

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1911 of 2013

=====

Sudhir Prasad S/O Shri Kameshwar Prasad R/O Village- Maldah, Police Station-
Barbigha, District- Sheikhpura

.... Petitioner

Versus

1. The State Of Bihar Through The Principal Secretary Education Department,
Government Of Bihar, Patna
2. The Director, Primary Education Education Departmnet, Govt. Of Bihar, Patna
3. The District Magistrate, Sheikhpura
4. The District Education Officer, Sheikhpura
5. The District Programme Officer (Establishment), Sheikhpura
6. The Block Development Officer, Barbigha, District- Sheikhpura
7. The Block Education Officer, Barbigha, District- Sheikhpura
8. The Member, District Teacher'S Employment Appellate Authority, Sheikhpura
9. The Mukhiya Of Gram Panchayat Raj Maldah Police Station- Barbigha, District-
Sheikhpura
10. The Panchayat Secretary Of Gram Panchayat Raj Maldah Police Station-
Barbigha, District- Sheikhpura
11. Rajesh Kumar S/O Shri Ramdeo Prasad R/O Village- Fedalibigha, P.O. Maldah,
Police Station- Barbigha, District- Sheikhpura

.... Respondents

with

=====

Civil Writ Jurisdiction Case No. 1211 of 2014

=====

Rajesh Kumar Son Of Sri Ram Deo Prasad Resident Of Village - Fedali Bigha,
P.O. - Maldah, P.S. - Barbigha, District - Sheikhpura

.... Petitioner

Versus

1. The State Of Bihar Through The Principal Secretary, Education Department,
Government Of Bihar, Patna
2. The District Programme Officer, (Establishment), Sheikhpura
3. The District Education Officer, Sheikhpura
4. The Director, Primary Education, Education Department, Government Of Bihar,
Patna
5. The Collector Cum District Magistrate, Sheikhpura
6. The Block Development Officer, Barbigha, District - Sheikhpura
7. The Block Education Officer, Barbigha
8. Panchayat Secretary, Gram Panchayat Raj, Maldadah, Barbigha, Sheikhpura
9. Mukhiya, Gram Panchayat Raj, Maldadah, Barbigha, Sheikhpura
10. The Secretary, Bihar School Examination Board, Patna
11. Sudhir Prasad S/O Shri Kameshwar Prasad R/O Village- Maldah, Police
Station- Barbigha, District- Sheikhpura

.... Respondents

=====

Appearance :

(In CWJC No.1911 of 2013)

For the Petitioner/s : Mr. Ram Sagar Singh, Adv.

For the Respondent/s : Mr. Manoj Kumar Ambastha, SC 26
Mr. Subodh Kumar, AC to SC26



For BSEB : Mr. Partha Sarthy, Adv.
(In CWJC No.1211 of 2014)
For the Petitioner/s : Mr. Pramod Kumar Singh, Adv.
For the Respondent/s : Mr. Jitendra Kumar, AC to AAG14

=====

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL JUDGMENT
Date: 15-12-2016

Reg.: C.W.J.C.No. 1211/2014

Heard Mr. Pramod Kumar Singh, learned counsel for the petitioner, Mr. Jitendra Kumar, AC to AAG14, Mr. Partha Sarthy, learned counsel for the Bihar School Examination Board and Mr. Ram Sagar Singh, learned counsel for the private respondent.

Mr. Pramod Kumar Singh, learned counsel appearing for the petitioner, Rajesh Kumar, submits on instruction that in view of the facts which have come on the counter affidavit of the Bihar School Examination Board (hereinafter referred to as 'the Examination Board') the petitioner does not wish to pursue the matter and that he may be permitted to withdraw the writ petition, which is, accordingly, dismissed as withdrawn.

Reg.: C.W.J.C.No. 1911/2013

Heard Mr. Ram Sagar Singh, learned counsel for the petitioner, Mr. Manoj Kumar Ambastha, SC-26 and Mr. Pramod Kumar Singh, learned counsel for the private respondent.

