

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1782 of 2012

IN

Civil Writ Jurisdiction Case No. 12781 of 2012

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Md. Soharab, S/O Idrish, Resident of Village- Desari, P.O- Desari, P.S- Desari,
District- Vaishali.

.... Appellant

Versus

1. The State of Bihar, through the Commissioner- cum- Secretary, Department of Education Government of Bihar, New Secretariat, Bihar, Patna.
2. The Director, Department of Primary Education, Government of Bihar, New Secretariat, Bihar, Patna.
3. The District Education Officer, Vaishali.
4. The Member, District- Teacher Employment Appellate Authority, Vaishali.
5. The Secretary, the District Teacher Employment Appellate Authority, Vaishali.
6. The District Program Officer (Establishment) Vaishali.
7. The Sub- Divisional Education Officer, Mahua, Vaishali.
8. The Block Development Officer, Cheharakala Block, District- Vaishali.
9. The Block Education Extension Officer, Cheharakala, Block District- Vaishali.
10. The Panchayat Secretary, Gram Panchayat Raj Mathana Milk, Block Cheharakala District- Vaishali.
11. The Mukhiya Gram Panchayat Raj Mathana Milk, Block Cheharakala, Distt- Vaishali
12. Md. Jakir Hussain, S/O Ahamad Hussain, R/O Village- Sarai Afjal, P.O.- Bisanpura, P.S- Goraul, Distt- Vaishali.

.... Respondents

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Appearance :

For the Appellant	:	Mr. Shashi Bhushan Kumar, Advocate Mr. Ravi Prakash, Advocate
For Respondent 12	:	Mr. Rajendra Pd. Singh, Sr. Advocate Mr. Mukesh Kumar Singh, Advocate
For the State	:	Mr. Prabhat Bharti, AC to GP-23
For Respondent 10	:	Mr. Kaushal Kishore, Advocate

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH
and

HONOURABLE JUSTICE SMT. NILU AGRAWAL
C.A.V. JUDGMENT

(Per: HONOURABLE JUSTICE SMT. NILU AGRAWAL)

Date: 14 -07-2016

This intra-court appeal arises out of the order
dated 25.07.2012, passed in C.W.J.C. No. 12781 of 2012 (Md.



Soharab Vs. The State of Bihar and others) by which the learned Single Judge has dismissed the writ petition holding that the petitioner was appointed as a Panchayat Teacher (untrained) in the Extremely Backward Category (EBC) and not under Physically Handicapped Category and respondent No. 12 Md. Jakir Hussain being more meritorious, the District Teachers Employment Appellate Authority, Vaishali (hereinafter referred to as the Authority) has rightly rejected the claim of the appellant- writ petitioner in favour of respondent No. 12.

2. Heard learned counsel for the appellant, learned counsel for the State and the learned counsel appearing on behalf of respondent No. 12 and with the consent of the parties, this appeal is heard and is being disposed of at this stage itself.

3. Appellant- writ petitioner was appointed as a Panchayat Teacher in Gram Panchayat Raj Mathna Milk under Chehrakala block in the district of Vaishali on 29.11.2006. He was terminated on the ground that his intermediate vocational qualification was not acceptable. However, he came to be reinstated in pursuance to the orders of this Court.

4. It is relevant to mention here that the vacancy was 10 in number, category-wise between roster points 26 to 35 and the appellant was appointed on roster point 32 which was



reserved for EBC category. Subsequently, it was found that one Md. Jakir Hussain (respondent No. 12) had secured more marks i.e. 68.11% in the EBC category and the appellant-writ petitioner having secured less marks i.e. 67.40% could not have been appointed at roster point 32, which was reserved for EBC category. He was removed from the post of Panchayat Teacher and respondent No. 12 was appointed in his place. Against this termination appellant moved this Court but was relegated to the Appellate Authority to vent his grievance. The Authority after hearing the appellant and respondent No. 12 passed order dated 16.07.2011 rejecting the claim of the appellant- writ petitioner holding that respondent No. 12 being more meritorious under EBC category and the appellant having been appointed under EBC category being less meritorious with lesser marks could not have been appointed. The appellant- writ petitioner challenged the order of the Authority which refused to interfere with his removal from the post of Panchayat Teacher, which was upheld by the learned Single Judge holding that there was no occasion to interfere with the findings of the Authority as there was no material to show that the appellant was not an applicant under the EBC category but was an applicant for physically handicapped category and although roster point 34 as per the reservation policy was reserved for

physically handicapped category candidate, appellant- writ petitioner was appointed at roster point 32 which belonged to EBC category.

