

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.943 of 2013

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Kumari Bibha Rani W/o Sri Ram Naresh Thakur, Rajkiya Primary School, Gram Panchayat at Kalana, P.O.- Basopatti, P.S.- Harlakhi, District- Madhubani.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Human Resource Development Department, Govt. of Bihar, Patna
3. The Director, Primary Education, Govt. of Bihar, Patna
4. The District Magistrate, Madhubani
5. The Member, District Teacher Appointment Appellate, Tribunal, Madhubani
6. The District Education Officer, Madhubani
7. The Block Extension Education Officer, Harlakhi, Madhubani
8. The Mukhiya, Gram Panchayat Raj, Kalana, Block Harlakhi, Madhubani
9. The Panchayat Secretary, Gram Panchayat Raj, Kalana, Block Harlakhi, Madhubani
10. Dolli Kumari D/o Balram Singh R/o Village- Kundalmadhiya, Post- Rampur, P.S.- Harlakhi, Distt.- Madhubani.

.... Respondent/s

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Appearance :

For the Petitioner/s :	Mr. Rajendra Pd. Singh, Sr. Adv. Mr. Shashi Bhushan Mr. Rakesh Roshan Singh
For the Respondent/s :	Mr. B. Sharma Mr. Indrajeet Bhushan Mr. Narendra Kr. Singh

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 15-02-2016

Heard learned counsel for the petitioner, learned counsel for the State, private respondent and respondent Nos. 8 and 9.

In this case, the petitioner is challenging the order dated 30th November 2012 passed by the District Teacher Appointment Appellate Tribunal whereby and whereunder the Tribunal has set aside the appointment of the petitioner and in her place directed for

appointment of Respondent no. 10, Dolli Kumari.

The Government of Bihar has initiated the 2nd phase of appointment of Panchayat Teacher in the year 2008. Accordingly, the Notification was published where one post was reserved/marked for unreserved female of Kalana Gram Panchayat, Block-Harlakhi.

The present petitioner and private respondent no. 10 filed their application along with others to contest the appointment as Panchayat Teacher.

The provisional list was published on 01/12/2008 and when the name of petitioner was not standing, she filed an objection on 05/12/2008 raising a grievance that she has altogether 76% marks after inclusion of the experience certificate, but it was shown only 56% which may be corrected and she should be called for the counselling. As per the case of the petitioner, she has obtained 55.66% in the Intermediate, added with 20 marks for her experience, while discharging the work of Teacher in non-formal school. Final counselling was conducted on 28/02/2009 where the petitioner appeared and produced her certificate. After the counselling, on 02/03/2009 the final list (Annexure-5) was published and the name of the petitioner has been shown at serial no. 1 whereas Dolli Kumari, Respondent no. 10 has been shown at serial no. 3. In such view of the matter, as the petitioner was at the top, she was selected and appointed on 14/08/2010. Accordingly she joined the post on 19/08/2010 and

she was posted to Rajkiya Primary School, Kalana Chowk, Block-Harlakhi.

As respondent No. 10 could not be selected, she claimed that she has a better marks, as she obtained 72% marks whereas the petitioner did not have any experience, has wrongly been selected and appointed as Panchayat Teacher. Respondent No. 10 filed an objection before the Incharge of Public Grievance Cell, Madhubani who forwarded the application to the District Teacher Appellate Tribunal which was registered as Appeal Case No. 817/08/11. The application which was filed by Respondent no. 10, was rejected by the Appellate Authority, vide order dated 30th November 2011. Against that Respondent no. 10 approached this Court in CWJC No. 22186 of 2011, which was disposed on 25/04/2012 and the matter was relegated to the Appellate Tribunal. The Tribunal discussed and decided the case vide order dated 30th November 2012, arrived to finding that the petitioner had not annexed the copy of the experience certificate, in such view of the matter, she could not claim to have obtained 76 points, in absence of the certificate, Respondent no. 10 has a better point and as such, she should have been appointed in place of the present petitioner, on this ground, the appointment of Kumari Bibha Rani was set aside by the Tribunal.

The question has been raised by the petitioner that when her name was not standing in the provisional list, as per the law, she



had filed an application before the Panchayat Secretary and the same was received by the then Mukhiya on 05/12/2008 which is apparently clear from Annexure-4 to this petition and on the basis of that objection, her name was brought in the final selection list and as she earned the highest marks, she was rightly selected, but the Tribunal has misdirected and misconstrued the material on record and wrongly recorded that on the date of the filing of the application, she had not annexed the copy of experience certificate.

During the argument on the last occasion, this Court had noticed that in the experience certificate the date has been shown as 12/11/2008 but at the bottom signature of some person with deceptive date is 19/11/2008 whereupon this Court had directed the State Government to produce the original Issuing Register.

