

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1165 of 2012

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Smt. Gunjan Kumari, W/o Late Ram Subodh Ray, resident of Village: Madanpatti,
P.S.: Bathnaha, District: Sitamarhi

.... Petitioner.

Versus

1. The State of Bihar
2. The Principal Secretary, Human Resources Development, Govt. of Bihar, Patna
3. The Director, Primary Education, Govt. of Bihar, Patna
4. The District Magistrate, Sitamarhi
5. The Member of District Teachers Appointment Appellant Authority, District: Sitamarhi
6. The District Superintendent of Education, Block: Parihar, Sitamarhi
7. The Block Development Officer, Block: Parihar, Sitamarhi
8. The Block Education Extension Officer, Block: Parihar, Sitamarhi
9. The Mukhiya, Gram Panchayat Raj Manikpur Musharniya, Block: Parihar, District: Sitamarhi
10. The Panchayat Secretary, Gram Panchayat Raj, Manikpur Musharniya, Sitamarhi
11. The Head Master, Primary School Ram Bhelahi (South Tola) Block: Parihar, District: Sitamarhi
12. Md. Gulam Jilani, S/O Jumman, resident of Village: Andauli (Parihar), P.S.: Parihar, District: Sitamarhi

.... Respondents.

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Appearance :

For the Petitioner/s : Mr. P. K. Sahi, Sr. Advocate
Mr. Niraj Kumar, Advocate
For the Respondent/s : Mr. Madhuresh Prasad, GP12
Mr. Prabhat R. AC to G.P. 12.

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

ORAL JUDGMENT

Date: 11-04-2016

Heard learned counsel for the petitioner and the State.

2. The original petitioner, Ram Subodh Ray, who is now substituted by his wife, Smt. Gunjan Kumari, filed the writ application for quashing the order, contained in letter no. 141 dated 22.12.2011, passed in case no. 141 of 2011 by the Member, District Teachers Appointment Appellate Authority by which the appointment

of the petitioner on the post of (handicapped category) Panchayat Teacher, Primary School, Ram Bhelahi (South Tola), Block Parihar, district Sitamarhi was cancelled. He also prayed for quashing the consequential letter no. 23, dated 26.12.2011, issued by respondent no.10 cancelling his appointment in light of order of the Tribunal.

3. In the year 2006, an advertisement was issued for appointment of Panchayat Teacher in Gram Panchayat Raj, Manikpur Musharniya, Parihar, district Sitamarhi. As per the reservation policy of the Government, 3% of the post was reserved for handicapped category. The reservation has been allocated in 1-100 roster points. The 1st post for handicapped was for roster point no. 1 to 33, the 2nd post for handicapped was for roster point no. 34 to 67 and the 3rd post for handicapped was for roster point no.68 to 100.

4. The petitioner was selected against roster point 67 under handicapped category for hearing impairment.

5. Respondent no. 12, Md. Gulam Julani, being aggrieved, challenged the appointment of the petitioner before the Tribunal. After hearing the parties, the Tribunal cancelled the appointment of the petitioner on the ground that the record of the case does not contain all the relevant dates.

6. Being aggrieved, the petitioner moved this Court in CWJC No. 16684 of 2009. The learned Single Judge observed that the



appellate authority without coming to a definite finding that there was interpolations and manipulations in the record, held the appointment of the petitioner to be bad. This Court, as such, by order, dated 15.11.2010 quashed the order of the appellate authority and remanded the matter for fresh consideration in accordance with law. On remand, the matter was re-considered by the appellate authority, who again cancelled the appointment of the petitioner. The Tribunal observed that the petitioner belongs to Backward Class Category and as such he was wrongly appointed against roster point no. 67, which belonged to unreserved category.

7. Being aggrieved, the petitioner filed the instant writ application.

8. The petitioner defended that his case was rightly considered under disabled category, as he suffered from both hearing impairment as well as bone disablement. The certificate referred to, issued by the Civil Surgeon-cum-Chief Medical Officer, Samastipur, is annexed as Annexure-2. As per the certificate, the petitioner was suffering physical disablement to the extent of 50% and hearing impairment to the extent of 40%.

9. Assailing the impugned order, the petitioner submits that the Tribunal failed to correctly appreciate the reservation policy of the Government for physically handicapped category dated

2nd November, 2002.

10. Learned counsel submits that the advertisement was invited for roster point 65 and 76 and as such as per the Government policy, roster point 66 was available for physical handicapped category pertaining to hearing impairment. But as the roster point 66 was earmarked for extremely backward class, the case of the petitioner was rightly considered against roster point 67, in the light of reservation policy, dated 2nd November, 2002. According to the petitioner, if the handicapped candidate does not belong to the category, with respect to which the roster point was reserved, he would be adjusted against next unreserved point, marked for unreserved category, which exactly has been done in his case.

11. The State too has filed more than one counter affidavit. In the counter affidavit, it is not denied that 12 vacancies of teachers from roster point 65 to 76 were advertised for Gram Panchayat Raj, Manikpur Musharniya. Roster point 66 was earmarked for handicapped with hearing disability.

12. The main submission of the State is that the petitioner did not apply against handicapped category and as such he was considered against the Backward Class category, to which he belonged. Furthermore, as the petitioner did not have better marks than the last selected candidates in that category, his candidature has

been canceled by the appellate authority.

13. Heard learned counsel for the petitioner and the State and perused the materials on record. No one has appears on behalf of the private respondent. The reservation for handicapped is regulated by Resolution of Personnel and Administrative Reforms Department dated 2nd November, 2002. The Resolution of Personnel and Administrative Reforms Department, dated 2nd November, 2002, is annexed as Annexure-11 to the supplementary affidavit filed by the petitioner, as well as Annexure-S/1 of the counter affidavit filed by the State. As per the resolution, 3% posts are reserved for handicapped category. For instance, for roster point 1-100, one post is reserved for roster point 1-33, 2nd post is reserved for roster point 34-67, and the 3rd post is reserved for roster point 68-100. Advertisement was for roster point 65 to 76. Roster point 66, as per the Government resolution is reserved for hearing impairment. From the counter affidavit of the State, it is evident that roster point 66 was allocated to EBC category. As per the Government policy, if the person claiming appointment against the handicapped category does not belong to that category, for which roster is earmarked, his/her appointment would be considered against the immediate next roster point meant for unreserved category. The petitioner, as such was rightly appointed against roster point no. 67.

14. Counsel for the State submits that the petitioner did not apply under handicapped category. It would appear from the tabulation chart contained in Annexure-4 that in fact the case of the petitioner was considered under handicapped category having hearing disablement. In view of the above, the impugned order cancelling the appointment of the petitioner is not sustainable in law and is accordingly set aside. As the original petitioner has already died, it would be open for the respondents to take fresh exercise to fill up the post. It would also be open for the substituted petitioner to approach the respondent authorities for benefits that may accrue under the law including filing of application for compassionate appointment.

15. The writ application is allowed to the extent mentioned above.

(Samarendra Pratap Singh, J.)

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