

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4026 of 2013

=====

Rupam Kumari daughter of Sri Baleshwar Paswan and Wife of Sri Binod Kumar Paswan, resident of village + P.O. Shreepur Hati, P.S + Block - Pandaul, District – Madhubani.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Human Resources Development Department, Govt. of Bihar, Patna
3. The Director, Primary Education, Government of Bihar, Patna
4. The Member District Teacher Appointment Appellate Authority, Madhubani
5. The District Magistrate, Madhubani
6. The District Education Officer, Madhubani
7. The Block Development Officer, Block Madhawapur, District - Madhubani
8. The Block Education Officer, Madhawapur, District - Madhubani

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Subhash Kumar Jha

For the Respondent/s : M/s N.K.Singh and Sunil Kumar

=====

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 19-04-2016

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

In this case, the petitioner is challenging the order of Tribunal dated 5th December 2012 by which the petitioner has been refused to be appointed to the post of Prakhanda Teacher on the reserved post of scheduled caste (female).

As an advertisement was issued for the appointment in the second phase of Prakhanda Teacher, the petitioner applied for the same. When she was called for the counselling, there is no dispute that she has 47% marks in Intermediate and so much so that she has claimed that she worked in the summer camp, the experience

whatever she acquired should also be added in Intermediate marks. She has claimed that in terms of the Resolution of the State Government, the experience gained by her in the summer camp will fetch an addition of 20% marks in Intermediate. When she was not appointed on the post of Prakhanda Teacher, she approached the Tribunal vide Appeal Case No. 937/08/12.

The Tribunal refused to grant the relief to the petitioner on the ground that 20% marks which she has claimed to have gained by way of experience on the summer camp, cannot be added. It appears from the record that a merit list was prepared and bench mark was fixed.

It appears that 15 female scheduled caste candidates were called for the counselling for three posts, but none appeared, respondents should have called the candidates after fifteen but opted to keep all posts (three) vacant.

The counsel for the petitioner submits that the petitioner applied for the posts of Prakhanda Teacher, she holds the minimum requisite qualification, 47 percent of marks in Intermediate. If the persons called for the counselling did not appear, in that circumstance, the persons below should have been called for the counselling, but instead thereof, they have preferred to keep the post vacant which is an act of arbitrariness and violation of Article 16 of the Constitution of India in view of the fact that when the post for the



scheduled caste has been kept reserved and the persons holding a minimum qualification are available in such circumstance, instead of selecting appropriate candidate, keeping post vacant, is not proper exercise of power rather completely an act of arbitrariness and is required to be interfered with. He has further submitted that the Tribunal rejected the appeal on the ground that the marks of experience cannot be added as this question of addition of marks of experience will be relevant when two or more than two persons are claiming the same post. Here the fact is, a persons up to serial no-15 did not appear for counselling, resultantly all the three posts reserved for the female scheduled caste have been kept vacant.

The counsel for the State submits that in view of the letter of the Principal Secretary, dated 4th December 2012 the selection process of Prakhand Teacher was closed and all the post meant for the second phase, have merged with the third phase. This Circular is meant for the officers to follow when the matter is under litigation, the post cannot be treated to have been gone to the next selection year, will be treated to remain with the second phase of the appointment.

In the present case admittedly three posts are kept vacant.

Having considered the argument of both sides, it clears that for three posts, fifteen candidates were called for

counselling, but none turned up, in such circumstance the appointing unit ought to have called for next candidates in row. There was no justification to keep all posts vacant whereas candidate of other categories have been selected. When the Government has reserved the post for schedule caste female, it is the duty to implement policy in the letter and spirit. It is not fair act of respondent to deprive candidates from the benefit of reservation.

In such view of the matter, Block Development Officer/Block Education Officer, Madhwapur Prakhand, District-Madhubani is directed to conduct the counselling of candidates below fifteen who had applied in the second phase after giving due notice to all of them, best persons should be selected.

This Court is not giving any direction that the petitioner would be directly appointed, but whoever is the best candidate in the scheduled caste female category, should be appointed.

With the above observation/direction, this petition is disposed of.

(Shivaji Pandey, J)

Mahesh/-

U			
---	--	--	--