

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1427 of 2014

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1. Puja Kumari Daughter of Janardan Prasad Singh Resident Of Village-
Salonachak, P.O.- Rohua, P.S.- Lakhisarai, Dist.- Lakhisarai
 2. Ranjeet Kumar Ratnakar Son Of Late Balmiki Singh Resident Of Village-
Salonachak, P.O.- Rohua, P.S.- Lakhisarai, Distt.- Lakhisarai
 3. Gulshan Kumar Son Of Late Brahmdeo Mahto Resident Of Village- Abgil
Rampur, P.O.- Paharpur, P.S.- Medani Chauki, Distt.- Lakhisarai

.... Petitioner/s

Versus

1. The State of Bihar
2. Director, Primary Education, Department Of Human Resources Development,
Bihar, Patna
3. District Education Officer, Lakhisarai
4. District Programme Officer (Estb.) Human Resources Development
Department, Lakhisarai
5. Block Development Officer, Lakhisarai
6. Block Education Officer, Lakhisarai
7. Panchayat Secretary, Gram Panchayat Raj- Garhi Bishanpur, Lakhisarai Block,
Lakhisarai
8. Mukhiya, Gram Panchayat Raj- Garhi Bishanpur Block- Lakhisarai, Distt.-
Lakhisarai
9. Sunil Sharma Son Of Late Deo Nandan Sharma Resident Of Village-
Mohanpur, P.O.- Ramchandrapur, P.S.- Piparia, Distt.- Lakhisarai
10. The Director, Panchayati Ra, Department of Panchayati Raj, Government of
Bihar, Patna

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Ambuj Nayan Chaubey, Adv.
 Mr. Amit Kumar, Adv.
 Mr. Vikas Kumar, Adv.

For the Respondent/s : Mr. Anil Kumar Upadhyay, SC-20

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 09-11-2016

Heard Mr. Ambuj Nayan Chaubey, learned counsel
appearing for the petitioners and Mr. Anil Kumar Upadhyay,
learned Standing Counsel-20 for the State.

The petitioners are aggrieved by the order of termination

dated 31.10.2011 passed by the Mukhia, Gram Panchayat Raj Garhi Bishanpur impugned at Annexure 5 series together with the order dated 04.10.2013 of the District Teachers Appointment Appellate Authority, Lakhisarai in Appeal Case No. 26 of 2012-13 impugned at Annexure-10.

The facts of the case for the sake of illustration briefly stated is that an appointment process was initiated in the year 2008. The three petitioners along with the private respondent no. 9 and some others applied against the post of the Panchayat Teachers. While petitioner no. 1 applied against the unreserved post belonging to the female category, the petitioner no. 2 applied against the unreserved post under open category and the petitioner no. 3 applied against the post of backward category. There was one post available for Extremely Backward Class. The private respondent also applied against the unreserved post. It is not in dispute that while the three petitioners come under the untrained category, the private respondent comes under the trained category. A merit list was published on 12.01.2009 and copies of which have been placed on record vide Annexure-2 series. The name of the private respondent no. 9 appears at page no. 21 with 56.63% marks under untrained (general category), the name of the petitioner no. 1 appears at page no. 22 in the unreserved general category (women) with 59.66%,



the name of the petitioner no. 2 appears at page no. 23 under untrained general category with 57.22 % and the name of the petitioner no. 3 appears at page no. 24 under untrained Backward Category with 57.55%. A public notice was published in the newspaper fixing the date of counselling on 27.01.2009 and evidence whereof is placed at Annexure-3. It is at this stage that the private respondent no. 9 complaining of irregularities in counselling approached the Appellate Authority constituted under 'the Rules' giving rise to Appeal Case No. 27 of 2008-09. The Appellate Authority taking note of the complaint made by the private respondent regarding his signature being taken a sheet other than the sheet relating to counselling of the applicants, issued an ad interim order of stay on the selection process. A copy of the order passed on 17.07.2009 in Appeal Case No. 27 of 2008-09 by the Appellate Authority is placed on record vide Annexure-6 at page no. 32.

