

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12855 of 2014

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1. Kumari Anchala Sharma W/o Sri Arvind Kumar Sharma, Resident of village- Kanti, P.O.- Kanti, P.S.- Kanti, District- Muzaffarpur
 2. Shanti Kumari W/o Sri Anant Kumar Rai, Resident of Village- Munni Baingri, P.O.- Munni, P.S.- Piyar, District- Muzaffarpur

.... Petitioners.

Versus

1. The State of Bihar represented through the Principal Secretary, Department of Human Resources Department, Govt. of Bihar, Patna
2. The Director, Department of Primary Education, Government of Bihar, Patna
3. The District Magistrate, Muzaffarpur
4. The District Programme Officer (Establishment), Muzaffarpur
5. The Block Education Officer, Gayghat, Muzaffarpur
6. The Mukhiya, Gram Panchayat Raj Maithi, Block- Gayghat, District- Muzaffarpur
7. The Panchayat Secretary, Gram Panchayat Raj Maithi, Block- Gayghat, District- Muzaffarpur
8. Pratibha Kumari W/o Sri Ram Nath Singh, Resident of Village- Dahila, P.O.- Dahila, Panchayat- Baghakhal, P.S.- Gayghat, District- Muzaffarpur

.... Respondents.

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Appearance :

For the Petitioner/s	:	Mr. Ajay Kumar Thakur, Advocate, Mr. Md.Imteyaz Ahmad, Advocate,
For the State	:	Mr. Dhurjati Kumar Prasad, G.P.7
For the Respondent no. 6 :		Mr. Satyendra Rai, Advocate,
For the Respondent no. 8 :		Mr. Vijay Kumar Singh, Advocate,

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH
ORAL JUDGMENT

Date: 14-01-2016

Heard learned counsel for the petitioners, learned counsel appearing for the State as well as learned counsel appearing for respondent no. 8.

1. The petitioners were selected as Panchayat Teacher of Gram Panchayat Raj Maithi in the district of Muzaffarpur.
2. The respondent no. 8 made a complaint before



Appellate Tribunal on 11.12.2010 that though she had participated in the counseling under physically handicapped category, her name was not included in the merit list and the two petitioners were appointed as Panchayat Teachers. The Tribunal came to a finding that the two seats that had fallen vacant for Panchayat Teachers, under Gram Panchayat Raj Maithi did not fall under handicapped category. However, he also came to a conclusion that the selection process suffered from infirmities and as such, cancelled the appointment of the petitioners. The Panchayat Niyojan Samiti was directed to take appropriate steps in the light of its order.

3. The petitioners, being aggrieved by the order of the Tribunal, has prayed for quashing of the order contained in Memo No. 37 dated 27.06.2014 passed by the District Teacher Employment Appellate Tribunal, Muzaffarpur in Case No. 318 of 2010, by which their appointment as Panchayat Teachers have been cancelled.

4. It would appear that the Tribunal has cancelled the appointment on two grounds. Firstly, that no notice to other candidates, who were higher in the merit list, were given. The second ground is that the appointment has been made by two Members, namely, the Mukhiya and Panchayat Sachiv and other Members were not present on the date of issuance of niyojan letters

on 14.08.2010.

5. Learned counsel for the State has justified the impugned order of the Tribunal. He submits that the proceeding dated 28.02.2009 of Niyojan Samiti was signed by only two members, namely, the Panchayat Mukhiya and Panchayat Sachiv and not by other members and as such the decision cannot be said to be that of Niyojan Samiti.

6. Mr. Ajay Kumar Thakur, learned counsel appearing for the petitioners, submits that due notices were given to all candidates whose names figured in the merit list prepared on 20.03.2009 by the Niyojan Samiti. The Tribunal found that there were only two vacancies of Panchayat Sikshak under Gram Panchayat Raj Maithi one for un-reserved category and the other for reserved category and no vacancy for handicapped category. Furthermore, the respondent no. 8 (Pratibha Kumar) did not figure in the merit list of candidates prepared in the counseling done on 28.02.2009. The meeting was duly attended by its members.

7. I have heard counsel for the parties. It is not in dispute that the applications were invited from intending candidates for appointment as Panchayat Sikshak in the 2nd phase of recruitment which started in the year 2008. The petitioners and others applied for the two posts advertised under Gram Panchayat



Raj Maithi. The two seats falling vacant, were to be filled, one each from un-reserved and reserved category. Petitioner no. 1 applied for the post under un-reserved category and petitioner no. 2 applied for the post under reserved category. The Niyojan Samiti prepared a merit list on 20.03.2009. A merit list of 12 persons was prepared for the post under un-reserved category. The name of petitioner no. 1 figured at bottom of the merit list under un-reserved category, whereas name of petitioner no. 2 figured at Sl. No. 2 of the merit list for reserved category.

8. In the meantime, before the date could be fixed for issuance of appointment letters, the State Government put a ban on the appointment of 2nd phase of Panchayat Teacher in the entire State of Bihar. The ban was subsequently lifted and Department of Human Resources Department got published a general notice in Hindi Newspaper 'Hindustan' notifying 30.07.2010, the date for counseling and issuance of appointment letter. Copy of newspaper publication appearing in daily newspaper 'Hindustan' dated 08.07.2010 is annexed as Annexure-3. The said notice however, was modified by Human Recourses Department by another notice duly published on 21.07.2010 in the Dainik Jagaran newspaper shifting the date for counseling and issuance of appointment letter to 13.08.2010 and 14.08.2010 for Panchayat Teachers. The dates for

counseling and distribution of appointment letters, was one uniform for the entire State of Bihar. On 14.08.2010, admittedly the petitioners appeared, whereas those higher in the list did not. As such, the petitioners were given the appointment letters.

9. I find that the proceedings of Niyojan Samiti drawn on 28.02.2009 mention names of the teachers as well as the candidates who were present on the occasion. It is difficult to accept the submissions that merely because they have not signed, they would be deemed to have not participated. There is no complaint from any of the Members that they had not appeared in the meeting scheduled on 28.02.2009.

10. The Tribunal has invalidated the appointments on the ground that there was no notice to other candidates. As noticed earlier, the State Government had put a ban on the appointment of 2nd phase teachers, which ban was subsequently lifted, and for the benefit and notice to all concerned general public, a publication was made in newspaper, fixing one uniform date for counseling of Panchayat Teachers in Gram Panchayats and Blocks of State of Bihar. There was no different dates for the Gram Panchayat in question and as such, the conclusion of the Tribunal that there was no due notice to other candidates, is ill founded. Furthermore, the Tribunal itself has come

to a finding that the representation of the complainant, namely, respondent no. 8 was itself not maintainable as there was no vacancy in the handicapped category under Gram Panchayat Raj Maithi. The respondent no. 8 has not even challenged the order of Tribunal holding that there was no vacancy under handicapped category under Gram Panchayat Raj Maithi.

In this view of the matter, the impugned order dated 27.06.2014 of District Teacher Employment Appellate Tribunal, Muzaffarpur is not sustainable and is set aside. The Committee would accordingly reinstate the petitioners forthwith. This order would not prejudice the case of Respondent No. 8 for consideration against future vacancies.

(Samarendra Pratap Singh, J)

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