The petitioner is aggrieved by the order dated 22.11.2012 passed by the District Teachers Appointment Appellate Authority, Sheikhpura constituted under the Bihar Panchayat Elementary



Teachers (Appointment and Service Condition) Rules, 2006 as amended from time to time, whereby the appointment of the petitioner has been set aside in favour of private respondent. The petitioner is also aggrieved by the consequential order passed by the Mukhiya, Gram Panchayat Raj, Maldah bearing Memo No. 09 dated 10.12.2012, whereby the order of the appellate authority has been acted upon to terminate the service of the petitioner and to appoint private respondent in his place, impugned at Annexure 1/A.

Rather peculiar sequence of events engages the present writ petition. Following initiation of a selection process for appointment of Panchayat Shiksha Mitra in the year 2003 that a merit list was prepared, a copy of which is placed at Annexure 2. The name of the writ petitioner was appearing at serial no. 1 with 64.3% while the name of one Braj Kishore Prasad appears at serial no. 18 with a remark that 'Matriculation certificate was not available'. The name of private respondent no.11 Rajesh Kumar figures nowhere. Obviously the petitioner figuring at serial no.1, was issued an appointment order under the signature of the Mukhiya on 24.2.2003 and was posted at Primary School, Ishmailpur. The petitioner gave his joining vide Annexure-3/A and which was accepted by the Headmaster of the school on 24.2.2003. Despite the position, there was a change in the mind of the Mukhiya who created obstruction in functioning of the petitioner as Panchayat Shiksha Mitra forcing him to represent before



the District Superintendent of Education and the District Magistrate vide Annexure 4 series and also before the Block Development Officer vide Annexure 5. The representations had no effect. On the contrary, a second merit list came out vide Annexure 6 and in which though the petitioner's name appears at serial no.1, the name of Braj Kishore Prasad son of Ramdeo Prasad, who figured at Sl.No.18 in the first merit list, went missing and in his place the name of one Rajesh Kumar, son of Ramdeo Prasad entered the list at serial no.18. A second appointment order was issued vide Annexure 7 under the signature of the Mukhiya on 24.12.2003 posting the said Rajesh Kumar at Primary School, Ishmailpur where the petitioner had given his joining.

The petitioner feeling aggrieved moved this Court in C.W.J.C.No. 12017/2007 and which writ petition was disposed of with a direction to the Block Development Officer to dispose of the pending representation of the petitioner. The order of this Court is placed at Annexure 8. The Block Development Officer, Barbigha acting in pursuance of the order of this Court issued directions to the Panchayat Shikshak Niyojan Samiti, Gram Panchayat Raj, Maldah to appoint the petitioner vide order bearing Memo No. 1812 dated 31.12.2009, present at Annexure 9, and which order was accepted by the Mukhiya to issue order dated 22.1.2010 requiring the petitioner to join the post. The petitioner accordingly joined the post on 25.1.2010



vide Annexure 11. The matter in so far as the petitioner is concerned, was put at rest.

A second round of proceeding got initiated against the private respondent and in which letter was issued by the District Superintendent of Education on 7.3.2008 to the Mukhiya and the Panchayat Secretary to proceed accordingly, vide Annexure 12. The matter was enquired into by the Mukhiya, Gram Panchayat Raj, Maldah and the private respondent was terminated from the service for committing fraud in obtaining appointment. The termination order of the private respondent is present at Annexure 13 and feeling aggrieved the private respondent moved this Court in C.W.J.C.No. 12094/2008 which was accordingly disposed of by this Court vide Annexure 14 requiring him to approach the appellate authority and who was directed to determine the identity of respondent no.11 and whether he and Braj Kishore Prasad were the same person. It is following such direction of this Court that the matter was examined by the appellate authority vide the order impugned at Annexure 1. The appellate authority attributing failure of the petitioner to prove that Rajesh Kumar and Braj Kishore Prasad are one and the same person, has proceeded to uphold the appointment of respondent no.11 and to terminate the appointment of the petitioner who had been appointed in his place.

