

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6895 of 2013

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Nitu Kumari W/O Ranjan Kumar Singh R/O Village- Taraiyan, P.O. And P.S.-
Chakiya, District- East Champaran At Motihari

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary Education Department, Government Of Bihar, Patna
3. The Director, Primary Education Education Department, Government Of Bihar, Patna
4. The District Magistrate East Champaran At Motihari, District- East Champaran
5. The District Teacher Appointment Appellate Authority East Champaran At Motihari, District- East Champaran Through The Presiding Officer
6. The District Education Officer East Champaran At Motihari, District- East Champaran
7. The District Program Officer (Establishment) East Champaran At Motihari, District- East Champaran
8. The Block Development Officer Kalyanpur, District- East Champaran At Motihari
9. The Block Education Officer, Kalyanpur District - East Champaran At Motihari
10. The Mukhiya Gram Panchayat Raj, Mani Chapra, Block- Kalyanpur, District- East Champaran At Motihari
11. The Panchayat Secretary Gram Panchayat Raj, Mani Chapra, Block- Kalyanpur, District- East Champaran At Motihari
12. Kumari Manju Singh W/O Not Known To The Petitioner Presently Working As Panchayat Teacher Under Gram Panchayat Raj, Mani Chapra Through The Panchayat Secretary, Gram Panchayat Raj, Mani Chapra, Block- Kalyanpur, District- East Champaran At Motihari

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. S.B.K. Manglam, Adv.
Mr. Ranjan Bharti, Adv.
For the State : Mr. S.P. Singh, GA-7
For the Resp. No.12 : Mr. Kamlesh Kumar Pathak, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 25-04-2016

Heard learned counsel for the petitioner and counsel for the respondents.

In this case, the petitioner is challenging the order of the appellate authority dated 10.1.2013 passed by the District Teacher

Appointment Appellate Authority, East Champaran in Case No. 845 of 2012 whereby he has rejected the appeal filed by the petitioner.

This matter relates to appointment of Panchayat Teacher for second phase. For general, there was only one post which was allotted to the female candidate. The petitioner and fourteen others including the private respondent no.12, namely, Kumari Manju Singh also applied for the post of Panchayat Teacher. A merit list was prepared. Nirmala Kumari was the first candidate, second was the petitioner and fifth name was of the private respondent no.12. The petitioner did not appear in the counseling. Ultimately, the respondent no.12 Kumari Manju Singh appeared in the counseling and she was appointed. Learned counsel for the petitioner submits that in fact the petitioner appeared in the counseling. Her counseling was conducted in a separate register. She was apprehensive that something wrong has been done and she made a complaint before the Sub Divisional Officer showing her apprehension that she might be disqualified from selection of the post of Panchayat Teacher. When finally the respondent no.12 Kumari Manju Singh was appointed, she filed a complaint before the appellate court and the appeal was registered as Case No. 162 of 2008. There the Appellate Authority rejected the claim of the petitioner by recording that her counseling was not conducted by the appointing unit and arrived to a finding that she



could not produce any material to show that she was present on the day of counseling and rejected the claim of the petitioner. Being aggrieved by the order of the appellate court, the petitioner approached this Court in CWJC No. 11687 of 2010 and the petitioner took a plea that she did not receive the call letter but, she had appeared in the counseling on the basis of press communiqué fixing the date of counseling by the State Government. The counseling was done in a different register and she made a complaint to the S.D.O. in this regard on 2.3.2009 i.e. only after two days after the counseling. The Court found the claim of the petitioner to be bonafide and remanded the matter for fresh consideration. The Tribunal has arrived to a finding that on the date of counseling, she was not present. It has also been recorded that she has not produced any receipt showing her presence in the counseling. The appellate authority disbelieved the story of the petitioner that she was present on the day of counseling. It has further been recorded that the petitioner neither produced the photocopy or the original copy of the receipt showing her presence in the counseling. Pramod Kumar Singh is said to have conducted the counseling of the petitioner, issued certificate of holding the counseling of the petitioner, whereupon Pramod Kumar Singh filed written statement, thereby denied to have conducted the counseling of the present appellant so much so if any receipt has been filed is not of

his handwriting. The appellate authority, on considering the materials, disbelieved the story of the appellant and on the strength of the judgment of this Court in the case of *Smt. Amita Kumari Vs. The State of Bihar & Ors.* reported in *2010(1)PLJR 49* held that she could not make out her case and dismissed the appeal.

