

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6705 of 2013

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Shyam Babu Rai S/O Late Lal Babu Rai R/O Fuliya Khada P.O. Bayna P.S. Nautan
Dist.- West Champaran

.... Petitioner/s

Versus

1. The State Of Bihar
2. The District Magistrate Bettiah West Champaran
3. The Block Education Officer West Champaran
4. District Education Officer Bettiah West Champaran
5. Mukhiya Gram Raj Panchayat Miyapur Duwaliya Block Bariya District- West Champaran
6. The Secretary Gram Raj Panchayat Miyapur Duwaliya Block Bariya District West Champaran
7. Kamlesh Kumar Son Of Nand Kishore R/O Baluwa Rampurwa P.S. Bariya Dist. E. Champaran
8. Member District Teacher Appoint Appeal Tribunal, West Champaran

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dhananjay Kumar No.2, Adv.
For the Respondent/s : Mr. Sanjeev Kr. Singh, AC to SC-12
For the Resp. No.7 : Mr. Bimlesh Kumar Pandey, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 02-05-2016

Heard learned counsel for the parties.

In the present case, the matter relates to appointment of Panchayat Teacher of Panchayat Raj Miyapur Dubawaliya in Bairiya block for the second phase. An application was invited for the purpose of appointment of Panchayat Teacher. In pursuance thereof, the present petitioner and the respondents including others have applied for the said post. One Kamlesh Kumar had also applied for the post of Panchayat Teacher and Santosh Kr. Saha was selected on the basis of marks obtained by him but, after his selection, two cases were filed against him, one by



Subodh Kumar Pandey in case no. 100 of 2011 and another was filed by Kamlesh Kumar in Case No. 13 of 2012. In both the cases, the same grounds were taken against Santosh Kumar Sah that he has obtained the appointment on the basis of certificate which is forged and fabricated which has purportedly been issued from the Teachers Training Institute, Sarnath, Varanasi. On that basis, the appointment of Santosh Kumar Sah was set aside. In the case of Kamlesh Kumar, the Tribunal has recorded that there is no other claimant except Kamlesh Kumar having secured 71.66% and, as such, the appointment unit will be obliged to appoint Kamlesh Kumar in terms of government circular. The present petitioner being aggrieved by the direction filed writ application wherein he has stated that Sri Kamlesh Kumar has been appointed though there are other better persons in the merit list, leaving them aside, Sri Kamlesh Kumar has been given preference over the other better candidates. He has further submitted that the Tribunal instead of giving direction directly for his appointment should have given direction for conducting fresh counseling, giving due notices to persons and after considering the cases of all eligible persons, who are in the merit list, and best persons should have been appointed and, so much so that, he has further submitted that it is not only that Kamlesh Kumar has filed the case but another person Subodh Kumar Pandey had also challenged the appointment of Santosh Kumar Sah, the petitioner should have been given due notices and also opportunity to participate in the counseling.

Per contra, counsel for the private respondent, namely, Kamlesh Kumar submits that the writ application is fit to be rejected on the



ground of the delay and laches, placed reliance on the judgment in the case of ***Md. Faiz Akhtar Vs. The State of Bihar & Ors.*** reported in **2014(3) PLJR 736** para-6 & 7 and has submitted that the counseling was conducted, the petitioner did not appear in the counseling and, as such, he cannot raise grievance that he was not given proper opportunity for selection to the post of Panchayat Teacher. Learned counsel for the private respondent also submits that after the remand, the notices were also given to all concerned persons.

Learned counsel for the State has also filed counter affidavit, taken a similar stand and submitted that after the remand, the notices were served upon all the persons who were in the merit list, only the Kamlesh Kumar appeared and after due counseling, he was appointed to the post of Panchayat Teacher.

This Court had directed the State to produce the original record and from perusal of the record, it appears that the notices were not issued to any of the persons in the merit list but what they have done, the notices were pasted on the notice board. Pasting of a notice on the notice board cannot be a valid service of notice to the person concerned. In view of the admitted facts that Kamlesh Kumar is not the only person who is in the merit list, other persons were also in the merit list. Subodh Kumar Pandey also challenged the appointment of Santosh Kumar Sah on the same ground. The best course for the Tribunal was to give direction to the Panchayat Unit that proper counseling should be conducted, giving proper notices to the persons concerned and best person should be selected for the

post of Panchayat Teacher instead of giving a direction for appointment of Kamlesh Kumar which this Court feels that is not a proper direction and that part of the order of the Tribunal is modified with a direction that the Panchayat Unit will give notices to all the persons in the merit list, issue notices through registered cover as also publish notice in the locally circulated daily newspaper and after conducting counseling the best person should be appointed.

Till the next arrangement, Kamlesh Kumar will continue to hold the post.

The Panchayat Unit will complete the entire process within a period of six months from the date of production/receipt of this order.

(Shivaji Pandey, J)

Rishi/-

AFR/NAFR	NAFR
CAV DATE	NA
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