The issues raised by Mr. Singh, learned counsel for the



petitioner, to question the order of the appellate authority are as follows:

- (a) Whereas this Court directed the appellate authority to determine whether or not Rajesh Kumar and Braj Kishore Prasad are one and the same person, this obligation has not been discharged.
- (b) The opinion recorded by the appellate authority that the petitioner did not lead any document to support his contention that both are the same person, is an error of record since there were sufficient documents on record to show that the two persons are same person.
- (c) Rajesh Kumar was never an applicant to the post which is confirmed vide Annexure 2 and not contested.
- (d) Once a merit list was prepared vide Annexure 2, there was no occasion for the Niyojan Samiti to prepare a second merit list at Annexure 6, thus, replacing the name of Braj Kishore Prasad by Rajesh Kumar.
- (e) The petitioner was appearing at serial no.1 while Braj Kishore Prasad as well as Rajesh



Kumar were appearing much below the petitioner and others, the appointment of the petitioner could not have been interfered with.

(f) In any view of the matter, the Bihar School Examination Board vide Annexure 31 has cancelled the degree of Rajesh Kumar.

Mr. Ambastha, learned Standing Counsel No.26, while without disputing the factual aspects of the matter, has submitted that though this Court had directed the Block Development Officer to dispose of the representation of the petitioner but by the said time, the Tribunal was constituted and whereafter there was no jurisdiction with the Block Development Officer to issue any direction for appointment.

Having heard learned counsel for the parties and having perused the records, I am of the opinion that the writ petition is bound to succeed on all the issues raised by the petitioner. Be it the merit list at Annexure 2 or the merit list at Annexure 6 there is no competition between the petitioner and Braj Kishore Prasad, son of Ramdeo Prasad, whose name appears at serial no.18 of Annexure 2 without any Matriculation certificate or with private respondent Rajesh Kumar S/o Ramdeo Prasad, who was a fresh entrant to the merit list at Annexure 6 with nothing on record to show whether at all he was an applicant to the post. There cannot be a better example of backdoor



appointment by surreptitious method. Rather surprising is that even though the appointment process in so far as the petitioner is concerned, stood concluded by his joining at Primary School, Ismailpur vide Annexure 3/A, yet without any order terminating the service of the petitioner, the Mukhiya has replaced the petitioner by the private respondent vide order present at Annexure 7. Obviously, two teachers could not be posted on the same post and once the petitioner had joined the post vide Annexure 3/A, the private respondent could not have been imposed upon him or could have replaced the petitioner in absence of any termination order.

In the circumstances discussed above, the appointment of the petitioner could not have been interfered with by posting of private respondent in the school where the writ petitioner had already given his joining. On remand of the matter by the Court vide Annexure 8, the grievance was examined and upheld by the Block Development Officer, Barbigaha to issue appropriate directions to the Panchayat Niyojan Samiti. Although some objections have been raised by Mr. Ambastha to question the manner accompanying the second round joining by the petitioner but, in my opinion, the direction of the Block Development Officer to the Mukhiya to act accordingly, would give way to the final order passed by the Mukhiya vide Annexure 10 resulting in the joining of the petitioner.

Apart there from, considering that the appointment of the



petitioner had already taken place on 24.2.2003 i.e. much before appointment was provided to the private respondent on 24.12.2003 by surreptitious method, the acceptance of the joining of the writ petitioner on 25.1.2010, is a mere completion of formality and a correction of error. Last but not the least is the order of the Bihar School Examination Board present at Annexure 31 of the supplementary affidavit whereby the degree of the private respondent itself has been cancelled.

In the aforesaid view of the matter, the order of the appellate authority and the Mukhiya, impugned at Annexures 1 and 1/A, cannot be upheld and are accordingly quashed and set aside. The writ petition is allowed.

The petitioner stands restored to his post.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	25.12.2016
Transmission Date	NA

