

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1056 of 2014

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1. Pushpa Kumari Daughter of Shree Sidheshwar Prasad R/O Village + Post-Digha, P.S.- Gurira, District- Gaya (Bihar)

.... Petitioner/s

Versus

1. The State of Bihar
2. The District Magistrate Gaya
3. The Block Development Officer Guraru, District- Gaya
4. The Secretary of Panchayat Teachers Appointment Committee, Gram Panchayat Barorah, P.S.- Guraru, District- Gaya
5. The Mukhiya Gram Panchayat Barorah, P.S.- Guraru, District- Gaya
6. The Panchayat Sachiv, Barorah, P.S.- Guraru, District- Gaya
7. Pramila Kumari Wife of Lalan Kumar R/V- Tinari, P.S.-Guraru District- Gaya.
(She is formal party because she obtains lesser weightage than that of petitioner)

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Nagendra Sharma, Adv.

For the Respondent-State : Mr. Anil Kumar Sinha, G.A.1; Mr. N.K. Agrawal, A.C.
to G.A.1

Mr. Aditi Hansaria, A.C. to G.A.1

For Respondent No. 8 Mr. Akash Deep, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 23-11-2016

Heard Mr. Nagendra Sharma, learned counsel for the petitioner,

learned counsel for the State and Mr. Akash Deep, learned counsel for

the private respondent.

With the consent of the parties, the writ petition has been heard

with the view to final disposal at the stage of admission itself.

The petitioner is aggrieved by the order dated 19.8.2013 passed

by the District Teachers Employment Appellate Authority (hereinafter

referred to as the 'Appellate Authority') in Appeal Case No. 43 of

2012 preferred by the respondent No.8 herein and whereby the



Appellate Authority accepting the plea of the private respondent that there was lack of transparency in the counseling, has invalidated the appointment of the petitioner. Forming such opinion, the Appellate Authority while allowing the appeal, has quashed the appointment of the petitioner along with the appointment of one other namely Sushil Kumar and has directed the Block Education Officer to carry out fresh counseling in the matter for appointment to the post. A copy of the order is impugned at Annexure-8 series to the writ petition.

Facts on record reflects a sorry picture. A selection process which began in 2008 is yet to reach a finality. The records of the proceedings would reflect that two posts of Panchayat Teachers, one in the Extremely Backward Category and one in the General Category, was notified for appointment and against which posts Alok Kumar and Rim Jhim Kumari were appointed. The private respondent no.7, questioned the appointments in Appeal No. 167 of 2010 and which was allowed by the Appellate Authority vide order passed on 9.1.2012 and a direction was issued for her appointment.

Two separate writ petitions were filed before this Court giving rise to C.W.J.C.No.3852 of 2012 and C.W.J.C.No.4157 of 2012 and this Court while upholding the order of the Appellate Authority quashed the appointment of the private respondent while directing for



fresh appointments which is confirmed from the order of the appellate authority dated 7.5.2012 present at Annexure-3.

It is following the order so passed by this Court as also the consequential order of the Appellate Authority dated 7.5.2012 that notice was issued to all 10 candidates and a merit panel was prepared on 31.7.2012 present at Annexure-4. The merit panel places the writ petitioner at Serial No. 1 in the Extremely Backward Category with 75.04 marks which includes additional weightage of 20 marks for teaching experience, while the private respondent is at Serial No. 3 with 68.3 marks inclusive additional 20 marks on teaching experience.

It the contention of the petitioner that a notice was published in the Panchayat office on 10.8.2012 fixing the date of counseling on 12.8.2012 and for which reference is made to the notices present at Annexure-9 series issued in the name of the private respondent received by her husband and the petitioner respectively. On the other hand, it is the contention of the private respondent that even though a notice was published in the Panchayat office on 10.8.2012 but no counseling took place on 12.8.2012 rather it is on the basis of the counseling held on 31.7.2012 that appointment order was issued in favour of the writ petitioner on 13.8.2012 vide Annexure-5 and pursuant whereto she joined on 18.8.2012. The private respondent complaining as such, filed the appeal in question along with one Alok



Kumar and while Alok Kumar questioned the appointment of Sushil Kumar who was appointed under the General Category post, the private respondent questioned the appointment of the petitioner who was appointed against the Extremely Backward Category. Both the cases were considered together.

