

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2354 of 2013

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Ranjit Kumar, son of Sri Kamleshwari Yadav, resident of Village-Salaiya, P.S.-
Barhat, District- Jamui

.... Petitioner

Versus

1. The State Of Bihar.
2. The Principal Secretary, Department of Human Resources and Development,
Government of Bihar, Patna.
3. The District Education Officer, Jamui.
4. The Block Development Officer, Barhat, Jamui
5. The Block Education Officer, Barhat, Jamui
6. Mukhiya, Gram Panchayat Raj Barhat, District - Jamui
7. The Panchayat Secretary, Gram Panchayat Raj Barhat, Jamui
8. The District Teacher Employment Appellate Tribunal, Jamui
9. Ravi Prasad, son of Ganesh Shanker Vidyarthi, resident of Village - Amari, P.S.
- Khera, District - Jamui

.... Respondents

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Appearance:

For the Petitioner : Mr. T.N. Maitin, Senior Adv.
: Mr. Rajeev Kumar Sinha, Adv.

For the State : Mr. Lalan Kumar, A.C. to G.P.-9

For Respondent No. 9 : Mr. Sunil Kumar Singh, Adv.
: Mr. Jogendra Kumar, Adv.

For respondent No. 6 : Mr. Bibhakar Tiwary, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 16-08-2016

1. In the present case, the petitioner is challenging the
order dated 17.12.2012, passed by the District Teachers



Employment Appellate Tribunal, Jamui (for short "*the Tribunal*") in Case No.17 of 2012, whereby and whereunder, the Tribunal has held that the application filed by the petitioner is not maintainable on the ground that he had never applied against the advertisement published for the appointment of Panchayat Teacher from Gram Panchayat Raj, Barhat.

2. For the second phase of appointment of Panchayat Teacher for Gram Panchayat Raj, Barhat an advertisement was published on 01.11.2008, inviting applications from the eligible candidates. The Block Development Officer, Barhat issued a letter, informing to all, the applications will be received at the Basic School, Barhat and Murari Sharma, Panchayat Teacher, Elementary School, Gurmaha, was authorized to receive the applications from the candidates on 29.01.2008. Accordingly, the petitioner and others submitted their forms to Murari Sharma at Basic School, Barhat. After receipt of the applications, Murari Sharma, prepared the list of the candidates, who applied for the same. In the said list, the name of the petitioner figures at serial No.232, whereas the name of Ravi Prakash-respondent No.9 figures at serial No.304, having 60.90 percent of marks in the Intermediate.

3. Learned counsel for the petitioner submits that the



petitioner has obtained the list prepared by Murari Sharma, under Right to Information Act, which is equivalent to Annexure-16 of this writ application. He further submits that Annexure-3 of the writ application is the list of the candidates applied for the post of Panchayat Teacher, which itself shows that in column No.304 the name of Ravi Prakash and his father's name including address have been written, but other columns including the educational qualification and the percentage of marks obtained by him are completely silent. He further submits that Annexure-3 is a printed sheet though does not bear the signature of any person, but Annexure-16, which is non other than Annexure-3 is in the handwriting of certain persons. In Annexure-3 the name of the present petitioner is at serial No.232 and the name of Ravi Prakash-respondent No.9 is at serial No.304B, save and except, the name and address, rest columns are vacant including the educational qualification, but one thing is required to be noticed that in Annexure-3 the word अना० has been mentioned, meaning thereby he applied for the general candidates, but that indication is missing in Annexure 16 of the writ application.

4. The petitioner has also obtained the identical and same list from the office of the Block Development Officer, which has



been marked as Annexure-18 to this writ application. One thing is very significant either in Annexure-16 or in Annexure-18 the signature of Murari Sharma is appearing, but the signature of members of Gram Panchayat Raj Barhat are missing, but two more signatures are there, one of Panchayat Secretary and another of the Block Development Officer, but it appears that these signatures have been made at the time of issuance of these documents under Right to Information Act. The date, save and except, in first page which bears the seal and signature of the Block Development Officer has been given as 29.10.2008, but in the last page there is no date below the signature of Murari Sharma, Panchayat Teacher and Block Development Officer. The respondents have challenged the authenticity of the register annexed as Annexure-3, Annexure-16 as well as Annexure18, which have been claimed by the petitioner that he has obtained the same under Right to Information Act from the office of the Block Development Officer.

