

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5596 of 2011

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Peer Mohammad Ansari, son of Md. Islam Ansari, Resident of village and Post office Shrikhinda, Police Station Nokha District Rohtas

.... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Department of Human Resources Development, Government of Bihar, Patna
3. The director, Primary Education, Bihar at Patna
4. The District Magistrate, Rohtas at Sasaram
5. The Member District Teacher Employment Appellate Tribunal, Rohtas at Sasaram
6. The District Superintendent of Education, Rohtas at Sasaram
7. The Block Development Officer, Nokha District Rohtas
8. The Block Education Extension Officer, Nokha District Rohtas
9. The Mukhiya Chabnki Gram Panchayat Nokha District Rohtas
10. The Panchayat Secretary Chanki Gram Panchayat Nokha District Rohtas
11. Md. Mumtaz Alam son of Ahmad Ali Ansari resident of village Shri Khinda police station Nokha District Rohtas

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajeev Kumar Singh

For the Respondent/s : AC to AAG 4

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 17-10-2016

Heard Sri Rajeev Kumar Singh, learned counsel for the petitioner and learned AC to AAG No. 4, who has appeared on behalf of the respondent no. 1 to 10. However, none has appeared on behalf of the respondent no. 11. On earlier occasion also none had appeared on appeared on behalf of respondent no. 11 whereas in this case a counter affidavit was filed on behalf of respondent no. 11 on 5th March 2016.

The petitioner has approached this Court invoking its writ



jurisdiction under Article 226 of the Constitution of India with a prayer to quash an order passed in Case No. 113 of 2010 contained in Memo No. 447 dated 29.10.2010 by the Member, District Teacher Employment Appellate Tribunal, Rohtas at Sasaram (hereinafter referred to as “District Tribunal”). By the said order the District Tribunal has rejected the appeal preferred by the petitioner wherein a prayer was made for cancelling the appointment of respondent no. 11 namely Md. Mumtaz Alam on the post of Urdu Panchayat Teacher in Primary School, Aghara within Chanki Gram Panchayat, Rohtas at Sasaram. It was claimed by the petitioner that he had obtained 70.72 % merit point whereas the respondent no. 11 had obtained much lesser merit mark than the petitioner.

Learned counsel for the petitioner submits that the learned District Tribunal in a mechanical manner has rejected the appeal preferred by the petitioner. By way of referring to Annexure- 1 and 1/1 to the writ petition wherein it has categorically been stated that petitioner was having much higher mark than the respondent no. 11, it has been argued that for appointment of Panchayat Teacher one of the criteria was Intermediate or equivalent and petitioner having certificate of Moulvie was eligible to be appointed whereas the marks of the private respondent in Fauquania was considered for his appointment. It is true that private respondent was also having



certificate of Moulvi but in the mark sheet of Moulvi he was having lesser mark than the petitioner. In the counter affidavit filed on behalf of the respondent no. 11 it has been admitted that mark sheet of Fauquania is equivalent to Matriculation and Moulvi is equivalent to Intermediate. Meaning thereby that the private respondent has not disputed that in the examination of Moulvi the respondent no. 11 was having lesser mark than the petitioner. Moreover the respondent no. 11 has not disputed the allegation of the petitioner that in the mark sheet of Moulvi the respondent no. 11 was having lesser mark than the petitioner.

Learned AC to AAG No. 4 submits that the allegation of the petitioner that marks in the Moulvi examination obtained by the petitioner was higher than the private respondent.

In this case no separate counter affidavit has been filed on behalf of the respondent no. 9 and 10 i.e. Mukhiya and Panchayat Secretary of the concerned Gram Panchayat. It is also not in dispute that the Mukhiya and Panchayat Secretary were the competent authority for making selection of Panchayat Teacher.

In view of non disputed fact that petitioner was having higher marks than the respondent no. 11, the order impugned i.e. order passed by the District Tribunal contained in Annexure -5 is liable to be set aside. Accordingly, the order of the District Tribunal

(Annexure 5) is hereby set aside. Meaning thereby, that henceforth the private respondent will cease to function as Panchayat Teacher of the concerned Panchayat. The matter is remitted back to the selection authority i.e. respondent no. 9 and 10 to examine the matter afresh and pass appropriate order in accordance with law preferably within a period of eight weeks from the date of receipt / production of a copy of this order.

The writ petition stands allowed.

(Rakesh Kumar, J)

Praful/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20-10-2016
Transmission Date	N.A.