

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9564 of 2013

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1. Ranjit Kumar Jha S/O Badrinath Jha R/O Village- Biraul, Police Station- Biraul,
District- Darbhanga

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Member District Teacher Employment Appellate Authority, Balbhadrapur,
Laheriasarai, Darbhanga
3. The Block Development Officer, Biraul, Darbhanga
4. The Block Education Extension Officer, Biraul
5. Panchayat Niyojan Ekai (Panchayat Employment Unit) Grampanchayat - Sonpur
Paghari
6. Mukhiya, Grampanchayat- Sonpur Paghari Block- Biraul, District- Darbhanga
7. Panchayat Sachiv, Panchayat - Sonpur Paghari Block- Biraul, District-
Darbhanga
8. Bhawesh Nath Jha S/O Rama Nath Jha R/O Village- Paghari, P.S.- Biraul,
District- Darbhanga
9. Ram Nath Jha S/O Late Aklu Jha R/O Village- Paghari, P.S.- Biraul, District-
Darbhanga, And Ex-Mukhiya, Grampanchayat- Sonpur Paghari, Block- Biraul,
District- Darbhanga

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajni Kant Jha, Advocate

For the Respondent/s : Mr. P.N. Shahi,

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 19.09.2016

Heard learned counsel for the petitioner and learned
counsel for the State.

2. In the present writ petition, petitioner is challenging the
order dated 2.2.2012 passed by the Member, District Teacher
Employment Appellate Authority, Balbhadrapur, Laheriasarai,
Darbhanga in Appeal No.130 of 2011 by which he has rejected
the aforesaid appeal.

3. The matter relates to appointment of Panchayat Teacher



with respect to Gram Panchayat Sonpur Paghari, Block Birauli, District Darbhanga. Petitioner along with private respondent, namely, Bhawesh Nath Jha applied for the said post. Accordingly counseling was done on 20.5.2007 and 21.5.2007. The employment unit and approved the list prepared by the Secretary on the basis of counseling done on 20.5.2007 in which the petitioner has been shown at top and second person was Bhawesh Nath Jha, respondent no.8. On 5.12.2007 again employment unit assembled, agenda nos. 3 and 4 are relevant for the purposes of this case. Agenda No.3 has been shown as considered the case of the petitioner where it has been mentioned that Ranjit Kumar Jha (petitioner) was holding the intermediate vocational degree and the same cannot be accepted as proper qualification in view of the guideline issued by the Higher Officer of the State Government where it has been provided the vocational degree cannot be allowed to equivalent to intermediate. Hence person holding the vocational degree does not hold the requisite qualification for the purposes of appointment as Panchayat Teacher. Accordingly the appointment committee has appointed Bhawesh Nath Jha as a Panchayat Teacher who is second person in the merit list.

4. When the petitioner was not appointed, he approached this Court vide C.W.J.C. No.10798 of 2008 and the same was



disposed of vide order dated 19.9.2011. This Court placed reliance on the case of Prakash Kumar and others Vs. State of Bihar, reported in 2008(3) PLJR 282 and an order of this Court dated 18.4.2007 passed in C.W.J.C. No.1631 of 2007 where the degree from vocational course have been treated to be equivalent to intermediate degree and in the light of the said judgment the Court has disposed of the matter with a direction to the petitioner to approach the appellate authority for redressal of his grievance.

5. In pursuance thereof he approached to the Tribunal which was registered as Appeal No.130 of 2011. The Appellate Tribunal has refused to interfere with the order of appointment of Bhawesh Nath Jha holding that vocational degree is not equivalent to the intermediate degree.

6. Learned counsel for the petitioner submits that Rule 8(2) of the Bihar Panchayat Elementary Teachers (Employment and Service Conditions) Rules, 2006 provides that candidate applied for the post of Panchayat Teacher must possess the qualification of intermediate or higher secondary or its equivalent. The vocational course is equivalent to the intermediate and petitioner has obtained first division with distinction and is rightly placed at the top of the merit list but Bhawesh Nath Jha who is below than to him has wrongly been appointed. He has further submitted that the State Government vide its resolution dated 4.9.1996 has



