

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4031 of 2013

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1. Gautam Kumar Son Of Dasrath Prasad Resident Of Village And Post Office -
Anaith, Police Station - Ara Nawadah, District - Bhojpur At Ara

.... Petitioner/s

Versus

1. The State Of Bihar
2. The District Teachers Employment Appellate Authority, Bhojpur At Ara
3. The District Education Officer, Bhojpur At Ara
4. The Block Education Officer, Grahani In The District Of Bhojpur At Ara
5. The Mukhiya, Gram Panchayat Raj, Grahani Khas, Block - Grahani, District -
Bhojpur At Ara
6. The Panchayat Secretary, Gram Panchayat Raj, Grahani Khas, Block - Grahani,
District - Bhojpur At Ara
7. Firoz Akhtar Son Of Abdul Khalil Ansari Resident Of Village - Abgila, Post And
Police Station - Sahar, District - Bhojpur At Ara

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. RANJAN KUMAR SINGH, Adv.
For the State : Mr. Gyan Prakash Ojha, GP-22
Mr.S.K.Sinha, AC to GP-22.
For the Res. No.7 : M/s. Sanjay Kumar & S.K. Choudhary, Adv.
For the Res. 5 & 6 : Mr.K.P.Yadav, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 12-01-2016

Heard counsel for the petitioner and the respondents.

In this case, petitioner is challenging the order dated
30th November 2012 passed by the District Teachers'
Employment Appellate Authority, Bhojpur (for short, the
'Appellate Authority') in Appeal No. 14 of 2010/96 of 2012
whereby and whereunder the Appellate Tribunal has directed for
appointment of respondent no.7, in place of petitioner. Further
prayer has been made that the petitioner should be allowed to

continue on the post of Panchayat Teacher, Primary School Mahabirganj and be paid his salary including other consequential benefits in accordance with law.

From the record it emerges that for appointment of Panchayat Teacher s in the 2nd drive in the year 2008, petitioner and respondent no.7 both had applied for the post of Panchayat Teacher and as per claim of the petitioner, respondent no.7 had applied for general category whereas as per respondent no. 7, had applied for extremely backward class.

As per the counsel for the respondent no.7, he had obtained caste certificate on 17th July 2008 (Annexure-A) showing that he belongs to the extremely backward category (for short, 'EBC') and thereafter he applied for the said post. The date of counselling was fixed on 27th January 2009, no merit list was prepared which was required under the Rules but he was informed that the respondent no.7 has been treated as general category candidate having lesser marks will not be called for counselling. Thereafter he approached the Block Development Officer and the BEO with a prayer that he was being wrongly treated as a general category candidate though he belongs to EBC Category. In pursuance thereof, the B.D.O., Garahani directed the Panchayat Sevak, Garahani to look into the case of respondent no.7 and he should be allowed to appear in the counselling as the EBC



candidate. The counselling was conducted on 27th January 2009 but was not allowed to participate in the counselling. On the same day, he had again approached the BDO and other Officers complaining about the manner he was being treated by the Panchayat Secretary. He also brought this fact to the notice of the Appellate Tribunal who opened the case being case no 96 of 2009 and passed the order dated 14th May 2010 wherein he has recorded that the respondent no.7 has obtained 65.4% marks but the counselling was done of the person who has only 60.2% of marks and directed the respondents to hold the counselling of the respondent no.7 and place him at the proper place in the merit list.

The counselling of the respondent no.7 was conducted on 10th August 2010 but just thereafter petitioner was appointed on 13th August 2010. After appointment of the petitioner, the Respondent No. 7 again approached the Appellate Tribunal and the Appellate Tribunal vide order dated 13th May 2011 passed the order in favour of respondent no.7 and set aside the appointment of the present petitioner.

