal service of the letters

intimating the date of counselling it is undisputed that it was sent by post and it is stated by the respondent no.9 that she did not receive the same. Meaning thereby, a definite attempt was made to avoid participation of the candidates, who were otherwise eligible to the post.

In view of the position explained above, the order passed by the ‘Appellate Authority’ impugned in this writ petition suffers from no error requiring any interference.

The writ petition is accordingly dismissed.

Re:**M.J.C.3817 of 2012**

In view of the order passed in CWJC No.550 of 2012, this contempt application is disposed of.

(Jyoti Saran, J)

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AFR	
CAV DATE	
Uploading Date	07.09.2016
Transmission Date	