

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 3608 of 2011

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Srimati Renu Kumari, wife of Sri Jay Prakash Mishra, resident of village-
Chansarai, P.O./P.S.-Mahua, District-Vaishali.

.... Petitioner

Versus

1. The State of Bihar through the Commissioner-cum-Secretary, Department of Human Resources Development Department, Bihar, Bailey Road, Patna.
2. Director Primary Education Bihar, Bailey Road, Patna.
3. The District Superintendent of Education, Vaishali at PO/PS/Distt. Hjiipur.
4. Mukhia Gram Panchayat Raj Bishunpur Hiraram urf Paharpur, Block Mahua, P.O.+P.S.-Mahua, District-Vaishali.
5. Panchayat Sachiv Gram Panchayat Raj Bishunpur, Hiraram urf Paharpur, PS/Block Mahua, District-Vaishali.
6. District Superintendent of Education at /PO/PS Distt. Vaishali.
7. Block Education Extension Officer at P)/PS/ Distt. Vaishali.
8. Treasury Officer Vaishali at PO/PS/Distt. Vaishali
9. Vikram Kumar s/o Satish Kumar, PO/PS, Mahua, District Vaishali
10. Member District Teachers Appointment Appellate Authority, Vaishali at +PO+PS-Distt. Vaishali.

.. Respondents

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Appearance :

For the Petitioner	:	Mr. Sanjeev Kumar Singh, Advocate
For the State	:	Mr. Aditi Hansaraj, AC to GA I
		Mr. N. K. Agrawal, Advocate
		Mr. Kumar Ravish, Advocate
For Respondent no. 9	:	Mr. Pushkar Narain Shahi, Sr. Advocate
		Mr. Sajal Kumar Sinha, Advocate
		Mr. Pandey Sanjay Sahay, Advocate
For Respondent no. 5	:	Mr. Surya Kant, Advocate
		Mr. Rajesh Ranjan, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 10-03-2017

Heard learned counsel for the parties.



The petitioner has moved this Court for quashing the order contained in memo no. 592 dated 20.12.2010 passed by the District Teachers Employment Appellate Authority, Vaishali, (hereinafter referred to as the 'Authority') approving the appointment of respondent no. 9 on the post of Panchayat Shishak in the category of handicapped person in Panchayat Raj Bishunpur, Hiraram urf Paharpur.

The petitioner and respondent no. 9 were applicants for the post of Panchayat Teacher in the concerned Panchayat in the handicapped category and after counselling, respondent no. 9 was appointed on the single post. The petitioner challenged the said appointment on 14.08.2010 before the Authority in Dispute No. MUP-01. The same was rejected by the order impugned in the present writ application.

Learned counsel for the petitioner submitted that though he had applied on the post reserved for handicapped category and initially he was not called for counselling and later on after he had objected, he was also called and finally appeared on 05.08.2010, along with certificate showing him to be 40% handicapped, whereas the respondent no. 9 had submitted his handicap certificate which was not a valid certificate for such purpose in terms of the letter of the State Government in the Department of Personnel and Administrative



Reforms, contained in Resolution No. 62 dated 05.01.2007. Learned counsel submitted that though the certificate had to be issued by a Medical Board comprising of at least three doctors but the certificate which was produced by the respondent no. 9, both at the time of filing of the application and counselling, was signed only by the Medical Officer of a Primary Health Centre, which should not have been accepted. He further submitted that in the certificate produced by respondent no. 9, there is overwriting, inasmuch as, initially 30% disability was written which was later on changed to 40%. Thus, the certificate itself becomes doubtful and the respondent no. 9 should not have been given benefit of such certificate. He further submitted that the petitioner sought information under the Right to Information Act with regard to validity of the medical certificate submitted by the respondent no. 9 and upon being made aware of the requirement of the medical certificate to be issued by three doctors, the respondent no. 9 has got himself examined on 14.09.2010, i.e., after the counselling held on 27.01.2009 and also after his appointment. He further submitted that the original certificate being issued in the year 2010, it should not have been revalidated in the year 2010. He submitted that the relevant date for consideration is the date of counselling and any development after that cannot be taken into consideration for the purpose of the present transaction while



considering the appointment of Panchayat Teacher in the handicapped category. Learned counsel further submitted that official examination of respondent no. 9, pursuant to the order of the Court in the present case, also discloses that due to overwriting, the initial certificate is suspicious.