The matter was next taken up on 10.08.2009 and when the Appellate Authority records the stand of the District Superintendent of Education, who vide letter dated 3.8.2009 has informed the appellate authority that the Panchayat Secretary has submitted the records before him and the Block Education Extension vide letter No. 577 dated 27.07.2009 has informed him



that the private respondent no. 9 had not participated in the counselling. Considering the report while the Panchayat Secretary was directed to submit the copy the intimation to the Appellate Authority, a similar direction was issued to the Block Education Extension Officer to submit the copy of the letter dated 27.07.2009. The matter was adjourned to 24.08.2009 but could only be taken up one year later on 10.08.2010 and when the Appellate Authority has taken note of the fact that the required records have not been submitted by the authorities concerned. The matter was adjourned to 14.08.2010, but in between the petitioners were appointed vide orders enclosed at Annexure-4 series. The petitioner no. 1 was appointed vide memo no. 1 dated 13.08.2010, the petitioner no. 2 was appointed vide order bearing memo no. 2 dated 13.08.2010 and the petitioner no. 3 was appointed vide order bearing memo no. 3 dated 14.08.2010.

Even though the first case instituted by the private respondent no. 9 arising from Case No. 27 of 2008-09 was pending consideration before the Appellate Authority, he chose to file a second case giving rise to Appeal Case No. 31 of 2010-11 which after being taken up on several dates, was considered on 01.02.2011 and the Appellate Authority taking note of the order bearing memo no. 3198 dated 06.10.2011 of the District Superintendent of



Education, Lakhisarai whereby directions was given to the Panchayat Secretary to cancel the appointments, reserved orders in the case. It is misconstruing the order of the appellate authority that the Block Education Extension Officer vide order being memo no. 463 dated 24.10.2011 in reference to the orders passed by the Appellate Authority, has held that the appointments of the petitioners have been cancelled and thus has issued orders to the Mukhiya and the Panchayat Secretary to proceed accordingly for cancellation of the appointment of the petitioners. The orders of termination have been passed impugned at Annexure-5 series. While the order of termination of service of the petitioner no. 1 bears memo no. 9 dated 31.10.2011, the order of termination of the remaining two petitioners bears memo no. 10 dated 31.10.2011.

The petitioners feeling aggrieved by the order of termination impugned at Annexure 5 series came before this Court in CWJC No. 20103 of 2011, which writ petition was permitted to be withdrawn enabling the petitioners to approach the Appellate Authority under 'the Rules' vide order passed on 03.05.2013, a copy of which order is placed at Annexure-9. The petitioners, thereafter, filed an appeal giving rise to Appeal Case No. 26 of 2012-13. The Appellate Authority despite taking note of the order of this Court in CWJC No. 20103 of 2013, has abdicated its

responsibility to adjudicate on the issue raised by the petitioners rather consigned the appeal, *inter alia*, on grounds that it had no power to review its earlier order whereby stay had been imposed on the appointment process. The petitioners feeling aggrieved are before this Court.

Vide order passed on 05.02.2014 and again on 20.08.2015 notices were issued to the Panchayat Secretary, Mukhiya and the private respondent no. 9 and the Block Development Officer was directed to effect the service of notice and report to this Court. This matter was taken up on 18.08.2016 and this Court taking note of the failure on the part of the Block Development Officer, Lakhisarai in ensuring compliance of the directions of this Court adjourned the matter and when an affidavit was filed on 29.08.2016 by the Block Development Officer, Lakhisarai, reporting service of notice. Despite the service of notice respondent no. 9 has not chosen to appear and contest the matter before this Court.

