

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.222 of 2012

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1. Sobha Kumari D/O Sri Chandrika Prasad and W/O Jitendra Prasad R/O Village-
Athu Mohan (Kanhwa Tola), Post Office- Amwa, Police Station- Jaruakhar, Block-
Ghorasan, District- East Champaran At Motihari

.... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary Department of Education, Government of Bihar, Patna
3. The Director, Primary Education Department of Education, Government of Bihar, Patna
4. The Member, East Champaran Teachers Appointment Appellate Authority at Motihari
5. The District Magistrate, East Champaran at Motihari
6. The District Education Officer, East Champaran at Motihari
7. The District Programme Officer (Establishment) East Champaran at Motihari
8. The Block Education Officer, Ghorasan, District- East Champaran at Motihari
9. The Mukhiya/ Secretary Sripur Gram Panchayat, Block- Ghorasan, District- East Champaran at Motihari
10. Amod Kumar Singh S/O Mahendra Singh R/O Village- Sripur (Khash), Block- Ghorasan, District- East Champaran at Motihari

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Jitendra Kumar Roy, Adv.

For the Respondent-State: Mr. Jainendra Kumar Sinha, A.C. to SC7

For the Respondent No.10: Mr. Sanjeev Kumar Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 09-08-2016

Heard Mr. Jitendra Kumar Roy, learned counsel for the petitioner, Mr. Jainendra Kumar Sinha, learned A.C. to S.C.17 and Mr. Sanjeev Kumar Singh, learned counsel appearing for the respondent no.10.

The petitioner is aggrieved by the order dated 19.12.2011 passed by the Panchayat Teachers Appointment Appellate Authority, East Champaran in Case No.756 of 2010 whereby the appellate

authority, while holding the appointment of the petitioner illegal, has directed for appointment of the private respondent.

Although, extensive argument has been advanced by the parties but the matter in contest, rests on a limited issue and upon interpretation of Rule-5 of the Bihar Panchayat Elementary Teachers (Appointment and Selection) Rule, 2006, which, inter alia, under Clause 5 (ख) provides for reservation of female candidates in each category to the extent of 50% with the odd number of post in that category also standing reserved for female candidates.

It is the argument of Mr. Roy, learned counsel appearing for the petitioner that of the four posts that were advertised, two posts were meant for unreserved and following the intendment of Rule- 5 (ख) one post from the said two posts, had to be reserved for a female candidate. He refers to the proceedings of the Appointment Committee, a copy of which is present at Annexure-R/3, to submit that since the petitioner was found to be the most eligible female candidate to be adjusted against the unreserved post meant for a female candidate, hence her candidature was given priority over the private respondent, who though was listed at Sl.No.2 of the General Category but his qualifications regarding experience as a Lok Shikshak was under cloud. He further with reference to an order passed by this Court on 27.3.2012 submits that an issue as regarding

the applicability of the District Level Roster was framed but has not been properly responded to by the State in the counter affidavit filed.

The argument of Mr. Roy in brief is that:

(a) of the four posts advertised, two posts were meant for unreserved candidate and of which one had to be reserved for the female candidate;

(b) irrespective of the fact that the petitioner came under the Backward Category, that there was no other female candidate available in the general category, there is no infirmity in her selection against the said post; and

(c) a District Level Roster cannot be applied in the matter of appointment of Panchayat Teachers.

The argument of Mr. Roy has been contested by the learned counsel for the State and counsel for the private respondent.

With reference to the Rule 5 of 'the rules' in question, it is submitted that the Sub rule (ख) of the said rules very clearly mentions that the appointments of the teachers would be in accordance with the roster. It is submitted that Sub rule (ख) was incorporated under the amendment introduced in 2008 vide Memo No. 3148 dated 25.8.2008 providing for 50% reservation to the women and which is in tune with the notification so issued which in Clause (3) provides that the vacancy in the different Panchayats would be grouped at the district