Learned counsel for respondent no. 9 submitted that the challenge in the present writ application is misconceived. Learned counsel submitted that the petitioner had applied on 17.11.2008 and admittedly till that date he did not have any certificate showing him to be physically handicapped and such certificate was issued only on 14.12.2008, i.e., almost after one month of the submission of his application. Learned counsel submitted that the counselling for the petitioner was held on 05.08.2010. Learned counsel further submitted that the cut off date for applying for the post was 27.11.2008, and thus, the petitioner not possessing any certificate showing him to be handicapped, could not have even applied for the said post. Learned counsel submitted that as per the format for issuance of the medical certificate, such certificate was issued to the respondent no. 9, may be in the year 2008, but later on in the enquiry made by the District Magistrate, Vaishali, pursuant to the order of the Court in the present case, it has come that in a camp held on 28.08.2008, a Medical Board had examined the petitioner and on the basis of their report the



certificate was issued. In that view of the matter, even if all the doctors had not signed, at best, it was only an inadvertent omission as the main requirement of examination by a Medical Board was fulfilled, and for non-signature of all the doctors, the liability cannot be fastened on the petitioner as he had no role in issuing such Disability Certificate. Learned counsel submitted that the handicap of the petitioner was verified, once in September, 2010 and thereafter, pursuant to the order of the Court, on 7th February, 2017 and consistently it has been found that he suffers from 40% disability of vision. In fact, learned counsel pointed out that there is further deterioration in his vision. Learned counsel submitted that right from the date of his appointment he has been working on the post and challenge to his appointment before the Authority has rightly been rejected and thus, the present case also deserves to be dismissed. Learned counsel relied on the decision of the Supreme Court in the case of **Dolly Chanda vrs. Chairman, JEE and others** reported as **2005(9) SCC 779**, the relevant being at paragraph no. 7 for the proposition that the general rule is that while applying for any course of study or a post, a person must possess the eligibility qualification on the last date fixed for such purpose either in the admission brochure or in application form, as the case may be, unless there is an express provision to the contrary. Learned counsel submitted that in



the present case the last date of application was 27.11.2008 and petitioner having applied in the reserved category it should have been supported by a certificate and admittedly no such certificate in favour of the petitioner having been issued prior to 14.12.2008, the petitioner could not have submitted such certificate along with his application itself, for the post reserved for handicapped, was ineligible to be even considered for appointment on such post.

Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court does not find any merit in the present writ application.

The petitioner had applied by the last date fixed on 27.11.2008 and if he had applied for the post reserved for handicapped, the application had to be accompanied by the certificate showing the petitioner to be handicapped. In the present case, the same being issued for the first time on 14.12.2008, that is, much after the cut off date 27.11.2008, the application of the petitioner was fit to be rejected at the very threshold. Further, this Court finds that respondent no. 9, being examined by a Medical Board, cannot be penalized even if his certificate was not signed by all the doctors who had examined him, but the same being in the format as is required under law, it is not the fault of the petitioner that only one person has signed. Moreover, the basic requirement that a Medical Board



examines a person, having been fulfilled, the certificate relied upon by the petitioner at the time of applying, cannot be ignored. The fact that later on in September, 2010, again the petitioner was examined and found to be suffering from 40% disability, which was further confirmed on February, 2017, does not leave any scope to question the *bona fide* claim of respondent no. 9.

As far as contention of learned counsel for the petitioner that cut off date should be the date of counselling is concerned, the Court cannot accept such plea for the reason that it would amount to modifying/altering the terms and conditions of the advertisement itself, which is impermissible, since once the process of recruitment is set in motion, there cannot be any change in the terms and conditions and once in the advertisement itself it was stipulated that any person applying on reserved category had to submit certificate showing him belonging to that category was incorporated in the advertisement itself, the same is mandatory, otherwise, it would lead to causing undue benefit to some and undue harm to others which cannot be permitted as it shall amount to violation of Articles 14 and 16 of the Constitution of India, since in public employment, the same should be through a transparent and open process. In the present transaction, if the plea of the petitioner is allowed, it would amount to extending the date for submission of the certificate of being



handicapped from 27.11.2008 to 05.08.2010, and thus, would mean that persons, who despite belonging to the said category, had not applied for the reason that they did not possess such certificate, if being aware that they could produce the certificate at the time of counselling, could also have applied. Once they were precluded from applying due to not having the certificate concerned, the petitioner cannot be given such benefit, as it would clearly be discriminatory and thus, illegal.

For the reasons aforesaid, the writ petition stands dismissed.

(Ahsanuddin Amanullah, J)

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