5. This Court vide order dated 01.03.2016 directed the Block Development Officer to produce the original application receipt register, whereupon on 11.04.2016 the Block Development Officer, Barhat, himself appeared before this Court and submitted that in his office the original register is not available, rather only



photo copy of the register is lying in his office and on that basis under the Right to Information Act, his office has supplied the said register. So, it is amply clear that in the office of Block Development Officer, Barhat, the original register of Annexure-16 is not available and whatever the register has been supplied to the petitioner is the photo copy of the photo copy lying in the office of the Block Development Officer.

6. Learned counsel for the petitioner submits that the finding recorded by the Tribunal that the petitioner has not applied for the post of Pacnahayat Teacher is completely wrong. In support of his submission, learned counsel for the petitioner has filed third supplementary affidavit, showing the receipt bearing the signature of Murari Sharma and one Pravin Kumar, in which date has been shown as 01.11.2008.

7. This Court has asked the petitioner to produce the original receipt, which was produced before the Court for verification and after verification, the same was returned. The petitioner has also annexed the application which has he filed for his appointment bearing the date as 01.11.2008. In nutshell, the petitioner is challenging the finding of the Tribunal that question of his consideration for his appointment does not arise in view of the

fact that he had never applied for the post.

8. Few candidates including the present petitioner approached the Appellate Tribunal, which was registered as Case No.63 of 2010 challenging the manner adopted in the selection process. It is not required to deal with the case of other persons in the present order. Before the Tribunal the petitioner making complaint that he had applied for the post of Panchayat Teacher, having secured 80.90% of marks in Intermediate, he had gone for counseling on 27.01.2009, but his counseling was not done on the ground that Panchayat Unit was conducting the counseling only of trained candidates. He further claimed that the person having lesser marks in the same category of untrained candidate, Ravi Prakash-respondent No.9, who is grand-son (*Nati*) of Mukhiya was not present in the counseling, but has been appointed on the post of Panchayat teacher. But the order of Tribunal reflects that time to time notice was sent to the Panchayat Secretary, but he did not respond, whereafter the notice was served upon him through the Block Development Officer, Barhat, and requested him to remain present along with the register connected with the appointment of Panahayat Teacher, but ignored the direction, the Panchayat Secretary did not appear, ultimately, the Tribunal declared all the



appointment made by the Panchayat Unit of Barhat including others to be bad in law and set aside all the appointment and directed for the fresh counseling. The Tribunal has also directed for initiation of the departmental proceeding against the Panchayat Secretary.

9. The Panchayat Unit further issued the list of selected candidates, in which the name of the petitioner was missing and the name of Ravi Prakash has been shown at serial No.5. Again the petitioner approached the Tribunal in Case No.62 of 2011. The Tribunal considered the case of the petitioner and found that person having lesser mark than the present petitioner has been appointed and directed the employment Unit to appoint the petitioner after verification of his certificates.

10. It appears that the direction of the Appellate Tribunal with respect to Panchayat Secretary, was looked into by the District Najarat Officer, wrote a letter on 06.4.2011, mentioning even after the direction of the Tribunal the Panchayat Secretary did not co-operate the proceeding and did not produce the record, whereupon an FIR has been lodged against him vide G.R. No.510 of 2011, but the learned counsel for the State has submitted that no further investigation has been made in that case, on account of the fact that

the Investigating Officer has run away and he has been declared to be absconder.

