

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17191 of 2013

=====

Punam Kumari, D/O Sri Suresh Prasad Singh, resident of Village- Birpur, P.S-
Birpur, District- Supaul.

.... Petitioner

Versus

1. The State of Bihar, through the Principal Secretary, Education Department,
Government of Bihar, Patna.
2. The Director, Primary Education, Government of Bihar, Patna.
3. The District Magistrate, Supaul.
4. The District Education Officer, Supaul.
5. The District Programme Officer, (Establishment), Supaul.
6. The Executive Officer, Nagar Teacher Appointment Committee, Birpur, Nagar
Panchayat Birpur, Supaul.
7. The District Teacher Appointment Authority, Supaul.
8. Bharti Kumari Deo, wife of Shashi Prakash Deo, Resident of Village-
Sakarpura, Nepal, at present resident of Quarter No. F/30, Kashiv Colony,
Birpur, Supaul.
9. Nutan Rana, wife of Bijay Kumar, resident of village-Birpur, P.S-Birpur,
District-Supaul.

.... Respondents

=====

Appearance:

For the Petitioner	: Mr. Tej Bahadur Singh, Senior Adv. : Mrs. Shashi Priya Pathak, Adv. : Mr. Ambrish Kumar Jha, Adv.
For Respondent-State	: Mr. Sanjay Kumar, A.C. to A.A.G.6
For Nagar Parishad	: Mr. Dhananjay Kumar, Adv.
For respondent No.8	: Mr. Sharda Nand Mishra, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT
Date: 17-08-2016

Heard learned counsel for the petitioner, learned

counsel for the State and learned counsel for the Nagar Parishad.

2. In this case, the petitioner is challenging the order dated 7th February 2013 passed in Appeal Case No. 37 of 2012 by the District Teacher Appointment Appellate Tribunal, Supaul.

3. The matter relates to appointment of Teacher in Nagar Panchayat Birpur, which is governed by the provision of Nagar Nikaya Primary Teacher (Appointment and Service Conditions) Rules, 2006.

4. The original litigation between Bharti Kumari Deo-respondent No.8 and Nutan Rana-respondent No.9 were fought on the ground that Nutan Rana- respondent No.9 was at the top in the merit list, holding 78% marks was not appointed as Teacher in the Nagar Panchayat, but in her place, Bharti Kumari Deo-respondent No.8 was appointed. Nutan Rana-respondent No.9 was not appointed on the reason that she was holding the degree of Intermediate in vocational course. Nutan Rana- respondent No.9 had applied for the post of teacher for two places i.e. Panchayat Teacher, Banailipatti and Nagar Panchayat Teacher, Birpur, when at both places her candidature was rejected on the ground of having a qualification of vocational course, she approached this Court in



C.W.J.C. No. 16866 of 2007, which relates to appointment of the Panchayat Teacher for Gram Panchayat, Banailipatti whereas she also challenged the action of authority of Nagar Panchayat, Birpur, in C.W.J.C. No. 16309 of 2007, which relates to appointment of Nagar Panchayat Teacher. Both the writ applications succeeded before this Court and this Court held that the person having a vocational certificate of Intermediate is equivalent to Intermediate, in pursuance thereof, at both the places, Nutan Rana- respondent No.9 was appointed, led to termination of service of Bharti Kumari Deo-Respondent No. 8, filed the appeal before the Appellate Tribunal, which was registered as Appeal Case No. 37 of 2012 and the Appellate Tribunal found that Bharti Kumari Deo's appointment was made in a regular manner, service of Nutan Rana-respondent No.9 was dispensed with and direction was given that Nutan Rana-respondent No.9 could be adjusted as a Panchayat Teacher in Banailipatti. In the order, the Appellate Tribunal also recorded that Nutan Rana-respondent No.9 has suppressed the fact with regard to her appointment as Panchayat Teacher from this Court.

5. The order passed by the Appellate Tribunal was challenged by Nutan Rana- respondent No.9 before this Court in



C.W.J.C. No. 7956 of 2013 and this Court has recorded that Nutan Rana has suppressed the fact with regard to her appointment as Panchayat Teacher while the matter was being disposed of with respect to C.W.J.C. No.16309 of 2007 and the Court has held that the Court was kept in dark with regard to her (Nutan Rana) appointment already made on the post of Nagar Shikshak on 01.08.2008. The petitioner-Nutan Rana being the same person could not have been appointed and allowed to work simultaneously two places both as Panchayat Teacher and as Nagar Shikshak, in fact the moment the petitioner-Nutan Rana had accepted the post of Nagar Shikshak in the month of August, 2008, her claim of Panchayat Teacher's post had automatically come to an end. The petitioner even otherwise was required to inform this Court while passing the order dated 3.2.2009 correctly that she had already been appointed and had joined the post of Nagar Shikshak on 01.08.2008 pursuant to the order of this Court dated 16.5.2008 in C.W.J.C. No.16309 of 2007 and yet he wanted to become a Panchayat Teacher for getting a longer continuity of her service or payment of salary or any personal reason whatsoever. The petitioner, however simply failed to do so and therefore, the Tribunal's view that now the petitioner should be accommodated somewhere on the post of Panchayat Teacher if there be vacancy, does not suffer from any