The State has produced the original Register, on perusal it appears that certificate was ready on 12/11/2008, as there is no signature of any of the person to have received the certificate whereupon counsel for the petitioner has produced the original certificate stating that the date which was deceptively appearing to be 19th November 2008, is not correct but the correct date is 12/11/2008, so much so the counsel for Respondent nos. 8 and 9 has produced the original records with reference to the selection of Panchayat Teacher in Harlakhi Gram Panchayat from where it appears that the name of the petitioner was standing at item No. 64 in the Employment Register



where the marks has been shown in favour of Kumari Bibha Rani is 56%. There is no entry with regard to supplying the certificate of her experience but the original record that has been produced by the Mukhiya, shows that the petitioner had filed experience certificate dated 12th November 2008. On perusal of application form of the petitioner it appears that she has put a tick mark against the experience in item no. 15 in Non-Formal Instructor and also in item No. 16 she has shown her to be Non-Formal Teacher.

One thing is very clear that the original record shows that she has filed the experience certificate, in terms of Bihar Panchayat Primary Teacher (Appointment and Service of Conditions) Rules 2006, Rule 9 (iii) read with *Prapatra* shows that at the time of filing of application only two documents are to be attached, one is the application form filled up by the applicant and another is 10 x 6 size of his/her photograph. With respect to the certificate concerning educational certificate, experience certificate as well as caste certificate is not required to be attached with the application form but item no. 4 of the *Prapatra* shows that the candidate will have to produce his/her original certificate at the time of final counselling.

In the present case if the petitioner did not file any experience certificate, how she has mentioned about her experience. The merit list is to be prepared on the basis of details supplied in the form, final selection would be made subject to production of original

certificates mentioned in the application form.

The counsel for the respondent has pointed out the fact that the plea was taken by the petitioner that she had filed an objection before the Block Development Officer and no plea of filing such objection before the Mukhiya was taken. Plea of raising objection before Block Development Officer has been treated by the Tribunal as non-compliance, for the first time in filing of objection before the Mukhiya has been taken before the Court.

Be that as it may, from the original record that has been produced by the authorities concerned, it appears that it is not a disputed fact that she had filed an application with experience certificate. Only the dispute is with respect to the fact whether she had filed the objection only to the Block Development Officer or had also filed before the Mukhiya.

From the writ petition, it appears that the objection was filed even before the Mukhiya and the copy of the same has been attached to the writ application where receipt with signature of Mukhiya dated 05/12/2008, has been shown, supported by fact that the original record that has been produced by Respondent nos. 8 and 9 from where it appears that she attached the certificate and also put mark in the form but the objection dated 05/12/2008 (Annexure-4) addressed to the Secretary and the Mukhiya was not filed before the Appellate Tribunal which is apparent from the order of the Tribunal.



The original record that has been produced, also does not show that such application is there in the record. Other applications with respect to another issues filed by the petitioner, are on record. In such view of the matter, it is very difficult to arrive at a final conclusion as to whether the petitioner had filed such objection before the Secretary and the Mukhiya on 05/12/2008 bearing signature of Lila Devi dated 5/12/08. If the objection filed by the petitioner is correct certainly she is entitled for the appointment, as in the original records her experience certificate is there.. It is an admitted fact that the name of the petitioner was not standing in the provisional list. Unless she establishes that she had filed an objection within seven days as per Rule 9, whole case falls flat and then the question would arise how her name was published in the final list, as per Rule 9, only an objection, mistake would be rectified.

In such view of the matter, this Court finds that the finding arrived by the Tribunal is completely not in terms of law and not in a proper tenor, the same is set aside. The matter is remanded back to the Tribunal to examine as to whether the petitioner had filed any such objection before Panchayat Secretary and Mukhiya and also make an enquiry with regard to application (Annexure-4) which is attached to writ application raising the plea with regard to inclusion of her name in the provisional list, addressed to the Panchayat Secretary and the Mukhiya dated 5th December 2008 received by Lila Devi on

the same date, is a genuine document or it is a fake letter as the same is not in original record. If it is found that the objection dated 05/12/2008 is a genuine letter, in that circumstance, it goes without saying that the petitioner would be appointed as Panchayat Teacher in place of Respondent no. 10.

In such view of the matter, for the present status quo as on to-day will be maintained. The Tribunal is directed to decide the case within a period of three months from the date of receipt/production of a copy of this order.

Accordingly, this petition is disposed of.

The original record which has been produced by the Respondent nos. 8 and 9, are being returned back that will be produced before the Tribunal as and when it will be required by the Tribunal.

(Shivaji Pandey, J)

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