

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1296 of 2011

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Niranjan Kumar, son of late Raj Nandan Singh, resident of village-Dopata, P.O. Baksanda, P.S. Rajauli, District-Nawadah

.... Petitioner/s

Versus

1. The State of Bihar
2. The Secretary cum Commissioner, Human Resources Development, Government of Bihar, Patna
3. The District Magistrate, Nawadah
4. The District Superintendent of Education-cum-District Coordinator of Programme Sarva Siksha Abhiyan, Nawadah
5. The Block Development Officer, Rajauli, Nawadah
6. The Block Education Extension Officer, Rajauli, Nawadah
7. The Member, District Teacher's Appointment Appellate Authority, Nawadah
8. Smt. Muna Devi, Mukhiya-cum-Chairman, Gram Panchayat Hardiya, P.O. Hardiya, Rajauli, District-Nawadah
9. Sri Bagesh Ranjan, Secretary, Gram Panchayat, Hardiya, Rajauli, District-Nawadah

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Shailesh Kumar, Advocate
For the State : Mr. Rishi Raj Sinha, SC-19

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 18-10-2016

A counter affidavit is being filed by Mr. Rishi Raj Sinha, learned Standing Counsel-19. Let it be kept on the record.

Heard Mr. Shailesh Kumar, learned counsel appearing for the petitioner and Mr. Rishi Raj Sinha, learned Standing Counsel-19 for the State.

With the consent of the parties the writ petition has been taken up with a view to its final disposal at the stage of admission itself.



The petitioner is aggrieved by the order dated 19.11.2010 bearing Memo. No.790 passed by the District Teachers Appointment Appellate Authority, Nawadah in Case No. 117 of 2010 whereby the appeal of the petitioner against his order of termination has been rejected. A copy of the order is impugned at Annexure-18 to the writ petition.

Facts of the case briefly stated is that the petitioner applied for appointment as a Panchayat Teacher, Gram Panchayat Hardiya, Block-Rajauli in the District of Nawadah and was appointed vide order bearing Memo No. 10 dated 13.11.2007, a copy of which is present at Annexure-5. Within three months thereafter that the appointment of the petitioner was cancelled simply on grounds that it was not found to be legal. A copy of the termination order bearing Memo No. 01 dated 18.1.2008 issued by the Mukhiya and the Panchayat Secretary is present at Annexure-8. An enquiry followed on the directions of the Block Development Officer and a report was submitted by the Block Education Extension Officer bearing Memo No. 31 dated 24.1.2008 upholding the appointment of the petitioner while rejecting the complaint made against him by one Bindeshwari Prasad. The petitioner thus represented before the Block Development Officer for his reinstatement vide Annexure-10 but to no effect. He moved before the Divisional Commissioner vide Annexure-11 again



with no effect. In between, the District Magistrate cum Collector on gathering information as to the illegalities in the appointment process ordered for enquiry which included the appointment of the petitioner and a copy of the order of the District Magistrate is present at Annexure-12. Insofar as the petitioner is concerned, the enquiry was conducted by the District Land Acquisition Officer and his report is at Annexure-13 upholding his appointment under the unreserved category at roster point no. 2023 yet the petitioner was not reinstated. He next moved before the appellate authority which has been constituted under the amendment introduced to the Bihar Panchayat Teachers Appointment and Service Conditions Rules, 2006 vide his appeal present at Annexure-14 and which was rejected by the appellate authority vide order bearing Memo No. 92 dated 17.2.2010 present at Annexure-15 on grounds that while there were better candidates in the general category, the petitioner could not have been appointed even in the handicapped category in absence of roster clearance. The petitioner questioned the order of the appellate authority before this Court in CWJC No. 7129 of 2010 and this Court taking note of the circumstances reemitted the matter to the appellate authority for re-examination of the matter vide order present at Annexure-17. The remand of the matter giving rise to Case No. 117 of 2010 did not result in any betterment for the petitioner and even in

the second round consideration the appellate authority did not find any merit in the claim of the petitioner which was rejected and the petitioner feeling aggrieved is before this Court.

As observed above, the ground assigned by the appellate authority to reject the claim of the petitioner is that while the last candidate appointed in the general category was having 65.44 per cent marks, the petitioner only had 52 per cent and thus according to the appellate authority the petitioner could not have been given an appointment in the general category. The second issue on which the claim has been rejected is that since the roster point for handicapped category was 33, 67 & 99 and which was not cleared in the appointment process, the petitioner could neither have been appointed as a handicapped category candidate. On these two grounds the claim of the petitioner has been rejected.

I have heard learned counsel for the parties and I have perused the records and it would not detain this Court to quash the impugned order for it is contrary to the facts available on records of the proceedings. As I have observed above, the claim of the petitioner has been rejected by the appellate authority on two grounds namely:

- (a) The last person appointed in the general category was having 65.44 per cent while the petitioner had only 52 per cent; and
- (b) There was no roster clearance for a handicapped

category candidate.

Now insofar as issue at (b) is concerned, the petitioner never claimed the post as a handicapped candidate and which fact is eloquent from his appointment order present at Annexure-5 which clearly shows the appointment of the petitioner against unreserved category post at roster point no. 2023. Meaning thereby the appointment of the petitioner was under an unreserved category and not as a reserved candidate in the handicapped category. There is thus an error on record committed by the appellate authority to interfere with the appointment of the petitioner on this ground.

The next point on which the claim of the petitioner has been interfered with is on grounds of difference in marks in between the petitioner and the person who was on the bottom of the general category list who had 65.44 per cent as against 52 per cent of the petitioner. Now, there is nothing on record to show whether any general category candidate had questioned the appointment of the petitioner on grounds of him securing higher marks than the petitioner. It is also not the case of the respondents that the post on which the petitioner was appointed did not come under the general category. In other words, in absence of there being any contestant to the claim of the petitioner against unreserved category post and in absence of any contest that the post on which the petitioner was

appointed belonged to unreserved category, in my opinion, there was again no occasion for interference with the appointment of the petitioner to the post of Panchayat Teacher.

For the reasons so expressed, the order passed by the appellate authority impugned at Annexure-18 together with the order of termination of services of the petitioner passed by the Mukhiya dated 19.1.2008 impugned at Annexure-8 cannot be upheld and are accordingly quashed and set aside. The petitioner is restored to the post of Panchayat Teacher.

The writ petition is allowed.

(Jyoti Saran, J)

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