recognized, the vocational course is equivalent to intermediate and so much so the issue for equivalence to intermediate came for consideration before this Court in the case of Ranjeet Kumar Vs. The State of Bihar, reported in 2007(3) PLJR 746 (CWJC No.1631 of 2007) which was decided on 18.4.2007 whereas in the present case merit list of the candidate was prepared on 30.5.2007 i.e. after the aforesaid judgment as well as appointment letter has been issued in favour of Bhawesh Nath Jha on 6.12.2007 i.e. much after the judgment of this Court. He has further submitted that in terms of Section 17(2) of the Panchayat Raj Act, 2006 which provides power of Mukhiya, postulates, in absence of Mukhiya, Up Mukhiya will discharge the duty of Mukhiya and so much so the whole counseling suffers from biasness on account of the fact that father of respondent no.8 was the Mukhiya as well as member of the appointing committee, has participated in the matter of appointment of Bhawesh Nath Jha. It would be natural that father would support his son, in such situation the case of the petitioner was ignored and kept the matter pending for more than seven months and placing reliance on the instruction of the State Government mentioning that the person who is holding the degree of vocational course cannot be appointed as a Panchayat Teacher and he has submitted that selection process suffers from biasness as it is the Mukhiya who



was the leader of the selection process and Mukhiya actively participated in the matter of the appointment. In such view of the matter, the entire process of selection is completely vitiated. He has further submitted that it would have been better for him that at the time of counseling Mukhiya should have rescued himself to participate in the selection and rest member would have conducted the selection process.

7. Other side has taken a plea that as Mukhiya is necessary member and in his absence, whole selection would have been vitiated and in the situation of necessity, biasness will have no application in the matter of selection of the Panchayat Teacher and it will have to give way as presence of the Mukhiya was essential. He has further submitted that in terms of Rule, Mukhiya is one of the essential members of the Selection Committee and hence the allegation of biasness will not come in the rescue of the petitioner. Further he has submitted that in fact there was no biasness as the petitioner has been shown at the top of the merit list. Had there been any intention of biasness then at the initial stage the name of the petitioner would have been removed from the merit list itself but that has not been done. In support of the submission respondent has placed reliance on the judgment in the case of Vijendra Kumar Verma Vs. Public Service Commission, Uttarakhand and others, reported in



(2011)1 SCC 150, paragraph 24, Sanjay Kumarf Manjul Vs. Chairman, UPSC and others, reported in (2006)8 SCC 42, paragraph 25 and extracts from the Book of M.P.Jain and S. N.Jain on the principle of administrative law where the question of necessity is found applicable excludes biasness. He tried to impress upon this Court about participation of the father of Bhawesh Nath Jha, respondent no.8 who was the Mukhiya will not ipso facto lead to declare the selection bad in law. He has further placed reliance on the letter no.4240 dated 15.11.2007 and drawn the attention of this Court that the person who was holding the degree of Urdu, Sanskrit and degree of vocational course cannot be appointed as Panchayat Teacher in view of the fact that there was no subject of vocational course for the student of primary level and in such circumstances the petitioner could not have been accommodated in view of the letter of the Human Resources Department dated 15.11.2007.

8. In view of the submissions of the parties two points have emerged for consideration whether the entire selection process suffers from biasness or the likelihood of the biasness and as such this Court should quash the selection of the Panchayat Teacher as father of respondent no.8 Mukhiya of the Gram Panchayat participated and influenced the selection of the Panchayat Teacher. This Court has already decided that the vocational

degree is equivalent to intermediate degree which is no longer res integra.

9. Second point for consideration whether petitioner has wrongly been refused for appointment in view of the fact that this Court much prior to the selection of the Panchayat Teacher of the present school has already decided that the vocational degree is equivalent to intermediate and as such petitioner having requisite qualification was holding highest marks, has wrongly been deprived from appointment of Panchayat Teacher. Third point that has been raised by the other side placing reliance on the letter dated 15.11.2007 that there was no syllabus for the primary level of vocational training in that circumstances claim of the petitioner that he should be appointed as Panchayat Teacher is completely misconceived and not sustainable. Whether the natural justice has to give way to the necessity or entire selection is vitiated on account of biasness. It is not in dispute that father of Bhawesh Nath Jha, namely, Rama Nath Jha was the Mukhiya of the Gram Panchayat. It is also an admitted fact that he all through participated in the selection of Panchayat Teacher i.e. selection process.

10. To arrive to a correct conclusion on the question of necessity will have a primacy over the biasness will have to consider the relevant provision of Panchayat Raj Act as well as



Bihar Panchayat (Elementary Teachers Appointment Service Conditions) Rule, 2006. Rule 9(v) deals with the manner the selection of the Panchayat Teacher and Rule (viii)(k) stipulates the member of the Selection-cum-Counseling Board would comprise five persons includes the Mukhiya of the Gram Panchayat who is the chairman of the Selection Board. On the strength of this provision claim has been made by Bhawesh Nath Jha that presence of Mukhiya was must and in his absence whole selection process would have been vitiated. Section 17(2) of the Panchayat Raj Act, 2006 mentions the power and function of the Mukhiya. In Section 17(2)(k) specifically mentions that in absence of Mukhiya, Up-Mukhiya will exercise his power and function and discharge his duty. But whenever Mukhiya returns he will automatically assume his charge. Sub Section (2)(kha) mentions that Up Mukhiya have all powers of Mukhiya and Rule 9-VII(kha) provides who will the members of the Selection Committee. But it does not provide the necessary member of coram for selection of Board and this Rule does not stipulate that in absence of Mukhiya selection would vitiate.