Since the present dispute concerns the appointment made against the Extremely Backward Category, this Court would restrict its consideration to the inter party dispute so raised. The private respondent questioned the appointment of the petitioner on two grounds namely:

- (a) The petitioner had passed her Intermediate Examination in 2006 and had also alongwith obtained a Teachers Training qualification in the same year which was an impossibility and thus the 20 additional marks given to the petitioner on her Teachers Training qualification, was not correct and should not have been awarded.
- (b) The second plea raised by the private respondent against the appointment was that it lacked transparency and even though a notice was put up on 10.8.2012 but no counseling took place on 12.8.2012 and the appointment was made on the basis of counseling held on 31.7.2012.

Both the issues were upheld by the Appellate Authority to



quash the appointment of the petitioner with direction to hold fresh counseling and the petitioner feeling aggrieved is before this Court.

I have heard Mr. Nagendra Sharma learned counsel for the petitioner, Mr. Nikhil Agrawal, A.C. to G.A. 1 and Mr. Akash Deep learned counsel appearing for the private respondent who was the appellant before the Appellate Authority.

It is the argument of Mr. Sharma with reference to the documents referred to above that there was absolutely no lack of transparency and even the allegation on the eligibility was thoroughly misconceived in view of the educational certificates present at pages 18 to 20 to the writ petition which shows that while the petitioner had obtained her Intermediate qualification in 1991, the Teachers Training qualification was obtained only in the year 2004-06. According to learned counsel for the petitioner the allegation was wholly incorrect and even though no supporting document was led by the private respondent to support the allegation as also admitted by the Appellate Authority yet it mechanically proceeded to endorse the complaint. Mr. Sharma has referred to the documents present at pages 40 and 41 to submit that these documents do confirm receipt of notice by the petitioner and the private respondent as regarding counseling to be held on 12.8.2012 and which was duly held but since the petitioner was found to be suitable candidate that she was appointed. It is



contended that it is after the appointment letter was issued on 13.8.2012 that the private respondent got wiser to raise her objection on 14.8.2012 as manifest from her complaint present at Annexure-R8/D to the counter affidavit filed on her behalf.

Mr. Akash Deep while contesting the arguments on merits submits that no counseling took place on fresh initiation. Learned counsel also questions the bona fide of the petitioner to hold this writ petition, in reference to the receipt enclosed with the writ petition at page 21 and the receipt enclosed with the counter affidavit of the respondent No.8 present at Annexure-R8/D at page 78. He submits that apparently there are two Pushpa Kumari who were applicant for the post because the receipt numbers vary. According to Mr. Akash Deep the two documents were produced by the writ petitioner at different stages and bear different receipt numbers which would show that she is not approaching the Forums with clean hands. The bogey sought to be created by the private respondent is that there were two applicants by the same name. Learned counsel refers to the merit list present at Annexure-4 which mentions the name of the father of the petitioner as Siddheshwar Prasad. He next refers to the residential certificate at Annexure-R8/E which mentions the name of one Binod Kumar as the father of the petitioner. Learned counsel relying upon these documents suggests that there were two applicants by the



same name.

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

I have already discussed, the issues raised by the private respondent to question the appointment of the petitioner and which were on her qualifications and secondly on transparency. While the private respondent did not lead any document to support her allegation on the ineligibility of the petitioner to hold the post or to question her additional 20 marks on teaching experience, the documents enclosed by the petitioner in the writ petition to contest these allegation, has not been contested on its genuineness. Meaning thereby, there is no contest on the educational qualification possessed by the petitioner to hold the post including the teachers training certificate which grants her 20 additional marks on her teaching experience. Once this contest is put to rest, the grades of the petitioner puts her far above the private respondent with 75 marks as against 68 marks obtained by the private respondent which is confirmed from the list present at Annexure-4.