11. Ravi Prakash-respondent No.9 being aggrieved by the order dated 02.04.2012 passed by the Tribunal (Annexure-7) approached this Court by filing C.W.J.C. No. 13992 of 2012 on the ground that the Tribunal has passed the order behind his back without impleading him as party to the appeal. This Court after considering the materials on record set aside the order of the Tribunal on the principle of violation of natural justice, as the basic premise is that, no person can be condemned unheard, remanded back the matter for fresh consideration providing the time limit for filing the application within four weeks, giving direction for invoking the inherent powers of the Tribunal in view of the judgment of the Hon'ble Supreme Court.

12. It will be relevant to quote relevant portion of the said judgment, which reads as under:-

“ If the petitioner files an application within four weeks before the Tribunal invoking its inherent powers in light of the present discussion and the Tribunal is satisfied that the petitioner was neither noticed nor heard, it is required to succeed in accordance with law as discussed in the present order. The Tribunal shall

not confuse its powers of review with its inherent powers. Since the petitioner has been prejudiced by an act of the Tribunal, if he files an application for interim relief pending re-hearing of the matter, the Tribunal is first bound to decide the same forthwith.

Keeping in mind the recurrent nature of the writ petitions that are coming to the Court arising out of orders passed by different District Teachers Employment Appellate Tribunals, it is considered appropriate to observe in the larger public interest that a copy of the order be sent to the Principal Secretary, Department of Education to seriously examine the need for training administrative personnel before they are required to discharge quasi judicial duties.”

13. In pursuance thereof, the petitioner filed an application bringing all the facts on record and the case was again registered as Case No.17 of 2012 after hearing the parties and verifying the record, the Tribunal arrived to a finding that the petitioner did not apply for the post as at serial No.232 of the counseling register the name of Prem Prakash Mehta, son of Sanichar Mehta has been mentioned, the name of the petitioner is completely absent from the counselling register. The Tribunal also doubted the genuineness of the receipt on the ground that Murari Sharma was authorized to receive the application, but the receipt filed by the petitioner bears



the signature of Murari Sharma and one Pravin Kumar, the Tribunal also verified the register receiving the applications found that altogether 515 candidates have applied for the post of Panchayat Teacher, but the name of Ranjit Kumar-present petitioner is nowhere appearing in the said register, recorded that unless the person applies for the post, he cannot be appointed.

14. Learned counsel for the petitioner submitted that the finding of the Tribunal that the petitioner had not applied against the advertisement is completely wrong in view of the fact that the name of the petitioner is standing in Annexures-3, 16 and 18 and all the documents have been obtained under the Right to Information Act, whereas Ravi Prakash-respondent No.9 has filed the supplementary counter affidavit, thereby annexed the photo copy of the register of receiving applications. On perusal of the same, it appears that the name of the petitioner is not standing at serial No.232 and the name of the Ravi Praksh is appearing at serial No.304, but here also save and except the name of Ravi Prakash, the name of his father and address, rest columns are vacant. At the end of the register it bears the signature of the then Mukhiya, Observer, Ward Member, Member of the Panchayat Samiti, but the signature of Murari Sharma is not there either on the first page or in



the last page. So the respondent No.9 also tried to substantiate his claim that the present petitioner did not apply for the said post and even though he has better marks unless he applies for the same, he cannot claim for his appointment. It will be pertinent to mention that the register which has been produced by Ravi Prakash-respondent no.9 (Annexure-D to the counter affidavit) the name of Ravi Prakash-respondent No.9 has been shown at serial No.304, whereas at serial No.232 the name of one Prem Prakash Mehta has been mentioned.

15. This Court directed the Panchayat Secretary to produce the original register, whereupon he has produced the same. On perusal of the register, it shows that at many places whitener has been used for the purposes of recording the name of the candidates superimposing over the name of others. On perusal of the register, it also appears that at serial No.232 name of Prem Prakash Mehta is standing not the name of the present petitioner what the petitioner has claimed, and at serial No.304 the name of Ravi Prakash-respondent No.9 is there, but it is very significant to mark that the register which was produced either by the petitioner or by the respondent No.9 save and except, the name, father's name and address rest columns are vacant, but register which has been



produced before this Court it appears that all the columns have been filled up in more than one transactions. It also appears that up to serial No.1 to 38 there is a gap of in between the two names but after 39 onward there is no gap at all and every line of the register bears the name and details of the candidates. On perusal of the register, it appears that it has not been maintained in course of the due business rather the use of the whitener in filling up the details of the respondent No.9 in more than one transactions itself create a serious doubt about the genuineness of the register produced by the Panchayat Secretary.