error. At last, this Court has held that today, displacement of respondent No.6, in fact, would be a cruel joke on her because she had been appointed in 2007, had continued in service till the petitioner was appointed on 1.8.2008 and therefore, this Court would not like to interfere now with that part of the order of the Tribunal which has restored that appointment of respondent No.6 in terms of the another order of this Court passed in C.W.J.C. No.16164 of 2009.

6. In this manner, the Court has refused to grant the relief to Nutan Rana-respondent No.9 and Bharti Kumari Deo-respondent No.8 continued to discharge the duty. The petitioner has challenged the order of the Tribunal submitting that the Tribunal has committed error in giving direction for appointment of Bharti Kumari Deo-respondent No.8, when she was standing at serial No.18 whereas the present petitioner is standing at serial No.17, so much so that after her marriage has been solemnized with Nepali citizen, in consequence, Bharti Kumari Deo- respondent No.8 has become a Nepali citizen, in such view of the matter, the essential qualification for the matter for appointment as Panchayat Teacher or Nagar Teacher is not satisfied, as only Indian citizen resident of Bihar would only be appointed as Nagar Shikshak. In such view of

the matter, the order of the Appellate Tribunal suffers from illegality.

7. Learned counsel for Bharti Kumari Deo-respondent No.8 has vehemently opposed the argument of learned counsel for the petitioner on two grounds. Firstly, that the present petitioner has never challenged her (Bharti Kumari Deo-respondent No.8) appointment, which was made on 29.11.2007, but the petitioner remained silent about six years suddenly, after the order of the Appellate Tribunal she woke up and filed the writ petition before this Court. Secondly, that though the marriage of Bharti Kumari Deo-respondent No.8 has been solemnized with Nepali citizen, but she is residing in India along with her parents inasmuch as she has never accepted the citizenship of Nepal, so the question of her having no requisite qualification is free from doubt.

8. Learned counsel for the petitioner submits that the cause of action of petitioner arose when Nutan Rana-respondent No.9 was replaced by Bharti Kumari Deo-respondent No.8 by the order of the Appellate Tribunal, not earlier, as the claim has been made that Nutan Rana-respondent No.9 was at the top in the merit list, but she was deprived of the appointment on the ground of holding the certificate of vocational course. Against the action of

the authority, Nutan Rana-respondent No.9 approached this Court in C.W.J.C. No.16309 of 2007, which was allowed in her favour, led to her reinstatement in service, as she was top in the merit list, did not create any cause of action to the petitioner.

9. Having considered the rival contentions of the parties, the process of selection of Nagar Panchayat Teacher were initiated in the year 2007. As per the Notification dated 23.10.2008 the time for filing of appeal is 30 days. This Court has put a question to the learned counsel for the petitioner that the litigation was in between Bharti Kumari Deo-respondent No.8 and Nutan Rana-respondent No.9, in which Bharti Kumari Deo- respondent No.8 succeeded, can a writ petition is maintainable when the petitioner was neither impleaded as a party nor she intervened in the case before the Tribunal. The Dispute was in between Bharti Kumari Deo-respondent No.8 and Nutan Rana-respondent No.9 and the Appellate Tribunal has never considered the case of the present petitioner.

10. Learned counsel for the petitioner replied in tangent that petitioner could not have approached this Court before the passing of the order of the Tribunal in view of subsistence of service of Nutan Rana- respondent No.9 and termination of the

service of Bharti Kumari - respondent No.8.



11. The reason which has been propounded by the learned counsel for the petitioner is not acceptable on the following reasons. First that the cause of action is not depending on the order of the Tribunal, rather cause of action has been created on the first appointment of Bharti Kumari Deo-respondent No.8, but the petitioner neither challenged the appointment of Bharti Kumari Deo-respondent No.8 nor raised any objection against her appointment. So, the argument of learned counsel for the petitioner that the cause of action arose on account of the order passed by the Tribunal is completely fallacious argument and cannot be countenanced in view of the fact that petitioner remained all through fence-sitter, when ultimately Nutan Rana-respondent No.9 could not succeed then she has jumped, challenged the order of the Tribunal. Hence, the claim of the petitioner is completely *de horse* to the facts and law and is accordingly rejected.

