

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10008 of 2012

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Md.Murshid Alam Son Of Md. Abdul Shakoor Resident Of Village - Chandan,
Police Station - Chandan , District - Banka

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Director, Department Of Human Resources Development, Govt. Of Bihar, Patna
3. The District Magistrate, Jamui
4. The D.S.E-Cum-District Programme Officer (Establishment), Jamui
5. The Member District Teacher Employment Tribunal, Jamui
6. The Block Development Officer, Jhajha, District- Jamui
7. The Block Education Extension Officer, Block-Jhajha, District - Jamui
8. The Panchayat Sachiv, Gram Panchayat Telwa, Block- Jhajha, District - Jamui
9. The Mukhiya, Gram Panchayat Telwa, Block Jhajha, District - Jamui
10. Md. Jamaluddin Son Of Late Jamiruddin Resident Of Village - Puran Kadih, P.S. Jhajha, District - Jamui

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Syed Firoz Raza, Advocate, Mr. Md. Najmul Hodda, Advocate
For the Respondent No. 10 :	:	Mr. Md. Nasrul Hoda Khan, Advocate, Mr. Harun Quareshi, Advocate
For the State	:	Mr. Shiv Kumar, AC to GA-7

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

ORAL JUDGMENT

Date: 27-01-2016

Heard learned counsel for the petitioner, learned counsel for the State and learned counsel for the private respondent.

The petitioner is aggrieved by the order dated 15.03.2012 passed in Case No. 98 of 2011 by the learned Member, District Teacher Employment Tribunal, Jamui, cancelling her appointment in favour of respondent no. 10 namely, Md. Jamaluddin. The Tribunal was of the view that the petitioner, who has got 55.33% marks, has wrongly been appointed, inspite of the



fact that the respondent no. 10 had secured higher marks of 68.66% than the marks obtained by the petitioner. The Tribunal further observed that the marks in Niyojan Register was incorrectly shown as 75.33% in place of 55.33%. The petitioner submits that the complaint case no. 98 of 2011 filed before the Tribunal itself was time barred as the same should have been filed within 30 days of the Niyojan in view of the government notification no. 7 dated 23.10.2008 issued by the Human Resources Department, Govt. of Bihar, particularly, sub-clause (iv) of clause-‘Kha’. He thus submits that the complaint should have been filed on or before 30.01.2011 whereas the same was filed belatedly on 14.02.2011.

The petitioner fairly submits that it is true that a division bench of this Court in LPA No. 1250 of 2014 observed that an appeal is preferred beyond the period of 30 days, the same may be entertained by the authority, if there are sufficient reasons. The division bench further observed that appellate authority ought not to entertain such complaint without assigning any reason and seeking of any extension of period of limitation, which is not the situation in the instant case. The petitioner has also placed reliance upon the decision of learned Single Judge in the case of Pramila Shah Vrs. State of Bihar and others, reported in 2006 (4) PLJR 568.

Counter affidavit has been filed by respondent no. 10 as well as respondent State.

Before I consider the rival submission of the parties, it would be relevant to notice the facts of the case in brief.

The petitioner along with others including respondent no. 10 applied for appointment as Panchayat Teachers within Telwa Block, Jhajha, District Jamui. The counseling for the said post were held on 27.01.2009. In the said counseling, 11 teachers were selected for appointment. The petitioner's name figured amongst the 11 teachers so selected. The petitioner was issued appointment letter on 13.08.2010. However, the District Teacher Employment Appellate Tribunal cancelled their appointments and issued direction for holding fresh counseling. Consequent to the order of the Tribunal, the Employment Committee held a meeting on 27th and 29th December, 2010 and decided to hold counseling for all the applicants on 30th December, 2010. According to the Employment Committee, only 11 applicants appeared in the counseling on 30th December, 2010 including the petitioner and 10 others, who were appointed on 14.08.2010.

Being aggrieved, the respondent no. 10 filed a complaint raising a grievance that no adequate notice was given for the counseling. Furthermore, the counseling was held in hurry on the next day itself. Apart from this, he has also secured 66.68% marks as against 55.33% marks of the petitioner.

The State in its counter affidavit has also affirmed the fact that the respondent no. 10 had higher marks than that of the

petitioner.

I have heard counsel for the parties. The petitioner has assailed the order of the Tribunal on the ground that the complaint itself was time barred being filed almost one and half months though the same should have been filed within a period of one month in view of government notification no. 7 dated 23.10.2008. I find that the respondent no. 10 has not filed any petition seeking condonation of delay nor the appellate authority has recorded any reasons for entertaining the said complaint beyond the said period. The aforesaid aspect would only disentitle the respondent no. 10 to the reliefs granted to him by the Tribunal.

The other important issue is as to whether the selection process should be allowed to stand, if the Court finds that there is grave irregularities in the process of counseling and thus should the petitioner be allowed to retain the benefit of appointment. While issuing notice, a bench of this court vide order dated 18.06.2012 has observed that:-

“Three questions arise for consideration (a) if Respondent No.10 did not participate in counseling on two occasions, is he entitled to appointment (b) if the Tribunal was satisfied that there were grave irregularities in the process of counseling that was held, can the petitioner be allowed to retain the benefit of the appointment (c) is it a fit case where fresh selections may be directed.”

This court finds two disturbing features in the selection

process. A meeting was held on 27th December, 2010 followed by another meeting on 29th December, 2010, on which date it was decided to hold counseling for all the candidates on 30th December, 2010. In my view, fixing the date of counseling just on the next day of the preceding meeting cannot be said to afford reasonable opportunity to the intending candidates to appear in the counseling. Atleast there should have been a gap of minimum of 5 to 7 days between the dates deciding to hold the counseling and the counseling itself. Besides this, the Committee too was not adequately represented as required under Rule 4 of Bihar Primary Teachers Employment Rules, 2012.

I thus find flaw in the selection process. Accordingly, the counseling held on 30th December, 2012 is set aside. The order of the Tribunal is also set aside having entertained the complaint beyond period of 30 days, without any explanation or seeking extension of time. The Selection Committee is directed to hold a fresh counseling, fixing a date, after due notice.

The writ application is disposed of in aforesaid terms.

(Samarendra Pratap Singh, J)

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