Thereafter the present petitioner moved this Court in CWJC No. 12261 of 2011 raised the issued that he was not made a party before the Appellate Authority nor the Appellate Authority took any care to issue notice to the present petitioner in the meantime vide order dated 12/9/2011 stayed the order passed



by the Appellate Authority dated 13th May 2011 in Appeal No. 40 of 2010. As per the petitioner the order passed by this Court dated 12th September 2011 in CWJC No.12261 of 2011 was violated, MJC No. 1775 of 2012 was filed for initiating contempt proceeding, vide order dated 18th August 2012, notice was issued. This Court vide order dated 17th August 2012 finally disposed of CWJC No. 12261 of 2011 thereby set aside the order of the Appellate Authority passed in Appeal No. 14 of 2010, remanded back the matter with direction to the respondents to pass a fresh order.

As per counsel for the respondent no.7, before the interim order could be passed, the respondent no.7 had already joined, which has been disputed by the petitioner. The Appellate Authority has decided the case on the basis of material brought before him and arrived to a conclusion that prima facie the Respondent no. 7 filed application claiming himself to be a EBC Candidate, some person mischievously interpolated the application of the respondent no.7 on that basis arrived to the conclusion that the respondent no.7 is entitled for appointment to the post of Panchayat Teacher under the EBC category.

Counsel for the petitioner submitted that basically the Tribunal was swayed away on purported order passed by the BDO, directed for holding the counseling of the respondent no.7

but, in fact, such letter was not issued, is apparent from the information supplied by the Office of the BDO under R.T.I. and claimed that it is forged and fabricated.

Apart from that he has further submitted that if any person has played a mischievous game with respondent no.7 for that the petitioner should not suffer as he was appointed as person of EBC category having 60.2 per cent marks so much so the Panchayat Secretary has filed an affidavit wherein it has been stated that the respondent no.7 had not applied under EBC category nor having annexed certificate with respect to his caste. He has further drawn attention of this Court to the Admit Card issued to the respondent no.7 by the Intermediate Council for I.A. examination of the year 1994 where optional papers have been shown, Hindi, English and Political Science whereas the mark-sheet filed by the respondent no.7 shows his optional subjects as Political Science, Psychology and History.

Claimed that the mark-sheet is the basis for appointment of respondent no.7 is forged. The mark sheet filed by the Respondent no. 7 was never challenged by the petitioner before the Appellate Authority and for the first time he is raising this issue. It is for the authority to examine the same while making scrutiny of the documents which has been claimed to be forged and fabricated.



On perusal of the application form which has been filed in the present writ petition, it appears that some person has played mischief with the respondent no.7 as it appears that some one has put tick marks in all the option Box and thereafter made 'X' (cross) in every Box and the Box for unreserved category comprises tick marks. Another point has been taken that some one has written "unreserved" and there is a cutting which creates a serious doubt. When a person has obtained a certificate of EBC, it does not stand to reason that he will file an application under the general category and would not attach the relevant caste certificates.

This Court feels that the appellate authority has examined the record and rightly arrived to the conclusion that some person has played mischief by making interpolation in the form of respondent no.7 and purposely he has been shown in the unreserved category. The case of Respondent no. 7 is fortified from the fact that when respondent no.7 was not called for, counselling, he instantly approached not only to the Appellate Authority but also to the BDO and there he had taken a specific plea that he had applied for the reserved category and has wrongly been shown belonging to general category. These are series of facts show that the respondent no.7 had applied for the reserved category but has wrongly been treated under the general

category.

In such view of the matter, this Court feels that as respondent no.7 had obtained 65.4 per cent of marks, rightly has been directed for his appointment. Respondents authority will examine the testimonies of Respondent No. 7 and if it is found to be genuine, he will remain in service, as he has already joined the service but if it is found that he secured the appointment on the strength of wrong certificate, in that circumstance, petitioner may have a case for consideration for his appointment. Petitioner will be at liberty to bring to the notice of the authority concerned about the certificates attached by the respondent no.7, specially the certificate issued by the Intermediate Council. The scrutiny of the certificate should be done at the earliest, not exceeding three months. However, it is made clear that if the certificate is found to be forged and fabricated, suitable action will be taken against the respondent no.7, including lodging of a criminal case.

With this observation, this writ petition is dismissed.

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(Shivaji Pandey, J)