The second issue raised by Mr. Akash Deep is regarding lack of transparency. This Court had directed the State counsel to produce the records but it is rather unfortunate that although a counter affidavit has been filed by the Panchayat Secretary but it does not provide any



assistance rather the Panchayat Secretary shows helplessness in the matter because according to him, the record is in possession of the predecessor in office Ram Jatan Prasad and who has been transferred to a different Block.

Such instances have become a regular feature. It has become a routine stand of Panchayat Secretaries to charge their predecessors of holding on to the records relating to the selection process of Panchayat teachers. In my opinion the respondent authorities in the department need to find a solution to this serious misconduct. The records of a selection process are public documents and not the private property of the Panchayat Secretary or the Mukhiya, to be retained by them. It is about time that the Principal Secretary, Panchayati Raj and the District Magistrate of the concerned district take note of the serious malady and come down heavily on those unscrupulous elements who are not only a blot on the post which they hold but are also an obstruction in the decision making process.

Reverting back to the case in hand. Although the records have not been produced but then the non-production of the records would not be so much of an impediment in the disposal of the writ petition because there is no contest as to the factual position which is reflecting from the merit list present at Annexure-4. It is thus to be seen whether the argument of Mr. Akash Deep learned counsel for the



private respondent on the lack of transparency in holding of counseling on 12.8.2012 holds good and would require a remand of the matter to the Appointing Committee for holding fresh counseling or the issues raised can be put at rest on the basis of materials on record.

As I have said above, there is no contest on the merit position reflecting from Annexure-4. Although Mr. Akash Deep learned counsel for the private respondent has questioned the very locus of the petitioner to hold the post and maintain this writ petition relying upon the residential certificate present at Annexure-R/8E which mentions the name of the father of the petitioner as Binod Kumar and which does not confirm to the position reflecting from Annexure-4 but in my opinion the objection is without merit because a typographical error has given a reason to the private respondent to raise doubts when there exists none. The documents on record confirm that whereas Binod Kumar is the husband of the petitioner, Siddheshwar Prasad happens to be her father. The two aspects are clear from the merit list present at Annexure-4 and the caste certificate present at Annexure-2. May be the residential certificate present at Annexure R8/E suffers from some typographical error but that cannot enure to the benefit of the private respondent to unnecessary create a confusion.



The identity of the petitioner as well as the objections on her educational qualification, put at rest, it would bring this Court to the last issue raised by the private respondent regarding lack of transparency.

As I have said the records of the selection process have not been produced to conclude on the counseling held on 12.8.2012 but then the notices present at Annexure-9 series read along side the objection raised by the petitioner at Annexure-R8/D do confirm that a public notice was put up at the Panchayat Bhawan and notices were issued to the respective candidates on 10.8.2012 fixing the date of counseling on 12.8.2012. It is also confirmed that notices were received by the petitioner as well as the private respondent well in advance. Now while it is the case of the petitioner that a counseling took place on 12.8.2012 and though this submission is contested by the counsel for the private respondent but her objection at Annexure R8/D does not make any whisper that she appeared on 12.8.2012 but counseling did not take place.

Now in absence of any chit of paper on the records of the proceedings which would show that the private respondent did register her appearance for counseling on 12.8.2012 but it did not take place, I shall accept the submission of learned counsel for petitioner.

In fact in view of fact situation discussed above, even a remand



of the matter would not give any different result in view of the uncontested position reflecting from the merit list at Annexure-4 where the petitioner stands above the remaining candidates. In such circumstances a remand of the matter for mere completion of a formality, would in my opinion, be an exercise in futility.

For the reasons so expressed hereinabove, the order of the Appellate Authority impugned at Annexure-8 cannot be upheld in so far as it relates to the petitioner and which is accordingly quashed and set aside. The writ petition is allowed.

Since the petitioner is already continuing on her post by virtue of the interim order passed in the present proceeding, the interim order passed on 23.1.2014 is hereby confirmed. It goes without saying that whatever salary is found admissible to the petitioner, should be paid to her within three months from the date of receipt/production of a copy of this order.

(Jyoti Saran, J)

Bibhash/-

AFR	
CAV DATE	
Uploading Date	13.12.16
Transmission Date	

