

Md. Izhar Son
District - Bhagalpur

1. The State of
2. Principal Se
3. The District
4. Member, Th
5. The Block I
6. The Pancha
7. Mahendra K

Bihpur Dis

.... Appellant/s

1. The State of Bihar
2. Principal Secretary, HRDD, Government of Bihar, Patna
3. The District Superintendent of Education, Bhagalpur
4. Member, The Teacher Employment Appellate Authority, Bhagalpur
5. The Block Education Extension Officer, Bihpur, District - Bhagalpur
6. The Panchayat Secretary, Jhandapur, District - Bhagalpur
7. Mahendra Prasad Yadav, Father name not Known, R/O village Jhandapur, P.S. Bihpur, District - Bhagalpur
8. Neeraj Kumari D/o Late Bhujangi Ray R/O village Jhandapur, P.S. Bihpur, District - Bhagalpur
9. Lousi Bharti, wife of Shayam Nandan Singh R/O village Jhandapur, P.S. Bihpur, District - Bhagalpur

.... Respondent/s

For the Appellant	:	Mr. Ashok Chaudhary, Advocate
For the State	:	Mr. Rishi Raj Sinha, SC 19
For the Respondents No. 8 and 9	:	Mr. S. D. Sanjay, Sr. Advocate with Mr. Arjun Kumar, Advocate

The challenge in the present Letters Patent Appeal is to an order passed by the learned Single Bench of this Court on 21.02.2014 whereby the termination of the services of the appellant in pursuance of the order passed by the District Teachers Employment Appellate Authority has remained unsuccessful.

The appellant is a handicapped person having speech and hearing impairment. An advertisement was published for appointment of

Panchyat Teachers in Jhanjharpur Panchayat, Bihpur Block to fill up posts at roster points 46 - 53.

There was no post reserved for handicapped category though there was a post advertised for females as per the amendment carried out in the Bihar Panchayat Elementary Teachers (Employment and Service Conditions) Rules, 2006 whereby 50% vacancies were reserved for female. The appellant belonging to a handicapped category was appointed against the roster point of unreserved category of female.

Such appointment was challenged by one Mahendra Prasad Yadav before the Appellate Authority. The Appellate Authority has set aside the appointment of the appellant for the reason that the appellant could not be appointed against the roster point meant for female by a candidate who is physically handicapped. It is the said decision which was not interfered with by the learned Single Bench.

Learned counsel for the appellant relies upon the circular dated 20.01.2007 whereby the roster point for physically handicapped category was fixed as 1, 34 and 67. It was also contemplated that if for any reason such roster points are not filled up, then the physically handicapped person can be appointed against any of the roster point. Therefore, it is contended that the appellant was rightly appointed against the roster point reserved for female category since there was no other handicap candidate available. The appellant has worked for more than four years and therefore, terminating his services after such lapse of

time is inequitable. It is contended that even now one post is available and the appellant could very well be adjusted against the available post. Learned counsel relies upon a judgment of the Hon'ble Supreme Court reported as (2007) 8 SCC 621 (Mahesh Gupta v. Yashwant Kumar Ahirwar).

We have heard learned counsel for the parties and find no merit in the present appeal. Admittedly, in the advertisement published, no posts were reserved for physically handicapped category. Since there was no post reserved, the application of the appellant has to be treated as General Category. Had the post been advertised for physically handicapped, the other eligible candidates could have applied and would be in the zone consideration. In the absence of any advertisement, the appellant could not be appointed as a handicapped person against a post not advertised more so, when the post advertised is reserved for female.

The judgment referred to by learned counsel for the appellant is clearly not applicable. It was a case where the reservation for handicapped persons was introduced by virtue of a circular dated 29.03.1993. It is in pursuance of such circular, an advertisement was published to carry out special drive for filling up of reserved post of handicapped persons. Since the posts for handicapped persons were advertised, therefore an opportunity was given to all the eligible physically handicapped candidates to apply and to be considered for appointment. In absence of any condition in the advertisement

advertising post for physically handicapped, the appellant, being a handicapped person, cannot seek appointment against a general female category post.

The appellant has been appointed against the roster point 53 out of roster point 46-53 allocated to Gram Panchayat. 53 is the roster point reserved for female. The appellant could not be appointed against such roster point only because he is a handicapped candidate. Even as per the circular, the roster point 1, 34 and 67 are reserved for handicapped persons. The appointments are not being made against such roster point. Therefore, to say that the appellant will have a right of appointment against roster point reserved for female is not tenable.

Consequently, we do not find any merit in the present appeal and the same is dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

Anjani/P.Kumar

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