

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.7365 of 2013**

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1. Anil Kumar Sah Son of Shri Bunni Lal Sah Resident of Village - Hasua, P.O. Hasua, Police Station - Nautan, District - Siwan
  2. Gajendra Kumar Yadav Son of Late Lakshman Yadav Resident of Village - Mura Khap, P.O. Mura Khap, Police Station - Darauli, District - Siwan

.... .... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary , Education Department, Government of Bihar, Patna
2. The Director, Primary Education, Bihar, Patna
3. The District Magistrate, Siwan
4. The District Education Officer, Siwan
5. The District Programme Officer (Establishment), Siwan
6. The Block Education Officer, Darauli, District - Siwan
7. The Mukhiya, Gram Panchayat Raj Harnatand, Block Darauli, District - Siwan
8. The Panchayat Secretary, Gram Panchayat Raj Harnatand, Block Darauli, District Siwan
9. The Member, District Teacher'S Employment Appellate Authority, Siwan

.... .... Respondent/s

with

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**Civil Writ Jurisdiction Case No. 21993 of 2013**

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Chandra Kishore Son of Late Matha Prasad Resident of Village - Sheopur, Sakra, P.S. Ansaw, District - Siwan, At Present Posted As Panchayat Secretary, Gram Panchayat Raj Harnatand, Block Darauli, District – Siwan.

.... .... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Human Resources Department, Government of Bihar, Patna
2. The Director, Primary Education, Bihar, Patna.
3. The Member, District Teacher Employment Appellate Authority, Siwan
4. The District Magistrate, Siwan
5. The District Education Officer, Siwan
6. The Block Education Officer, Siwan
7. The Mukhiya, Gram Panchayat Raj, Harnatand, Block Darauli, P.O. District Siwan
8. Anil Kumar Sah Son of Shri Bunnilal Sah Resident Of Village + Post Office - Hasua, Police Station - Nautan, District - Siwan
9. Gajendra Kumar Yadav Son of Late Lakshman Yadav Resident of Village + P.O. Mura Khap, P.S. Darauli, District – Siwan.

.... .... Respondent/s

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**Appearance :**

(In CWJC No.7365 of 2013)

For the Petitioner/s : Mr. Umesh Kumar Mishra

For the Respondent/s : M/s Suryakant Kumar and A.B Sinha, SC-19  
(In CWJC No.21993 of 2013)

For the Petitioner/ : Mr. Upendra Kumar Singh

For the Respondent/s :Mr. D. K.. Sinha and B.K. Sinha, AC to AAG-2

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**CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY**  
**ORAL JUDGMENT**

**Date: 04-05-2016**

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

In these cases, petitioners are seeking relief of  
implementation of order dated 6<sup>th</sup> August 2012 passed in Case No.  
324 of 2012.

From the order it appears that on the basis of ex-parte  
statement of the appellants, their names were in the merit list.  
Counselling was conducted, but they have not been given the  
appointment letters. Further claim has been made that if the authority  
has not verified the testimonies of these petitioners, they cannot be  
held to be responsible as it was the responsibility of the Panchayat  
Unit to make verification of the testimonies of the petitioners.

During the hearing, the Panchayat Unit produced the  
original records and also filed an application accepting the claim of  
these petitioners whereupon the Tribunal passed the order in favour of  
these petitioners for their appointment on the post of Panchayat  
Teachers. The present application has been filed for implementation  
of the order of Tribunal. Respondent authorities refused to implement

the same.

From the record it appears that Gram Panchayat Raj Harnatand, Block-Dharauni, District-Siwan issued a Notification for appointment of two Panchayat Teachers in the second phase, one post was meant for the general category and second for the EBC category. Admittedly, Anil Kumar Sah, petitioner no. 1 of CWJC No. 7365/2013 is belonging to Scheduled Tribe category and Gajendra Kumar Yadav, petitioner no. 2 is claiming to be member of Backward category. It has brought to notice of this Court, one person, namely, Ramesh Singh was appointed on compassionate ground against the vacancy meant for the general category candidate without impleading him as a party to the appeal, the order has been obtained by the petitioners suppressing this fact as well as the then Panchayat Secretary was obliged to bring this fact to the notice of the Tribunal so that the Tribunal after giving notice to him could have passed the order. As per the claim of the writ petitioners, petitioner no. 1 is a member of ST category, the post was advertised for the EBC category, he cannot be appointed against the vacancy notified for EBC category. A member of reserved category can compete with the general candidate, there is no bar, but a person of a particular category cannot be appointed against the vacancy notified for another category of candidate, partition so tight vertically one category of



candidate cannot encroach upon the vacancy of other category of candidate. It can be understood in following manner, a person belonging to 'A' category, will not be allowed to encroach upon the seat of 'B' category, such as, SC candidate cannot be appointed against the post of Backward category or backward category cannot be appointed on the post reserved for ST category. Similarly ST category cannot be allowed to encroach upon the vacancy meant for the EBC category, this aspect of matter has not been looked into by the Tribunal, merely on the basis of letter of the then Secretary, the order has been passed. Against that order, the Panchayat Secretary has also filed CWJC no. 21993 of 2013 thereby challenging the order of the Tribunal.

The counsel for the petitioner of CWJC No. 7365 of 2013 has taken a plea that the Secretary is an individual, cannot be allowed to file this writ application, as any writ application will be filed by the Panchayat Unit, not by an individual, he was not a person aggrieved. This Court treats this application that the writ has been filed by the Unit, not an individual capacity by Chandra Kishore and so much so that a person who was already working as a Panchayat Teacher, appointed on compassionate ground, was impleaded as a party to the appeal and so much so that Anil Kumar Sah who claimed to be belonging to ST category, cannot be appointed in the EBC

category inasmuch as Gajendra Kr. Yadav has been appointed against the general vacancy on which Ramesh Singh was already working. Apart from this fact it has been brought to notice of this Court through counter affidavit that the names of the petitioners are not in the list of applicant, so much so that their names are not standing in the seniority list, were never called upon for counselling and without considering this aspect, the Tribunal has passed the order which is completely per se illegal that cannot be implemented.

In such view of the matter, the order of Tribunal cannot be allowed to sustain and the same is quashed as this Court does not find any merit to implement the same. Accordingly, CWJC No. 7365 of 2013 is dismissed and CWJC No.21993 of 2013 is allowed.

**(Shivaji Pandey, J)**

Mahesh/-

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