

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10180 of 2013

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Naresh Ram S/O Late Kusheshwar Ram R/O Village- Rampur Chaklata, P.S.-
Jandaha, District- Vaishali

.... Petitioner/s

Versus

1. The State Of Bihar Through Its Secretary Education Department, State Of Bihar, New Secretariat, Patna
2. The Director (Primary Education) Education Department, State Of Bihar, New Secretariat, Patna
3. The District Magistrate, Vaishali
4. The District Teacher Appointment Appellate Authority, Vaishali
5. The District Education Officer, Vaishali
6. The District Programme Officer (Establishment), Vaishali
7. The Block Development Officer Jandaha, District- Vaishali
8. The Block Education Officer, Jandaha, District- Vaishali
9. The Panchayat Secretary Gram Panchayat Raj Nari Khurd Block Jandaha, P.S.- Jandaha, District- Vaishali
10. The Mukhiya, Gram Panchayat Raj Narikhurd Block- Jandaha, P.S.- Jandaha, District- Vaishali
11. Mr. Harikhan Paswan S/O Vijay Paswan R/O Village- Raulpur Chekala, P.S.- Jandaha, District- Vaishali
12. Mr. Shatrudhan Sharma S/O Jagdish Sharma R/O Village- Chakajayab, P.S.- Jandaha, District- Vaishali

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shashibhushan Kumar, Adv.
For the State : Mr. M.N.H. Khan, SC-1
For the Pvt. Respondent : Mr. Bindhyachal Singh, Adv.
Mr. Sachin Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 21-10-2016

Heard learned counsel for the petitioner and counsel for the State as also counsel for the private respondents.

In this case, the petitioner is challenging the order dated 26.11.2012 passed in Case No. HC-154/2011. The matter relates appointment of Panchayat Teacher of Panchayat Raj Nari Khurd, Block Jandaha. The petitioner belongs to scheduled caste category whereas the respondent no.11 is also from the scheduled caste



category and respondent no.12 is from general caste category. All of them applied for the post of Panchayat Teacher. The petitioner had secured 81.55% marks whereas as respondent no. 11 Harikhan Paswan secured 73% and respondent no.12 Shatrudhan Shama had secured 77.33% marks. The petitioner appeared in the counseling but illegally deprived of his appointment and compelled to approach this Court in CWJC No. 19980 of 2010. The matter was remitted back for fresh consideration. The Tribunal rejected the appeal of the petitioner on two grounds, firstly he was not present for giving consent and to receive the appointment letter and, secondly, the District Superintendent of Education, vide letter no. 1031 dated 23.2.2011, has cancelled the experience certificate of the petitioner.

Learned counsel for the petitioner submits that so far as the finding with regard to the petitioner being not present for accepting the appointment letter is concerned, it is not envisaged in the Bihar Panchayat Elementary Teachers (Appointment and Service Condition) Rules, 2006 wherein under Rule 10 and 11 has prescribed that on the day of counseling, the petitioner should remain present, selection would be made on the basis of merit list, appointment letter would be sent to the selected candidate as per Schedule-3 and, thereafter, the consent letter is to be tendered by the selected candidate. It is nowhere prescribed that on the day of acceptance of the appointment letter, he must remain present and give consent. It is



the Appointing Unit which has to send the appointment letter, thereafter, the candidate would tender the consent. Further he has submitted that on cancellation of experience certificate, he approached the District Education Officer for reconsideration and the same has not been disposed of till date.

Learned counsel for the private respondents has submitted that as per executive instruction, the petitioner was required to remain present on the day of distribution of letter and, on that day alone, he had to give consent and so much so that he has obtained 81.55% whereas other candidates have got above marks, if the marks obtained on the experience certificate is excluded, certainly he will go below the two persons in the merit list.

Having considered the rival contentions of the parties, so far as the objection of first part is concerned, as per the executive instruction, the person has to remain present is not acceptable in view of the fact that the executive instruction cannot override the provision of the rule. It can supplement but, cannot supplant the Rule. If the rule is clear then the authority has to act in accordance with Rule and, executive instruction can only play to fill up the gap if rule is absent on that area. In the present case, the Rule specifically prescribes the procedure in what manner the selection and the appointment has to be made.

In that view of the matter, the argument suggested by the

learned counsel for the private respondent is not accepted. Accordingly, the submission of the petitioner is accepted. The findings recorded by the Tribunal that only because he was not present on the day of acceptance of the letter and given his consent letter is completely misconstrued, no sustainable in law and, as such, that findings is set aside.

So far as the other part is concerned, admittedly the petitioner has obtained 81.55% marks (61.55+20). Whatever mark has been given on experience certificate is no longer in existence on account of cancellation of the certificate. If the mark arising from experience certificate goes then certainly the petitioner is below two persons and he cannot claim either as a general category candidate or reserved category candidate.

In that view of the matter, this case does not survive. However, if the petitioner would be able to recover his experience certificate, then he will certainly be at liberty to approach the appellate tribunal and raise his grievance.

With the aforementioned observation, this application is disposed of.

(Shivaji Pandey, J)

Rishi/-

AFR/NAFR	NAFR
CAV DATE	NA
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