Panchyat Teachers are selected by a Selection Committee headed by Mukhia. The husband of Kumari Manju, the respondent no.12, namely, Guddu Singh was the Mukhia of the said Gram Panchayat and he participated in proceeding, his wife was selected which is apparently clear from proceeding Annexure-A to the counter affidavit. Proceeding of selection Annexure-A has been annexed by the respondent no.12 itself shows that the Mukhia participated in the selection process of Panchayat Teacher. Counseling Register shows active participation of the husband of Kumari Manju Singh private respondent no.12. If the husband participates in the selection of his wife that itself shows all possibility of biasness. Such type of selection can not be approved, in such type selection, the Hon'ble Apex Court has taken strong exception. It is appropriate to place reliance in the case of *Ashok Kumar Yadav & Ors. Vs. State of Haryana & Ors.* reported in *(1985) 4 SCC 417*. In that case also, the Court has held that if there is a case of malafide in the selection process then the selection suffers from illegality and the court has held that if any personal interest is



there in the selection, he should not participate in the selection of his ward and must restrain himself/herself from participating in the selection process as there is likelihood of biasness on account of proprietary interest on account of personal reason such as hostility to one party or personal friend or near relation. The Court has held as follows:-

“16. ----- This Court emphasised that it was not necessary to establish as but it was sufficient to invalidate the selection process if it could be shown that there was reasonable likelihood of bias. The likelihood of bias may arise on account of proprietary interest or on account of personal reasons, such as, hostility to one party or personal friendship or family relationship with the other. Where reasonable likelihood of bias is alleged on the ground of relationship, the question would always be as to how close is the degree of relationship or in other words, is the nearness of relationship so great as to give rise to reasonable apprehension of bias on the part of the authority making the selection.

In the present case also, the order of the appellate court suffers from error on account of the fact that at the first round of litigation, the petitioner has produced the certificate showing that her counseling was conducted by Pramod Kumar Singh and, on that strength, the matter was remanded back, this time, as per the learned



counsel for the petitioner, had produced the document but, the appellate authority recorded a finding that she has not filed any slip to show her counseling was conducted is completely wrong and, so much so, that the appellate authority himself recorded that the two pages, namely, 74 and 75 of counseling was found pasted to each other, refused to accede request of opening the pasted pages and rejected the claim of the petitioner holding that she did not participate in the counseling. The order of the appellate authority cannot be sustained on two grounds, firstly the husband of the respondent no.12 was the Mukhia himself, participated in the selection process of the respondent no.12, makes selection itself to be illegal and vitiate the selection of respondent no.12 and secondly, after the counseling, she was approached to the S.D.O. as well as she produced certificate showing her counseling was conducted, on the strength of statement of Pramod Kumar Singh, the case of the petitioner has wrongly been rejected in view of the fact that after two days, she made complaint to S.D.O. about the manner she was treated, two pages of the counseling register was found pasted as well as her receipt shows her counseling was done.

In view of the aforesaid fact, this Court does find that the selection of Kumari Manju Singh, the respondent no.12, suffers from illegality as due process of selection has not been followed in the case.

Accordingly, the order of the appellate authority is set aside. The appointment of Kumari Manju Singh, respondent no.12 is held to be illegal and the same is set aside. As the Mukhia has participated in the selection of his wife completely illegal and any payment made to Kumari Manju Singh, the respondent no.12, by way of Panchayat Teacher, should be recovered from the pocket of the Mukhia.

The Panchayat Unit is directed to conduct fresh counseling of those who had applied for the post of general female candidate and will appoint the same in accordance with law.

This exercise, however, must be completed within a period of six months from the date of receipt/production of a copy of this order.

With the aforementioned observation and direction, this application is allowed.

(Shivaji Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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