

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7936 of 2013

Sadhana Kumari, wife of Sri Jitendra Prasad, resident of village - Tengahara, P.O.-
Malaypur, P.S.- Barhat, District- Jamui

.... Petitioner

Versus

1. The State Of Bihar.
2. The Principal Secretary H.R.D., Bihar, Patna
3. The Director, Primary Education, Bihar, Patna
4. The District Magistrate, Jamui
5. The District Education Officer, Jamui
6. Mr. Naresh Kumar Singh, The Member, District Teachers Appointment
Appellate Authority, Jamui
7. The District Programme Officer (Est), H.R.D., Jamui
8. The Block Development Officer, Barhat, Jamui
9. Block Education Officer, Barhat, Jamui
10. The Mukhiya, Gram Panchayat, Barhat, Jamui
11. The Panchayat Secretary, Gram Panchayat, Barhat, Jamui
12. Mr. Praveen Kumar, Panchayat Teacher (Now Prakhanda Teacher) Posted At
Upgraded Middle School, Kushauna, Barhat, Jamui
13. Punam Kumari 'Panchayat Teacher' Posted At Primary School, Kumar Tari,
Gram Panchayat - Barhat, P.S.- Barhat, District- Jamui
14. Rani Kumari Panchayat Teacher Posted At Musahrari Tanr, Barhat, District-
Jamui

.... Respondents

Appearance :

For the Petitioner/s : Mr. Rajesh Kumar Sinha, Adv.
For the State : Mr. Raghwanand, G.A.-11
For Respondent No.13 : Mr. Praveen Kumar,
: Mr. Jyoti Ranjay Jha, Adv.

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT
Date: 16-08-2016



In this case, the petitioner is challenging the order dated 26.01.2013 passed by the District Teachers Appointment Appellate Authority, Jamui, in Case No.15 of 2012, whereby and whereunder the appeal of the petitioner has been rejected on the ground that the objection was filed after 22 months, which suffers from staleness and delay. It has also been recorded that the appointment of Punam Kumari has been challenged by the petitioner after a delay of five years, which is against the provisions set out by the department.

2. The petitioner had applied for the second phase of appointment of Panchayat Teacher under the E.B.C. female category having 56.44% marks, annexing all the academic certificates. It has been stated that she had applied for the post on 6.11.2008. The petitioner and others were called for counseling, in which the petitioner had appeared but her counseling was not conducted, the Panchayat Secretary said that untrained candidates will be called for counseling on the next date. On the next day, the petitioner filed a complaint before the Block Education Officer, Barhat, but no counseling was done and later on 14.08.2008, Poonam Kumari- respondent No.13 and Rani Kumari- respondent No.14 were appointed under E.B.C. female category,



having only 45% and 55% marks respectively, whereas the petitioner having 56.44% marks. The other applicants for the post of Panchayat Teacher approached the Tribunal. Accordingly, their cases were registered as Case No.63 of 2010 and others. The Tribunal has considered the matter and has found that entire selection process suffers from illegalities, cancelled the entire selection and directed for fresh counselling and proper appointment of Panchayat Teacher.

3. After the remand, the Panchayat Unit fixed two dates namely 29.12.2010 and 30.12.2010 for counseling at Panchayat Bhawan. Accordingly, the petitioner went to appear in the counseling on both the dates i.e. on 29.12.2010 and 30.12.2010, but her counseling was not done and the Panchayat Unit reappointed the same candidates, who were earlier appointed though they have lesser marks than to present petitioner. Against the action of the respondents, the petitioner filed an application before the Block Education Officer, Barhat, stating therein that the earlier selection was set aside by the Tribunal, whereupon fresh counseling was conducted on 29.12.2010 and 30.12.2010, but she tried to find out the place where the counselling was being done, but even after the search she could not trace out the place where the counseling was

conducted, on that account her counselling could not be effected with the sole intention to deprive her for being appointed as Panchayat Teacher and as such the person having lesser marks having been appointed and she has been left out.