5. Learned counsel appearing for the appellant- writ petitioner submits that the appellant was a physically challenged person having orthopaedic problem and belonged to EBC category. He applied for selection as a Panchayat Teacher and was thus eligible at roster point 34 reserved for handicapped category but being EBC category he was then deemed to be a handicap of EBC category and thus he was validly appointed at roster point 32. It has been submitted that 3% reservation is required to be made in respect of physically challenged persons and, accordingly, the positions are fixed. The basis on which the selection was based upon is evident from Annexures-6 and 8 of the writ petition. Annexure-6 of the writ petition is the list of 10 selected candidates and the appellant- writ petitioner is shown as being appointed under EBC category. Annexure-8 is the second list dated 10.12.2006 showing appellant- writ petitioner to be already appointed under EBC category and the remarks column showing handicap (Viklang). Thus, he submits that the appellant- writ petitioner could not be made to compete with the persons like respondent No. 12 who belonged to simply EBC category. He also



submitted that the learned Single Judge was not correct in holding that there is no material to show that he had applied and was selected on the basis of physically handicapped category, as Annexures-6 and 8 would contradict the same. Counsel further submitted that Annexure-16 of the writ petition, which is letter dated 21.02.2009 by the Panchayat Secretary (respondent No. 10) addressed to the District Education Officer, Vaishali (respondent No. 3) shows that a letter had been written in connection with selection of Panchayat Teachers by the Block Education Extension Officer, Chehrakala dated 21.11.2006 that four handicapped category candidates had to be selected and with regard to Mathana Milk Panchayat, where appellant- writ petitioner was appointed, one vacancy was for physically challenged orthopaedic candidate. Hence, the learned counsel submitted that the appellant- writ petitioner was appointed as per Personnel and Administrative Reforms Department notification No. 458 dated 30.09.2002 at roster point 32 on the basis of being physically handicapped and being an EBC candidate under the category earmarked for EBC category.

6. However, Mr. Rajendra Prasad Singh, learned Senior Counsel appearing on behalf of respondent No. 12 submitted that undisputedly the recruitment made was for roster



points 26 to 35 and in between that there was no point for handicapped candidates. He, accordingly, submitted that if that be so then there is no question of appointment of the appellant- writ petitioner who has been selected as a handicapped category candidate at roster point 32 earmarked for EBC category, getting selected over respondent No. 12, who also belongs to EBC category and was more meritorious having secured higher marks. He further submitted that reference to Annexure-N being circular No. 502 dated 02.11.2002 which modified the circular dated 30.09.2002 clearly provides reservation for handicapped person at roster points 17, 50 and 84 and none of these roster points was under consideration for appointment of the appellant- writ petitioner, hence, the order of the Authority and the learned Single Judge calls for no interference.

7. Upon careful examination of the notification issued by the Personnel and Administrative Reforms Department bearing No. 458 dated 30.09.2002 and subsequent notification bearing No. 502 dated 02.11.2002 the matter becomes clear. In all Government and allied Government offices 3% reservation under the handicapped category has been provided and roster point fixed for handicapped person being between roster point 01 to 33 one post for vision impairment, between roster point 34 to 67 one post



for speech and hearing impairment and between roster point 68 to 100 one post for locomotive handicapped, and roster points 01, 34 and 67 are earmarked for physically challenged persons, category-wise. The Government notification dated 30.09.2002 shows that reservation for physically handicapped being vertical reservation, if roster point earmarked for handicapped person cannot be filled due to certain circumstances then it would be shifted between roster point 02 to 33, roster point 34 to 66 and between roster point 67 to 100, and, would be filled by the reserved category candidate to which they belong in between those roster points.

8. However, it was submitted by the learned Senior Counsel Mr. Rajendra Prasad Singh that vide Government notification No. 502 dated 02.11.2002, Annexure-N, the roster point available to physically challenged persons was 17, 50 and 84 in subsequent transaction for appointment. But Clause 2 of notification No. 502 dated 02.11.2002 further clarifies that the handicapped person to be appointed, would be placed in the respective reserved category to which he belongs. The appellant-writ petitioner was thus appointed as a handicapped person in the respective reserved category of EBC to which he belonged and since earlier there was no handicapped category candidate appointed in the earlier transaction of teachers appointment,



reservation being vertical the appellant- writ petitioner has rightly been appointed as handicapped category candidate in the category to which he belonged even with lesser marks than respondent No. 12. Hence, the order of the Authority dated 16.07.2011 as well as the order of the learned Single Judge dated 25.07.2012, passed in C.W.J.C. No. 12781 of 2012 are set aside. The appeal is, accordingly, allowed but without costs. It is also directed that the appellant writ petitioner be reinstated in service forthwith.

(Nilu Agrawal, J.)

Navaniti Prasad Singh, J : I agree.

(Navaniti Prasad Singh, J.)

Rajesh

AFR/NAFR	AFR
CAV DATE	29.06.2016
Uploading Date	14.07.2016
Transmission Date	