

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1561 of 2013
IN
Civil Writ Jurisdiction Case No. 12731 of 2011

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Sudha Kumari Son Of Sri Devkant Chaudhary R/O Village- Bhadaiya,
P.O.- Bhadaiya, Via- Mohaddinagar, P.S.- Mohaddinagar, District-
Samastipur

.... Appellant

Versus

1. The State Of Bihar, Through Principal Secretary, Govt. Of Bihar, Patna
2. The Commissioner Cum Secretary, Human Resources Department, Govt. Of Bihar, Patna
3. The Director, Primary Education, Govt. Of Bihar, Patna
4. The District Magistrate, Samastipur
5. The District Superintendent Of Education Cum District Programme Co-Ordinator, Samastipur
6. The Block Development Officer, Dalsingsarai, Samastipur
7. The Block Education Extension Officer, Dlsinghsarai, Samastipur
8. The Mukhiya Gram Panchayat Raj Sultanpur Ghataho, District- Samastipur
9. The Secretary, Gram Panchayat Raj Sultanpur Ghataho, District- Samastipur
10. The President, District Employment Appellate Tribunal Samastipur, Sunita Kumari, D/O Sri Ramchandra Singh R/O Village- Bhataho, P.O.- Ghatah, District- Samastipur, At Present
11. Sunita Kumari, Panchayat Teacher, Navsrijit Prathmit Vidyalaya Banghar, Mushari, Dalsingsarai, District- Samastipur

.... Respondents

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Appearance :

For the Appellant/s : Mr. Mrityunjay Kumar, Advocate

For the Respondent No.11: Mr. Shia Ram Sahi, Advocate

Mr. Binit Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
And
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 30-06-2017

Heard learned counsel for the appellant,
learned counsel for the State and learned counsel
representing respondent no. 11.

2. The appellant, in the present Letters Patent



Appeal, is aggrieved by order dated 04.09.2013, passed by learned Single Judge in C.W.J.C. No. 12731/2011. By the impugned order, the learned Single Judge has dismissed the writ application and refused to interfere with the order dated 20.06.2011, passed by the District Teachers Employment Appellate Tribunal, Samastipur, (hereinafter referred to as "the Appellate Tribunal") in case no. 1474/2011, as contained in Annexure-11 to the writ application.

3. The writ petitioner-appellant had earlier challenged before the Appellate Tribunal, the decision of the selection committee appointing respondent no. 11 namely, Smt. Sunita Kumari as Panchayat Teacher in Nav Srijit Prathmik Vidyalaya, Banghara, Mushari, Dalsingsarai, District – Samastipur.

4. The brief facts as may be culled out from the pleadings of the parties, the order passed by the Appellate Tribunal, Samastipur, and then, the order passed in the writ application by the learned Single Judge may be summarized as under: -

5. The appellant having passed matriculation examination in the year 1993 in 2nd Division and the intermediate examination in the year 1995 with 60% marks went for training and formal education programme



in between 27.02.1997 to 08.03.1997 and also did 10 days training course in the year 1998. By virtue of this she got an experience certificate dated 30.10.2008. The mark-sheet and the experience certificate of the petitioner are enclosed as Annexure-1 & 2 series to the writ application.

6. The Human Resources Department, Government of Bihar, published an advertisement for appointment of Panchayat Teacher which was published in newspaper on 30.08.2008 giving schedule of the 2nd phase of appointment of Panchayat Teachers. There happened a vacancy in unreserved female category (in short "URF") which is bone of contention in the present case.

