

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.3139 of 2013**

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1. Jitendra Kumar Singh S/O Late Bharat Prasad Singh R/O Village- Andherbari,  
P.S.- Taraiya, District- Saran

.... .... Petitioner/s

Versus

1. The State Of Bihar Through The Principal Secretary Human Resources Development Department, Govt. Of Bihar, Patna
2. The Director, Primary Education Human Resources Development Department, Govt. Of Bihar, Patna
3. The District Magistrate, Saran, Chapra
4. The Sub-Divisional Officer, Marhowra, Saran
5. District Education Officer, Saran, Chapra
6. District Programme Officer, Establishment, Saran, Chapra
7. District Panchayat Raj Officer, Saran, Chapra
8. Block Development Officer, Taraiya, Saran
9. Block Education Officer, Taraiya, Saran
10. The Mukhiya, Gram Panchayat Raj Madhopur, Bara, Taraiya, Saran
11. The Panchayat Secretary Gram Panchayat Raj, Madhopur, Bara, Taraiya, Saran
12. The District Teacher Employment Appellate Authority, Chapra Through Its Member
13. Braj Kishore Singh @ Braj Kishore S/O Raj Narayan Singh R/O Vill.- Bhalua Bhikar, P.S.- Taraiya, Distt.- Saran, Presently Posted As Apanchayat Shikshak Utkramit Madhya Vidyalaya, Ardewa, P.O.- Ardewa Under Gram Panchayat Raj Madhopur, Block, P.S.- Taraiya, Distt.- Saran

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Abhimanyu Sharma,  
Mr. Sanjay Kumar Singh, Advocates

For the State : Mr. Raju Giri, GP.30  
Mr. Nikhil Kumar Agrawal, AC to GP.30.

For Respondent no.13 : Mr. Suresh Prasad Singh No.1  
Mr.s Kumar Rashmi

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**CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY**

**ORAL JUDGMENT**

**Date: 25-01-2016**

Heard learned counsel for the petitioner and learned  
counsel for the State as well as respondent no.13.

2. In the present writ petition, the petitioner is challenging

the order dated 28.9.2012 passed by appellate Tribunal in Case No.9 of 2011 by which appeal of the petitioner has been rejected.

3. Brief facts of the case is that the Government of Bihar in second phase of selection process for appointment of Panchayat Teachers, 2008 issued the notification giving necessary instruction fixing the date of filing the application, date of counseling and date for appointment. The present petitioner applied for the post of Panchayat Teacher in two Gram Panchayats, namely Dumri and Madhopur Bara. As per claim of the petitioner he went to attend the counseling at Madhopur Bara and moved around along with other candidates but the proceeding of the counseling was not conducted but the same was held to another place without information to any person with a notice of giving benefit to the person of their choice. He filed a complaint before the District Administration and Block Development Officer. In the meantime, respondent no.13 was appointed as Panchayat Teacher. When he did not receive any response from any corner, approached to the appellate authority and claimed that no counseling was conducted on the date and placed fixed but at a different place counseling was conducted with an intention to give benefit to certain persons of their

choice and petitioner was deprived from the benefit of being selected as Panchayat Teacher. He has further submitted that petitioner has better marks than the private respondent. Had he been allowed to participate in the counseling he would have been selected being the person who has better marks than the private respondent.

4. The appellate Tribunal has already framed five issues, with respect to issue no.2 he has arrived to a finding that petitioner has better marks than to Braj Kishore Singh, respondent no.13 but while dealing with issue nos. 4 and 5 he has recorded that as the name of the petitioner was not standing in the provisional list nor he has filed any objection within the time prescribed as per the rule the question of his counseling does not arise and rightly the petitioner was not called for counseling and not selected. Counsel for the petitioner submits that the appellate Tribunal has misconstrued, misdirected and over looked itself in arriving to a finding that the name of petitioner was not standing in the provisional list but fact is that in the provisional list the name of the petitioner is standing at sl.no.19 whereas in the same provisional list the name of private respondent is standing at sl.no.22. In such view of the matter, filing of objection against non-impleadment of his name does



not arise. He has further submitted that under the wrong impression and wrong understanding of the facts, the Tribunal has recorded that the name of the petitioner was not standing in the provisional list. So much so he has submitted that when the counseling was not conducted he along with other candidates lodged a complaint to the District Administration as well as the Block Development Officer giving an information that the counseling as proposed was not being conducted and they were moving around but without any success.

5. Learned counsel for the respondent has submitted that petitioner had applied for Panchayat Teacher at two Gram Panchayats, at first petitioner had appeared for counseling before Dumri Gram Panchayat and he has participated in the counseling which he does not deny as register itself shows his presence in the Dumri Gram Panchayat. The petitioner had never participated in the counseling before the Madhopur Bara Gram Panchayat as from Annexure-3 itself shows that he has filed a complaint with regard to two Gram Panchayats one at Madhopur Bara and another at Dumri. He has made wrong statement with regard to having counseling not being conducted by Mukhiya and in connivance petitioner and others were deprived from the counseling. Further it has been submitted his



claim for appointment as Panchayat Teacher has been forfeited as he did not participate in the counseling which is apparently clear from Annexure 7 where it has been stated that counseling was conducted at Panchayat Bhawan Ardeba on 28.2.2009 whereas he has claimed that he had gone to attend the counseling at Madhpour Bara. In the writ petition no where it has been stated about the petitioner that he had gone to attend the counseling either at Madhpour Bara Gram Panchayat or at Gram Panchayat Bhawan Ardeba.

6. Learned counsel for the petitioner has submitted that in the appeal he has taken a plea that he had gone to attend the counseling at Ardeba but not at Madhpour Bara. He has further submitted that Annexure 7 and 8 have been prepared in one transaction by one person in one stroke of pen. So it appears to be a fake and fraudulent document.

7. Having considered the rival contentions of the parties it appears that as the appellate Tribunal has considered the case of the petitioner that his name did not appear in the provisional list and he has not filed any objection with regard to non-appearance of the name in the list and in case of absence of objection rightly the Panchayat Samiti did not call the petitioner for counseling is based upon wrong and illegal appreciation of facts in view of the

fact that Annexure 6 admittedly contained the name of the petitioner as well as Braj Kishore Singh showing their respective marks.

8. In such view of the matter, the basis on which the appellate Tribunal has decided the case appears to be a wrong, based upon wrong appreciation construction of fact and misunderstanding. In such view of the matter, the order passed by the appellate Tribunal is set aside and matter is remitted back to the Tribunal with a direction to decide the case as to whether the petitioner had participated in the counseling of Panchayat Unit Madhopur based at Panchayat Bhawan Arbeba on the date and time of counseling. From Annexure-3 of the writ petition it appears that complaint application was received by certain persons on 28.2.2009 at 2.20 PM. The appellate Tribunal will call all the documents with respect to appointment, examine the same and hold enquiry about genuinenity of the document with respect to appointment of the Panchayat Teacher. However, it is made clear till decision of appellate Tribunal the respondent no. 13 will continue to hold the office. The appellate Tribunal will decide the case within six months from the date of receipt/production of a copy of this order.

10. Accordingly this writ petition is allowed to the aforesaid extent.

Vinay/-

(Shivaji Pandey, J)

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