Mr. Ambuj Nayan Chaubey, learned counsel appearing for the petitioners while questioning the bonafides of the respondent no. 9 to question the selection process, has made reference to the information provided by the Deputy Secretary (Vigilance), Bihar School Examination Board as contained in his letter on 26.12.2011



and his letter dated 17.02.2012 present at Annexure-7, to submit that the testimonials so submitted by the respondent no. 9 was found to be forged inasmuch as the Roll Code 01101 and the Roll No. 0279 belonged to another person namely Sunita Kumari. He further submits that the copy of the testimonials of the respondent no. 9, forms at Annexure-8 series, are forged documents.

Reverting to the merits of the case, he submits that while the Appellate Authority in its order passed on 10.08.2009 in Appeal Case No. 27 of 2008-09 present at page 33 has taken note of the fact that the private respondent did not appear at the counseling and even though an ad interim order of stay on selection process, was passed by the Appellate Authority on 17.07.2009 yet the stay was not vacated and the proceeding hung limbo. Learned counsel submits that even when there is neither any order of termination passed by the Appellate Authority in Appeal Case No. 27 of 2008-09 nor there is any order passed in Case No. 31 of 2010-11, except that the appellate authority has taken note of an order passed by the District Superintendent of Education directing the Panchayat Secretary to terminate the appointment vide order bearing memo no. 3918 dated 10.10.2010 yet. The Block Education Officer vide his letter no. 463 dated 24.10.2011 which forms part of Annexure-5 series at page 31 has issued directions for termination orders. He

further submits that the petitioners were entitled to a notice before the order of termination was passed on 31.10.2011 impugned at Annexure-5 series.

Though this writ petition is pending consideration for last two years, except for a counter affidavit filed by the District Programme Officer, who simply hides behind the order passed by the Appellate Authority, there is nothing on the records of the counter affidavit to justify the impugned orders. The District Programme Officer also does not explain as to the source of power for ordering termination /cancellation of the selection process which power entirely vested with the Appellate Authority under 'the Rules.' The Mukhia and the Panchayat Secretary respondent nos. 7 and 8, go even further to hide behind the predecessor in office to submit that the entire records have been taken away by the predecessor.

Mr. Anil Kumar Upadhyay, learned Standing Counsel no. 20, in the circumstances discussed, refers to paragraph-7 of the writ petition to submit that these petitioners held a very low position in the merit list and thus, the apprehensions expressed by the private respondent no. 9, was not without substance. He submits that the petitioners coming at serial nos. 36, 48 and 65 respectively of the merit list, could have been appointed, in usual circumstances which

confirms that there were irregularities in the selection process. He further submits that since in the present case, it is also the argument of the petitioners that the Appellate Authority has abdicated its responsibility to adjudicate on the matter, the matter be remanded with appellate authority for fresh consideration of the issue.

I have heard learned counsel for the parties and I have perused the records. Even though Mr. Upadhyaya has tried to question the right of these petitioners for reinstatement *inter alia* in reference to their position in the merit list but the fact remains that except for the respondent no. 9, none amongst the merit list present at Annexure-2 series has chosen to question the appointment of these petitioners. In my opinion, unless any aggrieved candidate chooses to question the appointment of the petitioners before the appropriate forum, the State cannot take up this responsibility on itself to test the relative merit or to comment on the appointments. The names of the petitioners find mention in the merit list and thus in absence of a valid challenge to their appointment, their respective position in the merit list, can bear no reason for a challenge to the selection process.

The second aspect of the matter is that there is no question raised as to the eligibility of these petitioners to hold the post. Meaning thereby the petitioners are not found wanting on their

eligibility to hold the post. In the circumstances discussed, I find no reason to suspect the appointment of the petitioners merely on their position in the merit list.

Reverting to the challenge posed by the private respondent, in my opinion, considering the materials on records, the private respondent had no right to raise the questions on the selection process before the Appellate Authority because the documents present at Annexures-7 and 8 series puts a question mark on his bona fides and the very fact that the private respondent has failed to contest the matter either before the Appellate Authority in the proceedings initiated by these petitioners in Case No. 26 of 2012-13 or to respond before this Court, it only confirms this position. This single piece of information is sufficient to disqualify the private respondent to question the selection process before the Appellate Authority vide Appeal Case No. 27 of 2008-09 or by Case No. 31 of 2010-11.