4. When her grievance could not be redressed, she filed an application before the Appellate Tribunal on 24.1.2011, which was registered as Case No.59 of 2011 and the Tribunal has recorded a finding that her name was not standing at serial No.467 as in her place the name of Papu Pandey, Son of Hardey Pandey, was standing. Against that order the order of the Appellate Tribunal, the petitioner approached this Court in C.W.J.C. No.10969 of 2012, where it has been recorded that the Tribunal did not call the original record to satisfy itself. It was a fit case for the Tribunal to call for the original records on disputed question of fact whether the petitioner was applicant or not. The information obtained by the petitioner under R.T.I. Act is considered extremely relevant. If an order was obtained by the official respondents for dismissal of the appeal, which may not have been founded on the true and correct facts, power inheres in the Tribunal to examine the grievance of the petitioner without the need for any statutory power of review. The Court has directed the petitioner to take steps before

the Tribunal for redressal of her grievance.

5. It will be relevant to quote relevant paragraphs of the said order, which reads as follows:-

“ It does not appear from the order of the Tribunal that it called for the original records to satisfy itself. It was a fit case for the Tribunal to call for the original records on a disputed question of fact whether the petitioner was an applicant or not. The information obtained by the petitioner under the R.T.I. Act is considered extremely relevant. If an order was obtained by the official respondents for dismissal of the appeal which may not have been founded on the true and correct facts, power inheres in the Tribunal to examine the grievance of the petitioner without the need for any statutory power of review. Refraining from any observation that the order may have been based on misrepresentation by the official respondents it still leaves open the question of inadvertent error.

Rather than issue notice to respondent no. 13. Liberty is granted to the petitioner to file an application before the Tribunal in view of the information furnished to her under the Right to Information Act and which prima facie appears to be in teeth with the stand taken by the official respondents before the Tribunal. In that event, if satisfied, the Tribunal shall proceed to issue notice to respondent no. 13 and rehear the matter.

The Court expects the Tribunal to finally dispose off the matter by a reasoned and considered preferably within a period of three months from the date of receipt that the petitioner files such application along with a copy

of this order.

The application stands disposed.”



6. In pursuance thereof, the petitioner approached the Tribunal, raising her grievance and brought to the notice that the finding recorded by the Tribunal that she had not applied for the appointment of Panchayat Teacher deserves to be rejected on the ground that the photo copy which was supplied to her indicates that the name of the petitioner was standing at serial No.303 in the application receipt register. The original application receipt register has been placed before the Tribunal and the Tribunal found that the name of Sadhna Kumar figures at serial No.303 with full details but the Tribunal has refused to grant the benefit to the petitioner merely on the ground that she has objected the appointment of respondent Nos. 13 and 14 at belated stage.

7. Learned counsel for the petitioner submits that the reason has been assigned by the Tribunal for rejecting the claim of the petitioner is completely suffers from illegality and on wrong consideration of fact as the period would be counted from the date when second counseling was done in pursuance of the setting aside of first selection process. This would be treated to be the starting point, in such circumstance, the finding recorded by the Tribunal

that the objection was filed after 22 months is *per se* and illegal.

8. Learned counsel for the respondent No.13 and 14 tried to impress upon this Court that though the petitioner may have a better marks, but unless a person appears in counseling he/she cannot claim for his/her appointment.

9. Learned counsel for the respondent No.14 has submitted that she has better marks than to respondent No.13. Even if the appointment of respondent No.13 goes she should be accommodated in the E.B.C. female category as the petitioner would be adjusted against general female category candidate.

10. Having considering the entire facts and circumstances of the case, from the facts stated hereinabove it is amply clear that the Tribunal has refused to give the benefit to Sadhana petitioner merely on the ground that she has objected the appointment of respondent Nos. 13 and 14 at belated stage, but the Tribunal has not looked this aspect of the matter that some of the applicants challenged the initial appointment of Panchayat Teacher by filing different complaint petitions. The Tribunal after examining the facts and circumstances of the case quashed the entire selection and remanded the matter with a direction to conduct fresh counseling

and for that two dates were fixed i.e. 29.12.2010 and 30.12.2010, as per the claim of the petitioner she appeared on both the dates but she was deprived of the counseling on both the dates and just thereafter on 31.12.2010 she approached the Block Development Officer, Barhat. When nothing substantial action was taken, she approached the Tribunal on 24.1.2011. In such circumstances, the ground assigned by the Tribunal that she has approached the Tribunal after delay of 22 months is completely not sustainable in law.

11. In such view of the matter the order dated 26.01.2013 passed by the District Teachers Appointment Appellate Authority, Jamui, in Case No.15 of 2012 is set aside. The matter is remanded back to the Tribunal for fresh consideration. The Tribunal will also examine the genuineness of counseling register.

12. With the aforesaid observations and directions, this petition is allowed.

(Shivaji Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	N/A
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