level and would be applied against the hundred point roster. It is further the argument of learned counsel for the respondents that it is applying the hundred point roster that the vacancies in question have to be filled up and since the petitioner had applied against a reserved category post while the post was earmarked for unreserved category falling at Serial Nos. 8403 and 8407 hence her appointment was found to be illegal. It is the argument of learned counsel for the respondents that although arguments have been advanced to question the roster but at no stage such issue was raised nor even in the writ petition, is the roster put to question. Defending the decision it is submitted that in view of the statutory provisions, there is no illegality in applying the hundred point roster to the vacancies that have occurred. Learned counsel has invited the attention to the roster present at page 73 of the counter affidavit of the private respondent to submit that it is applying the hundred point roster to the vacancies occurring in the different Panchayats within the district that the point in so far as the Gram Panchayat Shripur is concerned of the four vacancies notified, 2 is available for unreserved, 1 for SC (Women) and 1 for EBC.

It is the argument of learned counsel for the respondents that since the roster itself takes care of reservation of women in each of the categories to the extent of 50% then there is no question of any further reservation on the points notified. To explain this position learned



counsel has invited the attention to this Court to Annexure-A of the counter affidavit filed on behalf of the respondent No.7 to submit that point nos. 6841, 6845 and 8501 have already been allotted to unreserved female category and thus there is no occasion for any further reservation for a female in the open/unreserved category. It is further submitted that the roster point cannot be altered by Appointment Committee and they have to proceed as per the point made available. In so far as disqualification of the respondent no.10 is concerned, the arguments advanced is that the opinion of the Selection Committee on the issue is an afterthought and appears to have been inserted in the proceedings recorded.

I have heard learned counsel for the parties and I have perused the records.

The issues raised by Mr. Roy as contested by the respondents stands discussed hereinabove. It is the argument of Mr. Roy that the second post in the unreserved category had to go to a female candidate. The argument of Mr. Roy would have to be tested not only against the statutory provisions but also against the issue whether the petitioner having applied in the reserved category, can yet be allowed to claim privilege in the unreserved category on grounds that she is a woman candidate.

For reaching a conclusion on the issue, I deem necessary to first



refer to the statutory provisions underlying Rule 5 which has been heavily relied upon by Mr. Roy to canvass the case of the petitioner. Sub rule (ख) to Rule 5 was incorporated vide amendment introduced in the year 2008 and inter alia provides for reservation of vacancies to the extent of 50% woman, in each category. It further provides that if in a particular category the number of posts available, are in odd number then the last post would again go to a woman candidate. The provision was incorporated vide memo no. 3148 dated 25.8.2008 and which notification refers to the hundred point roster for its applicability to the vacancies of teachers with the district as a unit. It is not the case of the petitioner that the roster so applied is illegal or is found wanting on this issue. The argument advanced by Mr. Roy is that of the vacancies notified since there are 2 posts available in unreserved category, one post should go to a woman candidate. In my opinion, it is a misconceived argument and not in tune with the statutory provisions.

As I have mentioned above, Rule 5 (ख) merely provides for reservation to the extent of 50% for women and refers to the guidelines present in memo No.3148 dated 25.8.2008 which by itself recognizes a District level roster. The hundred point roster placed on record at Annexure-B to the counter affidavit of respondent No.7 itself categorizes the posts reserved for females in each category,

which is to the extent of 50%. Meaning thereby, the interest of the woman candidates stands protected by the roster. A roster is a continuing process and cannot be seen in isolation and not every time a vacancy would occur, that 50% thereof needs to be earmarked for woman until the point so available on the roster, stands reserved for woman, which is not the case here. The post though for unreserved category, is not reserved for female rather is open and thus the petitioner would have to compete and claim the post qua the private respondent on merits and not on her status as a women candidate. Perhaps, if the petitioner had the marks, the submission would merit consideration but considering that the private respondent Amod Kumar has secured 77.88% marks in comparison to 55.44% secured by writ petitioner, she has no claim on the post even as a general category candidate. The petitioner thus could not have been accommodated against the general category vacancy.

In the circumstances discussed, the reasons assigned by the appellate tribunal to pass the impugned order setting aside the appointment of the petitioner, suffers from no illegality warranting any interference.

The writ petition is dismissed.

The interim order passed on 5.01.2012 stands vacated.

Bibhash/-

(Jyoti Saran, J)

AFR	
CAV DATE	
Uploading Date	17-9-16
Transmission Date	