The order-sheet in Appeal Case No. 26 of 2012-13 preferred by these petitioners does not indicate whether the private respondent was added as a party and whether notice was issued to him. The Appellate Authority though has taken note of the issues raised by these petitioners on the bonafides of the private respondent but the appellate authority has not chosen to adjudicate

thereupon simply on grounds that the stay order passed by the appellate authority in Case No. 26 of 2008-09, was not capable of being reviewed. The uncontested position as it stand today is as follows:-

- a.) The certificates of Educational Qualification of the private respondent no. 9 was found to be forged vide Annexure-7 and 8 series.
- b) It is on basis of forged documents that the respondent no. 9 applied for appointment and also preferred Case No. 27 of 2008-09 for cancellation of the selection process and although on 17.07.2009 an interim order of stay on the selection process, was passed, but the Appellate Authority while considering the matter on 10.08.2009 and taking note of the stand of the official respondents regarding non participation of the respondent no. 9 in the selection process, directed the official respondents to substantiate their stand. However thereafter, no further orders were passed leaving the matter in limbo.
- c) Even when one case preferred by the private respondent no. 9 was already pending, he abused the jurisdiction of the Appellate Authority to file another appeal giving rise to Appeal No. 31 of 2010-11 and which was reserved for orders, simply taking note of an order dated 06.10.2010 of the District Superintendent of Education directing the Panchayat Secretary to cancel the selection process;

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- d) Even when no orders were passed by the Appellate Authority to cancel the appointment yet the Block Education Officer vide letter no. 463 dated 24.10.2011 present at page 31 on a misconception directed the Mukhiya and the Panchayat Secretary to cancel the appointments of the petitioners;
 - e) Mechanically, the Mukhiya proceeds to cancel the appointment of the petitioners vide letter dated 31.10.2011 present at page nos. 29 and 30.
 - f) No opportunity of hearing was given to the petitioners before such orders were passed.

In my opinion, the entire matter has been handled by the Appellate Authority with abdication and rather casual approach. Apparently three proceedings were initiated before the Appellate Authority in respect of the same selection process. Even when the Appellate Authority has taken note of each of the proceedings while considering the issue raised by these petitioners in Case No. 26 of 2012-13 including the interim order passed but it has not bothered to take those proceedings to a logical conclusion. The appellate authority has also not interfered with the appointments except the initial stay order. Now apart from the fact that the documents present at Annexures-7 and 8, wrests the legal right in the private respondent to question the selection process, in absence of any valid challenge to the appointment of the petitioners and in absence of any positive order passed by the Appellate Authority to cancel the

selection process, the directions issued by the District Superintendent of Education as acted upon the Block Education Officer and the Mukhiya to terminate the appointment of the petitioners, is without sanction of law for any such jurisdiction, after the enforcement of 'the Rules', exclusively, vested in the Appellate Authority. The orders are also not sustainable on having been passed in utter violation of the principles of natural justice and in absence of any opportunity of hearing to the petitioners.

For the reasons so discussed, I deem it proper to hold that the entire proceedings arising from Case No. 27 of 2008-09 and Case No. 31 of 2010-11 and the adjudication of the respondents by the Appellate Authority in Case No. 26 of 2012-13 are without sanction of law and, are accordingly, quashed and set aside and for the same reasons the consequential orders passed by the Block Education Officer bearing memo no. 463 dated 24.10.2011 together with the orders of termination dated 31.10.2011 impugned at Annexure-5 series cannot be upheld and set aside. The petitioners are directed to be restored to their respective posts.

The writ application is allowed accordingly.

(Jyoti Saran, J)

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