16. The register which has been produced by the petitioner showing to be genuine register is required to be examined as Annexure-3, which is said to be the register prepared at the time of filing of the application is a sheet not is a register having no signature of any person anywhere, so it does not create any authenticity to be placed reliance on the document which has been filed by the petitioner. Now, let us examine two photo copy of registers, which have been filed by the petitioner i.e. annexure-16 as has been claimed by the petitioner the register was prepared by Murari Sharan, which is equivalent to Annexure-18. On that strength, claim has been made that the finding of the Tribunal is *per*



se, perverse and not sustainable. The register submitted by petitioner does not deserve any confidence on account of the fact that Murari Sharma was authorized to receive applications, if that be treated to be a proper register, but the signatures of Members of the Panchayat Unit, who are the appointing authority are absent in the said register. If the members of the appointing Unit have not put their signatures then the register cannot be placed on reliance and cannot be treated to be a proper and valid register for the purposes of adjudicating the dispute and so much so that the Block Development Officer has appeared before this Court and categorically stated that in his office only photo copy of the original register is lying and has flatly stated that the original register is not available in his office.

17. Looking to the entire facts and circumstances of the case, the photo copy of the original register, Annexures- 3, 16 and 18 do not deserve to be declared authentic. Neither the petitioner nor any person has brought the original register of Annexures-16 and 18. At best Annexure-16 and 18 can be said to be secondary evidence, cannot be looked into unless the original register is brought before the Court or there should be some explanation of its absence.



18. In such view of the matter, this Court also does not find any confidence in the photo copy of register submitted by the petitioner though in the register submitted by the petitioner figures the name of the present petitioner at serial No.232 and Prem Kumar Mehta has been shown to be at serial No.232B. The original register placed before this Court shows the name of Ravi Prakash has been entered into two transactions and there is a variance in the photo copy of the register produced by respondent No.9 has been marked as Annexure-D to the counter affidavit. As the original register shows that the entire columns have been filled with all details whereas the photo copy which has been produced by the respondent No.9 indicates, save and except, the name, father's name and address rest columns have been kept vacant and whitener has been used at many places. So *prima facie*, it appears that the original register which has not been filled up in one transaction, but in different transactions, it also shows that different ink has been used in filling up the name and details of the respondent No.9. Ravi Prakash-respondent No.9, who is the grand-son (Nati) of Mukhiya his name has also been entered in more than one transaction, itself creates a serious doubt about his participation in the counseling and proper entry in the register, which has been placed before this Court. Hence, the appointment of respondent

No.9 is set aside. As this Court has found that the Register filed by the petitioner cannot be placed on reliance does not deserve to be held the authentic documents.

19. As already a case has been instituted against the then panchayat Secretary and Mukhiya but the case has come to a grinding halt and has not given any tangible result, in such circumstances, the Superintending of Police Jamui as well as the Officer Incharge of Barhat Police Station are directed to complete the investigation within a period of three months from the date of receipt/production of a copy of this order. Non compliance of the order will be looked into by this Court very seriously and in case of failure, the Court will deal with the matter with heavy hands.

20. In such view of the matter, the writ petition filed by the petitioner is dismissed. At the same time, the appointment of Ravi Prakash-respondent No.9 is also set aside.

21. This court is not passing any order with regard to other teachers who have been appointed the reason is that their appointment as Panchayat teacher is not under challenge in the present proceeding. This Court cannot pass any order without giving hearing to persons appointed as Panchayat Teacher and so

much so that this Court has only examined the case of Ravi Prakash-respondent No.9 *vis-a-vis* the case of the present petitioner, so it will not have any effect to the appointment of others panchayat Teachers.

(Shivaji Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	N/A
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