11. It will be relevant to quote from the Book of M.P. Jain and S. N. Jain where it is provided that where no substitute is possible since no one is empowered to act in such circumstances natural justice will have to give way. It will be relevant to quote

certain passage from the aforesaid book:



“The Supreme Court has explained in Mohapatra that the only exception to the rule of bias is necessity. An adjudicator who is subject to disqualification on the ground of bias or interest in the matter which he has to decide, may be required to adjudicate if there is no other person who is authorized or competent to adjudicate, or if a quorum cannot be formed without him, or if no other competent tribunal can be constituted. In such cases, the principle of natural justice would have to give way to necessity for otherwise there would be no means of deciding the matter and the machinery of justice would break down. It is well settled that the law permits certain things to be done as a matter of necessity which it would otherwise not countenance on the touchstone of judicial propriety. Stated differently, the doctrine of necessity makes it imperative for the authority to decide and considerations of judicial propriety must yield. It is often invoked in cases of bias where there is no other authority or judge to decide the issue. If the doctrine of necessity is not allowed full play in certain unavoidable situations, it would impede the course of justice itself and the defaulting party would benefit there from. Take the case of a certain taxing statute which taxes certain perquisites allowed to Judges. If the validity of such a provision is challenged who but the members of the judiciary must decide it. If all the Judges are disqualified on the plea that striking down of such a legislation would benefit them, a stalemate situation may develop. In such cases the doctrine or necessity comes into play. If the choice is between allowing a biased person to act or to stifle the action altogether, the choice must fall in favour of the former as it is the only way to promote decision-making.”

12. In such circumstance where there is no provision stipulating minimum number for coram, the presence of Mukhiya at the time of selection was not necessary. Even presuming his presence was necessary, he could have rescued himself and in



terms of Section 17(2) of the Bihar Panchayat Act, 2006 requested Up Mukhiya to preside over the selection of the Panchayat Teacher. When son of Mukhiya was himself was party he should have rescued himself from the selection process, in such circumstances the claim of the petitioner that the theory of necessity would apply and in that circumstances biasness will have to give way is rejected as having no substance. The stand that has been taken by the respondent is not substantiated in view of the aforesaid discussion and biasness appears at large in view of the fact that the matter was kept hanging for seven months and after receipt of the some letter from Education Department the petitioner was refused to be appointed in view of the fact that this Court in the case of Ranjeet Kumar (supra) has decided the issue of qualification of vocational degree is equivalent to the intermediate, is proper qualification for the purposes of selection of Panchayat Teacher.

13. The principle of biasness or likelihood of biasness in the present case is completely made out as father has participated in the process of selection. In such circumstances, the plea of the respondent that there was no other way but to participate in the proceeding has no substance for acceptance.

14. Another point that has been raised by the respondent that the petitioner was not possessing proper qualification as the

power of fixation of qualification for a post entirely lies within the domain of the executive, only the person having the proper qualification can be accommodated.

15. In support of his contention respondent no.8 has placed two judgments in the case of Vijendra Kumar Verma (supra) and Sanjay Kumar Manjul(supra). The aforesaid judgment have no application in the present case as it is no longer res-integra that the person who possess the vocational degree is equivalent qualification to the intermediate in view of the judgment in the case of Ranjeet Kumar (supra). Even examining the letter dated 15.11.2007 which is basically deals with the persons having Maulvi degree, there the comparison has been made about the subjects which are taught to the students having Urdu degree vis-a-vis subject of the intermediate and taking into consideration that, in the primary level the person possessing the Maulvi degree can only be appointed on Urdu post which cannot be equivocally be applied in the case of person holding the vocational degree. In primary level only up to class Vth students are taught. On examination of the subject which is taught for vocational degree shows that subjects are Hindi, English and foundational course are there. In such circumstances, the plea of the petitioner that the persons having a vocational degree cannot be appointed at the primary level is not sustainable in law. Hence the same is

rejected.

16. In such circumstances, the selection of Bhawesh Nath Jha suffers from illegality, as father participated in the selection as well as he has lesser percentage of marks than to the petitioner. In such circumstances, the order dated 2.2.2012 passed by the Tribunal is set aside. The Gram Panchayat Sonpur Paghari, Block Biraul, District Darbhanga is directed to hold counseling of the petitioner after verification of his degree.

17. Accordingly this writ petition is allowed.

(Shivaji Pandey, J)

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