

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4825 of 2013

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Satya Narayan Chaudhary S/o Kailash Chaudhary, R/o Village- Balogarh, P.S.-
Runnisaidpur, District- Sitamarhi. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Human Resource
Development Department, Govt. of Bihar, Patna
 2. The District Magistrate, Sitamarhi
 3. The District Teachers Employment Appellate Authority, Sitamarhi
 4. The District Programme Officer, Sitamarhi
 5. The Chairman, Pannel Nirman Samittee (Sikshak Niyojan), Gram Panchayat Raj
Devana Bujurg, Block- Runnisaidpur, District- Sitamarhi
 6. The Secretary, Gram Panchayat Raj Devana Bujurg, Block- Runnisaidpur,
District- Sitamarhi
 7. Rabindra Paswan S/o Ram Sakal Paswan, R/o Village- Saidpur Ghat, P.S.-
Runnisaidpur, District- Sitamarhi. Respondent/s
- =====

Appearance :

For the Petitioner/s : Mr. Dinesh Jha
For the State : Mr. Anil Kumar Verma
For Respondent no.7 : M/s Manish Kumar and Mrityunjay Kumar, Advs.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 24-08-2016

Heard learned counsel for the petitioner, State and the
private respondent.

In this case, the petitioner is challenging the order dated
16th November 2011 passed in Case No. 134 of 2010 whereby and
whereunder the Tribunal has directed to appoint Rabindra Paswan,
Respondent No.7 as Panchayat Teacher of Gram Panchayat Raj
Devana Bujurg, Block-Runnisaidpur, District-Sitamarhi.

This matter relates to the appointment of Panchayat
Teacher of second phase which was initiated in the year 2008 for one
post for the scheduled caste. Altogether 254 candidates had applied
for the said post and large number of scheduled caste candidates were



holding the qualification of Intermediate, the petitioner including Respondent no. 7 were also tendered for the said post. As per the records which has been produced by the State, it appears from the proceeding of the counselling register that the first meeting of the Selection Committee was held on 11th August 2010 in which by Agenda No. 1, direction was given to prepare the merit list of the candidates of different classes and candidates were called for verification of their certificates, from the proceeding dated 11.08.2010, it appears that in General Category candidate Suresh Kumar Mahto was shown to be selected candidate, rest 08 persons were shown to be as waiting list candidates in the panel. In the scheduled caste category, Rajesh Kumar was shown to be the person holding the highest percentage of marks, has been shown to be the selected candidate and rest 07 persons have been shown to be waiting list candidates. The proceeding dated 11.08.2010 bears the signature of all the persons. All members again assembled on 14.08.2010, after verification, the appointment of UR category was stayed on the apprehension of submission of the fake and forged certificate. Agenda No. 3 deals with the appointment of scheduled caste candidate from where it appears that Rajesh Kumar has been shown to be selected candidate and it has been mentioned in the proceeding that if the selected candidate did not turn up and a candidate in the waiting list remains present, other persons senior to him is in the waiting list, in



such circumstances, notices would be given to the rest candidates through the U.P.C. so that there should not be any violation of any rule and regulation. It appears that Rajesh Kumar did not turn up for the counselling. The register does not show that any further notice was given to rest candidates or counselling was conducted by the Appointing Unit, save and except on 17.12.2011, when no candidate from the scheduled caste category appeared for the counselling, Rabindra Paswan, Respondent no. 7 was appointed on the strength of order of Appellate Tribunal. He had earlier approached the Tribunal, vide letter dated 24.12.2010, making a complaint that one post is reserved for the scheduled caste candidate and his counselling has not been conducted. It has further been mentioned that he has deposited his degree of Matriculation and so much so that he has crossed the hurdle of Intermediate whereupon the Tribunal directed that if Rabindra Paswan, Respondent no. 7 comes within the zone of cut off marks fixed by the Appointing Unit, in that circumstance, his counselling should be conducted. It appears that when the counselling was not conducted, again he approached the Tribunal, filed an application, which resulted into institution of Case No. 134 of 2010 dated 16.11.2011 where he has made a complain that there is one post for the scheduled caste candidate, he possesses the qualification of Matriculation, having 43.44% marks added with 20 comes to 63.44 marks, so much so he has cleared Intermediate examination with



50.04% marks but the counselling of Respondent no. 7 was done, for that, he had earlier moved to Appellate Tribunal, even then, his counselling was not conducted, resultantly he was not handed over any appointment letter. He has further said that he is the only one candidate of scheduled caste, who has applied for the post under the scheduled caste category and except him, no other person has filed the application but even thereafter having the proper qualification, he has been deprived of appointment.