7. The appellant being eligible applied under unreserved female category. She claims that by virtue of her marks obtained in the formal education she got 60 marks and then training certificate made her eligible for 20 marks. Respondent no. 11 claimed her eligibility on the marks obtained in formal education being 60.66% and 20 marks against an experience certificate which was shown to have been issued from the office of District Superintendent of Education, Samastipur, thus she claimed 80.66% marks. In the meeting held on 18.11.2008, the selection committee decided to prepare a



merit list of the candidates in different categories over and above the cut-off percentage. Annexure-6 contains the minutes of the meetings. It is contended that for unreserved female category merit list was to be prepared from and among the candidates who had secured more than 77.55% marks. Accordingly, a merit list was prepared in which the respondent no. 11 was placed at serial no. 6, while the appellant was placed at serial no. 7. Therefore, the selection committee of the Panchayati Raj in its meeting held on 30.11.2008 decided to call the candidates from the merit list equal to 10 times of the available post for the purpose of counselling.

8. The counselling took place on 28.02.2009, in which a total 19 candidates belonging to different categories appeared. It is not in dispute that on this date appellant and respondent no. 11 were also present. The appellant pointed out that finally one Sajani Kumari having highest marks in the merit list was selected and was placed at serial no. 1 in the list dated 01.03.2009, in the unreserved female category.

9. A perusal of the merit list dated 01.03.2009 (Annexure-6) would show that Kumari Sajani was placed at serial no. 1 with 86.44% marks, however, the respondent no. 11 Sunita Kumari was placed at serial no.



4 with 80.66%, just above this petitioner who stood at serial no. 5 with 80% marks. On 01.03.2009, respondent no. 11 submitted an application on the same day saying that the marks awarded to her against the experience certificate should be reduced as the said experience certificate is not complete and the merit list be rearranged/modified accordingly. No action was taken to rearrange the merit list and the selection committee proceeded calling the candidates from the aforesaid merit list dated 01.03.2009 in the ratio of 1:4 i.e. against one vacancy apart from Kumari Sajani (serial no.1) 4 more candidates from waiting list were invited to appear for giving their consent for appointment. The ratio of 1:4 was fixed in the meeting of the selection committee held on 07.08.2010, and it was decided that in absence of candidates having better position the next to that candidate shall be appointed.

10. We have gone into the said proposal which is part of Annexure-6 to the writ application. A perusal thereof would show that respondent no. 11 namely Sunita Kumari was considered for appointment by virtue of her position at serial no. 4 having 80.66% marks. It is evident, therefore, that even though respondent no. 11 herself claimed that her experience certificate should not



be considered, the selection committee proceeded to act on the basis of the experience certificate for purpose of appointment of Sunita Kumar (respondent no.11). There is no mention of her application dated 01.03.2009 in which she had herself admitted that her experience certificate be not considered and, therefore, this leads to a conclusion that on the face of the facts that respondent no. 11 took benefit of her wrong placement in the final select list dated 01.03.2009. The stand taken in this regard is only at a belated stage as an afterthought.

11. The selection committee handed over the appointment letter to respondent no. 11 on 14.08.2010 vaguely suggesting her presence and taking into consideration her marks as 80.66%. Petitioner-appellant claims that she was present on 14.08.2010 but she was not appointed rather respondent no. 11 got appointment on the basis of forged experience certificate.

12. The writ petitioner-appellant filed an appeal (Annexure-9 series) before the Appellate Tribunal challenging the decision of the selection committee to appoint respondent no. 11. We have perused the said application from which it is evident that the writ petitioner had raised a specific plea that on the basis of forged experience certificate the name of respondent no. 11 was



considered for appointment and she was allowed to join, while the writ petitioner-appellant who was very well present at the time of counselling and had more marks than the respondent no. 11 was not appointed. She claimed that in this regard a complaint was made by her in January 2011 itself. She requested the appellate authority to get examined the experience certificate of respondent no. 11 and cancel her appointment. At the same time she prayed for her appointment.

13. In the meanwhile, the petitioner obtained information under Right to Information Act from the Office of the District Superintendent of Education, Samastipur, which is contained in Annexure-7 to the writ application. The District Superintendent of Education, Samastipur vide his letter no. 297 dated 15.03.2011 informed this writ petitioner-appellant that the certificate produced by respondent no. 11 was not issued from his Office.