12. The next argument of learned counsel for the petitioner that as Bharti Kumari Deo-respondent No.8 was a Nepali citizen she could not have been appointed as Nagark Shiksak. The Nepal Citizenship Act and Rules has been brought on record by the respondent No.8 postulates acquisition by citizenship by



naturalization. In one of the sub-clauses, it has been provided that when a woman enters into marriage to Nepali citizen will have a right to acquire the citizenship of Nepal provided she will have to file an application along with the evidence of her marriage to a Nepali national. Relevant provision with regard to acquiring the Citizenship of Nepal is as follows:-

“A woman who is married to a Nepali citizen may submit an application to become a citizen of Nepal. She shall enclose along with such application evidence of her marriage to a Nepali national, and of having initiated action to relinquish her foreign citizenship.”

13. In the supplementary affidavit Bharti Kumari Deo-respondent No.8 has specifically stated that after her marriage she never applied for acquiring the Nepal Citizenship, still she is an Indian citizen inasmuch as her name is standing in the voter list of the area concerned. In such view of the matter, the contention of the learned counsel for the petitioner that Bharti Kumari Deo-respondent No.8 cannot be appointed as a Nagar Shikshak as she is not an Indian citizen, is devoid of merit in view of the fact that still she is holding the Indian Citizenship and so much so that in the voter list the name of Bharti Kumari Deo-respondent No.8 is standing stipulates her residential address.



14. The next contention of learned counsel for the petitioner that in the merit list her name is standing at serial No.17 and the name of Bharti Kumari Deo - respondent No.8 is standing at serial No.18 and so much so that she was never given any notice of counseling, placed reliance on the proceeding of the Nagar Panchayat Teacher submits that even though she may not be appointed, but the persons who are above the petitioner and Bharti Kumari Deo -respondent No.8 under B.C. category, can be appointed when Nutan Rana-respondent No.9 failed to occupy the seat.

15. In support of his contention, learned counsel for the petitioner has placed reliance on the judgment of the Hon'ble Supreme Court in the case of ***Ganapath Singh Gangaram Singh Rajput vs. Gulbarga University, represented by its Registrar and Others.*** reported in ***2014(3) SCC 767*** on the principle that preference should be given to the senior. It will be relevant to quote paragraph No.25 of the said judgment, which reads as follows:-

“25. Ordinarily, in a case where the person appointed is found ineligible, this Court after setting aside such appointment, directs for consideration of cases of such of the candidates, who have been found eligible. It is only in



exceptional cases that this Court issues mandamus for appointment. The case in hand is not one of those cases where the High Court ought to have issued mandamus for appointment of Shivanand as Lecturer in MCA. Hence, we are of the opinion that the High Court rightly held Ganpat ineligible and quashed his appointment. However, it erred in issuing mandamus for appointment of Shivanand. Accordingly, we uphold the impugned order of the High Court whereby it had set aside the appointment of the appellant herein and direct that the case of the writ petitioner Shivanand and all other candidates be considered in accordance with law. However, we make it clear that the selection already made shall be taken to its logical conclusion.”

16. There is no quarrel on this principle that above person in the merit list should have been given preference, but in the present case the question is, can the petitioner challenge the appointment of Bharti Kumari Deo-respondent No.8 after lapse of such a long time and so much so that she has not challenged the appointment of Bharti Kumari Deo- respondent No.8 even before the Tribunal. In such view of the matter, though the appellate Tribunal should have directed for appointment of any of the person who are above petitioner and Bharti Kumari Deo- respondent No.8,

but it was a litigation between Bharti Kumari Deo-respondent No.8 and Nutan Rana- respondent No.9 and no one has felt aggrieved of the appointment of Bharti Kumari Deo- respondent No.8, save and except, for the first time, the petitioner has approached this Court. So, this Court is not satisfied with the argument of learned counsel for the petitioner. If the petitioner is really aggrieved with the appointment of Bharti Kumari Deo-respondent No.8 she ought to have moved before the Tribunal by raising her own grievances, but in this writ application the appointment of Bharti Kumari Deo-respondent No.8 cannot be set aside as before the Tribunal the litigation was in between Bharti Kumari Deo-respondent No.8 and Nutan Rana- respondent No.9.

17. For the foregoing reasons, this writ petition is dismissed.

(Shivaji Pandey, J)

pawan/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	30/8/2016
Transmission Date	