

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6419 of 2013

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Poonam Kumari Daughter Of Shambhu Sharan Prasad, Wife Of Pankaj Kumar Singh Resident Of Village And P.O. Jhitkahiya, P.S. Rajepur, District - East Champaran At Motihari, At Present Of Kachhi - Pakki Of Muzaffarpur, P.S. Sadar Muzaffarpur, District - Muzaffarpur

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Education Department, Bihar, Patna
3. The Director, Primary Education, Education Department, Bihar, Patna
4. The District Magistrate, East Champaran At Motihari
5. The District Program Officer, East Champaran At Motihari
6. The Block Development Officer, Mehasi, District - East Champaran
7. The Block Education Officer, Mehsi, District - East Champaran
8. The Mukhiya, Gram Panchayat Raj Mahammadpur Majhaulia, Block Mehsi, District - East Champaran
9. The Panchayat Secretary, Mehsi, District - East Champaran
10. Renu Kumari Daughter Of Sri Kishore Kumar Resident Of Village - Sidhwalia, Tola - Akraha, P.S. Mehsi, District - East Champaran
11. The Member District Teachers Appointment Appellate Authority, East Champaran At Motihari

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Arun Kumar
: Ms. Sandhya Kumari Sinha
For the Respondent/s : Mr. Jay Prakash Sharma, A.C. to G.P.-11
For the respondent No.10: Mr. Anil Kumar.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 29-02-2016

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

2. In this case, the petitioner is challenging the order of the Tribunal dated 14.02.2013, to the limited extent that the Tribunal has directed for appointment of the respondent No.10. It is not the first



time the matter relates to the appointment of panchayat teacher of Panchayat Raj Mohmadpur, Majhauria, was under consideration before this Court. This matter relates to the first phase of appointment of panchayat teacher conducted in the year 2006 came for consideration on different occasions. Altogether six persons applied for one post of panchayat teacher under B.C. category (female), apart from the appointment in other categories.

3. The respondent No.10 has challenged the appointment of Sabita Kumari, claiming that the manner and method adopted by the authority cannot be approved, as notices were sent under U.P.C. on two occasions i.e. on 17.03.2011 and 25.03.2007, which were not served. Though Sabita Kumari was below in the merit list, was appointed on the ground that she was present in the counselling. The appointment of Sabita Kumari was challenged in the year 2008, before the Tribunal in Complaint Case No.331 of 2008, where the plea was taken that they have not received any notice with regard to the date of holding of the counselling as the notices were sent through U.P.C. never reached to him.

4. The Tribunal did not find favour to the present respondent No.10 and rejected the same, which was challenged before this Court in C.W.J.C. No.3215 of 2010. This Court was of the opinion that

method and manner adopted by the Panchayat unit for the appointment to the post of Panchayat teacher cannot be approved as the U.P.C. is not a proper mode of communication with regard to the service of notice and set aside the order of the Tribunal and remanded back the matter for fresh consideration.

5. It will be relevant to quote relevant part of the judgment, which explains the real direction and while remanding back the matter what was going on in the mind of the Court are as follows:-

“This Court however must make it clear that the appointment of the petitioner would be only possible if she was best among the six candidates called for counselling on 17.3.2007, but if the Tribunal finds that someone having higher marks to the petitioner was still available who could not be served with notice of counseling, it would after recording its finding as with regard to process of counseling, if necessary, extend opportunity of re-counseling for filling up the post by the best candidate, not necessarily the petitioner.

In the result this application is allowed and the impugned order passed by the Tribunal, is quashed and the matter is remitted back to the Tribunal for a fresh consideration in the light of the aforesaid observations and directions. This Court hopes and believes that the Tribunal will take up the case out



of turn and pass its final order within a period of four months from the date of receipt/ production of a copy of this order. In order to facilitate the expeditious disposal of the complaint of the petitioner this Court would direct both the petitioner and respondent no.10 to appear before the Tribunal on 27th April, 2012 whereafter the Tribunal will fix the date for hearing and would take its decision after obtaining and perusing the entire records of the selection and appointment of the petitioner and respondent no.10.”

