

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.579 of 2014
IN
Civil Writ Jurisdiction Case No. 8993 of 2012**

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Shyam Kishore Singh, S/O Sri Ram Pratap Singh, Resident Of Village Chandauli,
P.S. Vaini, District Samastipur

.... Appellant

Versus

1. The State Of Bihar through Principal Secretary, Education Department, Govt. Of Bihar, Patna
2. The District Programme Officer (Establishment), Bhojhpur
3. The Block Education Extension Officer, Bhojhpur
4. The District Teachers Employment Appellate Authority, Bhojhpur at Ara. Null Null
5. The Mukhiya, Bichala Jangal Mahal Gram Panchayat, Block Jagdishpur, P.S. Jagdishpur, District Bhojhpur.
6. The Panchayat Secretary, Bichala Jangal Mahal Gram Panchayat, Block Jagdishpur, P.S. Jagdishpur, District Bhojhpur
7. Sri Pramod Kumar Pandey S/O Sri Kameshwar Pandey Resident of Village Bharasora, P.S. Jagdishpur, District Bhojhpur
8. Sri Anjani Kumar, S/O Sri Shyam Narayan Singh Resident of Village Tenduri, P.S. Jagdishpur, District Bhojhpur

.... Respondents

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Appearance :

For the Appellant : Mr. Chitranjan Sinha, Senior Advocate
Mr. Chandra Mohan Singh, Advocate
For the Respondent State: Mr. S.S.P.Yadav, SC-14
For the Respondent No.7 : Mr. Dineshwar Mishra, Advocate

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**CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 04-04-2017

Heard learned Senior Counsel for the appellant, counsel
for the State and the private respondent No.7.

The learned single Judge, after considering the factual
background to the dispute, observed as under :

“In the considered opinion of this Court, the
Tribunal though has meticulously gone into



many of the aspects relating to illegality in the selection and appointment of the Panchayat Teacher and has rightly found chinks by way of selection of the petitioner despite his being son-in-law of the Panchayat Secretary as also the daughter-in-law of the Mukhiya, but then the Tribunal ought to have not unsettled the settled law that even if a person claims reservation against any reserved post including the backward category but would qualify against a unreserved post, his claim still would have to be confined against the reserved category. By now, it is well settled that a person of reserved category, the moment, he qualifies for the general (unreserved) category, he has to be counted against general (unreserved) category and the post of reserved category becomes available to the next candidate of the reserved category.

In the present case also, there can be no dispute so far it relates to filling of the post of general (unreserved) category by way of appointment of Prem Prakash Prabhakar and Anjani Kumar, the respondent no.-8, as both of them have the highest marks in the list of the total candidates. The question would remain that if the respondent no. 7, being the second candidate of the general (unreserved) category, came to be appointed in place of Anjani Kumar, he will



have to make way for the appointment to Anjani Kumar in the general (unreserved) category. This principle will be better applicable for the petitioner because in his case also, he is not the best candidate in the backward category inasmuch as from Annexure-R/1 it is apparent that one Sanyogita Kumari, who had also appeared in the counselling, had secured 57.35 % marks as against the petitioner Shyam Kishore Singh having nearly 53.44 % marks. Thus, while this Court would not interfere with the direction of the Tribunal setting aside the appointment of the petitioner, but it would slightly modify the order of the Tribunal by holding that appointment of Anjani Kumar, respondent no. – 8, will be against the second post of general (unreserved) category and, therefore, the appointment of respondent no. 7 will come to an end.

The post which become vacant on account of removal of the petitioner, belonging to the backward category, shall be filled up through the new process of selection and appointment on the third phase of teachers in view of the fact that all vacancies taking place after 31.12.2010 as per the policy of the government policy has to be filled up by a fresh selection process in the 3rd phase of appointment of teachers.”



In the above background, the learned single Judge has rightly given a direction to take steps to fill-up the vacancy caused amongst the backward category.

It goes without saying that the appellant will be free to participate if he fulfils the requirement, but no interference otherwise is required with the order of the learned single Judge.

Appeal has no merit. It is dismissed.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

Pawan/-

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