It appears from the statement of Respondent no. 7 that he was only the person applied for the post of Panchayat Teacher in the scheduled caste category. The Tribunal has directed for holding the counselling and issuance of the appointment letter. This order itself discloses that there was a suppression of fact and by making a misleading fact before the Tribunal, the order dated 16.11.2011 has been obtained.

The counsel for Respondent no. 7 submits that he has not suppressed the fact, as he has filed the application bringing the entire facts before the Tribunal for consideration, but the fact remains that the finding has been recorded by the Tribunal under impression that Respondent no. 7 was single candidate for the scheduled caste. It appears that on the basis of order dated 16.11.2011 the counselling of Respondent no. 7 was held on 17.12.2011. The counselling proceeding was conducted only by Chairman and one Member,

whereas counselling was to be conducted by the Appointing Committee and in the proceeding it has been recorded that in compliance of the order dated 16.11.2011, arising from Case No. 134 of 2010, the counselling of Respondent no. 7 was conducted.

Actually the fact about the other scheduled caste candidates was not brought to notice of the Appellate Tribunal. The counsel for Respondent no. 7 submits that the Panchayat Secretary has also participated in the proceeding before the Appellate Tribunal. It was bounden duty of the Panchayat Secretary, he ought to have brought to notice the real fact before the Tribunal and it appears that under the wrong impression, Respondent no. 7 was only the candidate for the scheduled caste, the order dated 16.11.2011 has been passed. In fact, there are large number of persons, who are above the respondent as well as the petitioner, it was the duty of the Panchayat Unit to select the best candidate. If no person had turned up, the effort should have been taken with regard to the appointment of the next candidate, who could be able to create proper educational environment and cater the proper education to the small children, appointed the person who was only matriculate at the time of filing of the application.

In such view of the matter, the order of the Tribunal dated 16.11.2011 based upon wrong fact that Respondent no. 7 was only the candidate of scheduled caste at that time, rather there were

large numbers of candidates having proper qualification were available.

The counsel for the respondent has raised two points that the petitioner has not taken any step for raising objection and he has approach this Court after lapse of about two years and the counsel for the petitioner has submitted that he is challenging the order of the appointment of Respondent no. 7 dated 16.11.2011.

The counsel for the respondent has placed reliance on the judgment reported in **2011 (4) PLJR 846 (Rajni Bara vs. State of Bihar)**. The Court in paragraph 6 said that the parties should have approached the Tribunal within a reasonable time and three-four months would certainly be considered sufficient for filing such complaint. The Court has also held that where no period of time has been prescribed in the law, it is a reasonable time for filing the application, but in this case the facts are quite different than to the fact of that case, as in this case the Tribunal has passed the order on the wrong impression so the judgment that has been placed reliance of Rajni Bara case (supra) does not apply to the present case. Another point has been raised by Respondent no. 7, no other candidates raised the objection, in such circumstances, the private respondent has been appointed, but the fact remains that counselling has been done on the basis of the order passed by the Tribunal, which is based upon the wrong facts.

In such view of the matter, even if no one had approached the Tribunal, the order of the Tribunal cannot be sanctified on the score that if the order has been passed on the basis of wrong facts, and on wrong consideration of the fact and law, which cannot be allowed to be sustained. In such view of the matter, the order of Tribunal is set aside accordingly, in resultantly, the appointment of Respondent no. 7 cannot be upheld and accordingly his appointment is set aside. This Court directs for fresh counselling and whoever is the best candidate should be appointed after giving due notice to all the parties. Till the counselling is completed, Respondent no. 7 will continue to discharge the duty. After joining the new incumbent, he will be deemed to have been discharged from that post. The District Programme Officer is directed to ensure that all the proceeding should be completed within a period of three months from the date of receipt/production of a copy of this order.

Accordingly this petition is allowed.

(Shivaji Pandey, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	30.08.2016
Transmission Date	