6. In pursuance of the remand order, the Tribunal has again started proceeding with the matter, which was renumbered as complaint Case no.862 of 2012. The respondent No.10 has prosecuted her case before the Tribunal; there the petitioner did not participate in the proceeding in any manner. The Tribunal placed reliance on the judgment of this Court and held that U.P.C. cannot be a proper mode of service as it only shows that notice was issued but does not ensure that it has reached to the destination. Placing reliance on the judgment of this Court reported in 2010(4) P.L.J.R., page-183, the Tribunal held that the appointment of Sabita Kumari was bad in law on account of fact that she was much below in the seniority list and having a lesser mark than Renu Kumari, and no one raised grievance with regard to the appointment of Sabita Kumari. The Tribunal has granted relief to

Renu Kumari.

7. After the order dated 14.02.2013, the present petitioner has filed a Review Application on 22.5.2013, but the Tribunal has rejected the same on the ground that it has no power to review its own order as the review is the creation of the statute, unless it is specifically or impliedly conferred, no forum or Court has power to review its own order. But, the question would arise whether the Tribunal was justified in passing the order in favour of Renu Kumari.

8. Learned counsel for the respondent has taken a plea that the petitioner had never raised any grievance with regard to appointment of Sabita Kumari and have been sitting outside the fence, therefore, she cannot be allowed to take the fruit what the respondent No.10 has reaped by pursuing her case before the Tribunal as well as before this Court. He placed reliance on the Notification dated 23.10.2008, which provides that appeal has to be filed within 30 days. He also placed reliance on a judgment of the Hon'ble supreme Court in the case of ***Londhe Prakash Bhagwan vs. Dattatraya Eknath Mane and Others, 2014(1) PLJR, page 49***, where the Hon'ble Supreme Court has held that even if there is no time prescribed, but the person should approach the Court or the Tribunal within a reasonable time and looking to the facts and circumstances of the case, the period of nine

years and ten months was held to be an inordinate delay, refused to grant relief.

9. Learned counsel for the respondent No.10 submits that as the petitioner had never pursued her case and remaining sitting ideal and she cannot be allowed to take benefit what the respondent No.10 has achieved by pursuing her case before the Tribunal as well as before this Court and therefore, the ground of limitation itself disentitles the petitioner. But, the present case will not be governed by the circular as well as the judgment that has been decided by the Hon'ble Supreme Court in view of the fact that while remanding back the matter by this Court in C.W.J.C. No.3215 of 2010 (Annexure-2), the Court has specifically directed that the person who is the best should be selected and if necessary, the Tribunal may give direction for re-counselling.

10. It is an undisputed fact that Renu Kumari is not the best candidate amongst all the candidates applied for the said post, her position is fourth in the merit list, whereas this Court was of the view that best candidate should be appointed as panchayat teacher, who will be able to impart proper education to the small kids, who are at the nascent stage, their character will be built by the best person, that was the idea while remanding back the matter to the Tribunal. In my view, it was required from the Tribunal that it should have remanded

back the matter to the Panchayat Unit for fresh counselling after following due procedure and the person who is the best one should have been selected. The Tribunal has wrongly directed for appointment of respondent No.10. This Court does not approve the action of the Tribunal. Accordingly, this Court has no other option but to quash the appointment of Renu Kumari-respondent No.10 and remanded back the entire matter to the Panchayat Unit, who will fix the date of counseling, giving prior notice to the persons who had applied against the vacancy of B.C. category (female) and the person who is the best amongst the candidates should be appointed.

11. The Panchayat Unit is directed to complete the entire exercise within a period of three months from the date of production / receipt of a copy of this order. It is made clear that all the communications would be made through registered post including the notice.

12. With the aforesaid observations and directions, this writ petition is disposed of.

(Shivaji Pandey, J)

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