

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7662 of 2013

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Nitu Kumari Daughter of Sri Krikshna Kumar Chaudhary, Resident of Village-
Gopalganj, Post + Police Station- Ghosi In the District of Jehanabad

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Education Department,
Government of Bihar, Patna
2. The District Magistrate-Cum-Collector, Jehanabad
3. The Block Development Officer, Ghosi, Jehanabad
4. The Block Education Officer, Ghosi, Jehanabad
5. The Mukhiya, Gram Panchayat Ghosi, Jehanabad
6. The Panchayat Secretary, Gram Panchayat Ghosi, Jehanabad
7. Sangeeta Kumari Wife of Shyam Kumar, Resident of Village- Bharthu, Police
Station- Ghosi, District- Jehanabad.

.... Respondents

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Appearance :

For the Petitioner/s : Mr.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 05-05-2016

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

2. In the present case, the petitioner is challenging the
order of the Appellate Authority, by which the application filed by
the petitioner has been rejected on the ground that the application
was not filed within time. The Ghosi Gram Panchayat issued an
advertisement for the second phase of appointment of Panchyat
Teacher, breakup is given herein below; one post for unreserved
female, two posts for the Backward Caste and one post for

Schedule Caste (female). There was no one vacancy for the Scheduled Caste (male). The petitioner-Nitu Kumari and the private respondent No.7-Sangeeta Kumari applied for the said post under the category of Schedule Caste (female).

3. It appears that when a merit list was prepared on the basis of percentage of marks, the petitioner-Nitu Kumari has been shown at serial No.2 and her marks has been shown as 70.20% whereas respondent No.7-Sangeeta Kumari was standing at Serial No.6 in the said merit list and her marks has been shown as 61.1% after giving 20 percent weightage. The date of counselling was fixed on 20.02.2009 and in pursuance thereof, the petitioner and respondent No.7 appeared in the counselling and from minutes of proceeding (Annexure-7 of the writ application), it appears that the petitioner-Nitu Kuamri shown at serial No.2, whereas Sangeeta Kumari shown at serial No. 6 in the merit list in the category of schedule caste. The minutes of proceeding of the Panchayate Unit dated 29.02.2009 shows that final list of selected candidates was prepared, in which, the name of petitioner has been shown to have been selected and in pursuance thereof the Panchayat Unit has issued the letter of selection (Annexure-6 to the writ application). Again Panchayat Unit sat on 30.12.2010 and in place of petitioner-Nitu Kumari, Respondent No.7-Sangeet

Kumari has been shown to have been appointed on the post of Panchayat Teacher. In the minutes of the proceeding dated 30.12.2010, no reasons have been assigned for substitution of Sangeeta Kumari, Respondent No.7 in place of the Nitu Kumari-present petitioner.

4. Learned counsel for the petitioner submits that in pursuance of proceeding dated 30.12.2010, respondent No.7- Sangeeta Kumari joined the allocated Upgrading Middle School, Narayanbigha under Gram Panchayat Raj Ghosi on 03.11.2008. When the petitioner could know about her joining on 08.11.2011 she approached to the Panchayat Unit about her fate with regard to her selection and when no satisfactory reply was received, she filed an application before the Tribunal on 07.03.2011. The Tribunal after examining the matter from different angles arrived to a finding that the petitioner has approached the Tribunal after a delay of 30 days on that count alone the appeal of the petitioner was rejected.

5. Learned counsel for the petitioner submits that the petitioner could know about the appointment of Sangeeta Kumari on 08.01.2011 and within 30 days she approached the Tribunal so much as that the Bihar Panchayat Elementary Teachers Appointment and Condition of Services Rules, 2006, does not





prescribe any period of limitation, but a Resolution has been issued by the then Commissioner-cum-Secretary, Human Resources Department, which provides that the appeal should be filed within 30 days. It is well known principle that Resolution cannot amend the provision of the Rules as the status of the Resolution is far below than the Rule.

6. This court is not examining whether by Resolution the time can be prescribed for the filing of the appeal. Apart from the fact narrated hereinabove, it appears that petitioner had taken plea that Sangeeta Kumari has joined the post on 03.01.2011, she could know about her appointment only on 08.11.2011 and she filed the application on 07.02.2011 before the Tribunal. If these dates are taken into consideration, certainly the Tribunal will have to examine the date of the joining of Sangeeta Kumari.

7. In contra, learned counsel for the private respondent submitted that though the residence of petitioner has been shown at Ghosi Gram Panchayat, but for all practical purposes she has been residing at Bokaro as he has completed study at Steel City, Bokaro and always resides there, after selection she never turned up to submit his consent letter despite repeated information, when she did not turn up, the Panchayat Unit again assembled and decided to appoint the respondent No.7. This Court is not

examining this aspect of the matter. The Tribunal has not dismissed the appeal on merit; it has dismissed the appeal only on the ground of limitation. This Court feels that the Tribunal ought to have decided the case on merit instead of deciding the same on the ground of limitation.

8. In such view of the matter, the order of the Tribunal is set aside. The matter is remitted back to the Tribunal to decide this case on merits, within a period of six months from the date of receipt / production of a copy of this order.

9. It is clarified that this Court is not giving any opinion on the merits of the claim of the petitioner. Till the Tribunal decides this case, the respondent No.7 till continue to discharge her duty and if it is found that the respondent No.7 has been working in the School, her honorarium should be paid to her by the Panchayat Unit.

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

(Shivaji Pandey, J.)

Rajiv/Pawan

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