

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4445 of 2011

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Suresh Kumar Ranjan , son of Sri Raj Ballam Ram , resident of village +P.O.
Dewadhi, P.S. Taraiya, Distt. Saran

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Divisional Commission, Saran Division At Chapra
3. The District Magistrate, Saran At Chapra
4. The Member, The District Teacher Employment Appellate Authority, Saran At Chapra
5. The District Superintendent Of Education Saran At Chapra
6. The Block Development Officer, Panapur Distt. Saran At Chapra
7. The Block Education Extension Officer, Panapur, Distt. Saran At Chapra
8. The Mukhiya Gram Panchayat Raj Chakiya Block Panapur Distt. Saran At Chapra
9. The Panchayat Secretary Gram Panchayat Raj Chakiya Block Panapur Distt. Saran At Chapra
10. Sri Radhey Shyam Paswan, son of Ambika Manjhi, Resident of village – Serukahan, Police Station – Masrak, District Saran

.... Respondent/s

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Appearance :

For the Petitioner/s : **Mr. Gyan Prakash**
For the Respondent/s : **Mr. Umesh Kumar Mishra**
AC to SC 9

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 25-10-2016

Heard Sri Gyan Prakash, learned counsel for the petitioner,
learned AC to SC No. 9 as well as Sri Umesh Kumar Mishra, learned
counsel who has appeared on behalf of the respondent no. 10.

The petitioner, who was initially appointed vide Annexure-
1 to the writ petition which was issued on 20.2.2007 as Panchayat
Teacher in Gram Panchayat Raj, Chakiya, Block - Panapur , District -
Saran at Chapra against five posts earmarked for Scheduled Caste



candidates had initially filed the present writ petition with a prayer to quash an order contained in Memo No. 33 dated 1.2.2011 passed by Member, District Teacher Employment Appellate Authority, Saran Chapra (hereinafter referred to as “District Appellate Authority”) in Case No. 22 of 2009. By the said order the District Appellate Authority had allowed the application filed by the respondent no. 10. The respondent no. 10 before the District Appellate Authority had claimed that though he was having higher marks than the petitioner, ignoring his case petitioner was appointed. The District Appellate Authority after hearing the parties disposed of the application filed by the respondent no. 10 vide Annexure -5 to the writ petition with a direction to the appointing authority to adjust the respondent no. 10 after cancelling the appointment of the last candidate against five posts allocated for Scheduled Castes candidates. Since petitioner was last candidate, in view of the order of the District Appellate Authority in place of petitioner respondent no. 10 was appointed and appointment of the petitioner was cancelled and petitioner was removed. Since the person who was just above the petitioner in the earlier merit list and appointed against post reserved for Scheduled Castes category died during the pendency of the writ petition, the petitioner filed an interlocutory application vide I.A. No. 298 of 2016 with a prayer to allow amendment in the relief portion as follows:-



“For issuance of a writ of mandamus commanding the respondents, specially respondent no. 8 and 9 to take statutory step for restoration / continuation of petitioner on his duly appointed post of Panchayat Teacher in view of the fact that due to death of Lalan Ram on 30-3-2015 appointed as Panchayat Teacher with petitioner, one post of Panchayat Teacher became vacant and is still vacant and further the impugned order i.e. order passed by the District Appellate Authority dated 1-2-2011 be modified”. The petitioner in the interlocutory application by specific pleading had agreed for not claiming any remuneration for the period during which he remained disengaged. Vide order dated 1.2.2016 the interlocutory application i.e. I.A. No. 298 of 2016, after hearing the parties, was directed to be treated as part of the writ petition. Meaning thereby that now prayer for amending relief has been treated as part of the writ petition.

It is case of the petitioner that as per selection process which was initiated in view of the provisions contained in Bihar Panchayat Prarambhik Shikshak (Niyozan Evam Shart) Rules, 2006 (hereafter referred to as “Rules 2006”) the petitioner participated in the selection process. There were five posts reserved for Scheduled Castes category. Out of five, three posts were meant for male and two were meant for female of the same category. Since in the



selection process none of the female member qualified in view of government instruction i.e. Annexure -6 to the supplementary affidavit. In view of Government instruction contained in Memo No. 223 dated 8th August 2006 [Annexure -6 to the supplementary affidavit , running page no. 40] two male candidates against vacant vacancy ear marked for female was filled up. The petitioner was adjusted against 5th post and above the petitioner one Lalan Ram who was having higher marks than the petitioner was selected. The petitioner in view of Annexure -1 to the writ petition i.e. appointment letter on the very next date i.e. on 21.2.2007 joined the Prathmik Vidyalaya, Chintamanpur and he started to discharge his duty diligently. After his selection no objection was raised from any side. However after lapse of about two years the respondent no. 10 suddenly approached the District Appellate Tribunal raising a plea that he was having higher marks than the petitioner. Since the application preferred by respondent no. 10 was contrary to the statutory provision of limitation as contained in Rules 2006 his application was rejected by the District Appellate Tribunal vide Annexure- 2 to the writ petition i.e. order dated 7.7.2009 in Case No. 22 of 2009 . The private respondent thereafter filed a writ petition vide C.W.J.C. No. 10518 of 2009. A bench of this court vide its order dated 6.10.2009 quashed the order dated 7.7.2009 of the District



Teacher's Employment Appellate Tribunal, Saran and remitted back the matter to decide the Appeal on merit. It is case of the petitioner that at the time of filing of the application before the District Appellate Tribunal vide Annexure -2, the petitioner was not impleaded as party but after the case was remitted back by this Court vide its order dated 6.10.2009 passed in C.W.J.C. No. 10518 of 2009 notice was issued to the petitioner also and after hearing all the concerned the order impugned was passed vide Annexure -5 to the writ petition. The Case No. 22 of 2010 was finally disposed of with a direction to adjust the applicant of the Case (Respondent No. 10 herein) on last post ear-marked for five reserved category candidates. It was submitted by learned counsel for the petitioner that once there was statutory provision to raise objection within thirty days, the Court is of the opinion that after lapse of such a long time of selection, application of the private respondent was not required to be entertained. However, since the matter was remitted back by order of this Court the Appellate Tribunal had examined the case and passed order. Now during pendency of the writ petition the candidate who was just above the petitioner had already died and vacancy has occurred and it is also a case that petitioner continued to serve from 21.2.2007 till at least order passed by the Appellate Tribunal which was passed on 1.2.2011 for the ends of justice and



equity the Court is of the opinion that direction can be issued to accommodate the petitioner against vacancy which has occurred after the death of the person who was just above the petitioner. Of-course at the time of argument learned counsel for the petitioner has raised many points assailing the order of the District Appellate Tribunal regarding irregularity but since prayer is confined limited to the extent of his adjustment against vacancy which occurred subsequently it would be necessary to allow the limited prayer of the petitioner.

Accordingly taking in view the principle of equity the writ petition is allowed with a direction to the concerned respondents to adjust the petitioner against the vacancy which has occurred due to death of Sri Lalan Ram. It is made clear that final order regarding adjustment of the petitioner by the concerned respondent particularly the respondent no. 8 and 9 is to be taken within a period of eight weeks from the date of receipt / production of a copy of this order. Since the petitioner in its interlocutory application i.e. I.A. No. 298 of 2016 has already prayed that he will not claim any salary during the said period the petitioner shall not be paid any remuneration from the date of his disengagement till the date of re-engagement. However, the respondent authority may take appropriate decision regarding regularizing the said period of absence even showing the period as

leave without salary.

The writ petition stands allowed.

(Rakesh Kumar, J)

Praful/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	30-10-2016
Transmission Date	N.A.