14. Since, during pendency of the appeal before the appellate tribunal the information furnished by the District Superintendent of Education, Samastipur was made available to the writ petitioner-appellant, the same was brought on record before the appellate authority. On perusal of the appellate order dated 20.06.2011, it would



appear that instead of considering the seriousness of the matter particularly the conduct of respondent no. 11 in submitting a false experience certificate, which was evident from letter no. 297 dated 15.03.2011, issued by the District Superintendent of Education, Samastipur showing that the experience certificate of respondent no. 11 was not issued from his Office, the Tribunal went on a different consideration and held that the selection of respondent no. 11 is not by virtue of her experience certificate, but because she was the only candidate present on 14.08.2010 for the purpose of giving consent.

15. Had the Appellate Tribunal gone into the minutes of the meeting dated 07.08.2010, in which the selection committee had decided to call for appointment the candidates in the ratio of 1:4, the Tribunal could have easily come to a conclusion that the respondent no. 11 was called for giving her consent only because her name appeared at serial no. 4 with 80.66% marks in the merit list. It is her own case that her experience certificate was not fit to be acted upon. Therefore, the selection committee was not justified in calling her for giving consent on basis of merit list prepared on 01.03.2009 showing her at serial no. 4 with 80.66% marks. This leads to a conclusion that either the letter dated 01.03.2009 is



anti-dated and has been brought at a later stage or the selection committee despite receipt of letter dated 01.03.2009 from respondent no. 11 failed to act upon that and wrongly considered her marks as 80.66% and maintained her position at serial no. 4.

16. The learned Appellate Tribunal came to a finding that whether the experience certificate is genuine or not is totally immaterial as the appointment of respondent no. 11 has been done because she was only candidate present on 14.08.2010, however, the minutes of the selection committee shows the marks being the dominant reason for selection. The selection committee's minutes nowhere specifically mentioned absence of others. Appellant had made allegation in her show-cause filed before the Appellate Authority that Panchayat Secretary (respondent no.8) had submitted minutes of the meeting after interpolation and manipulation to show that the minimum marks for empanelment in merit list for URF was above 77.55% appears to have been made as 47.55%. Similarly, the ratio 1:4 has been made 1:8.

17. The contention has got force because a perusal of the zerox copies of the Minutes available on record creates doubt. One more fact needs to be noticed here. After rejection of appeal by the Appellate Tribunal on



20.06.2011 and during pendency of writ, on the basis of an enquiry done by Block Extension Education Officer, it was found that respondent no. 11 was appointed on the basis of forged and fabricated document. Thus, vide Annexure-F to the counter affidavit of respondent no. 8, a decision was taken and communicated on 07.11.2011 terminating the service of all three teachers including respondent no. 11, but on appeal preferred by respondent no. 11, the Appellate Tribunal vide its order dated 10.01.2012, set aside the order dated 07.11.2011, on the ground that in view of the order dated 20.06.2011, passed by Appellate Tribunal in Appeal No. 1474/2011 (Sudha Kumari vs. Panchayat Secretary & others), the Mukhiya, who is Chairman of the Selection Committee, was not justified in passing order of termination of respondent no. 11. By virtue of this, despite there being a finding of obtaining appointment on the basis of forged and fabricated experience certificate, the respondent no. 11 has been continuing as Panchayat Teacher.

18. The learned Single Judge has refused to interfere with the appellate order only on the ground that the petitioner did not appear as alleged on the date fixed i.e. 14.08.2010 for submitting the consent for such appointment. There is no consideration to the admitted



fact that the merit list as well as final list dated 01.03.2009 were wrongly prepared as respondent no. 11 had submitted a forged experience certificate and by virtue of that she was placed at serial no. 4. with 80.66% which made her eligible not only to be called out on 14.08.2010 but also considered as having better marks compared to the present appellant. Appointment of respondent no. 11 cannot be justified on the ground of her presence alone and by putting aside her conduct in submitting a false experience certificate.

19. We are afraid that the order passed by the Appellate Tribunal as well as the learned Single Judge have completely missed out on a very relevant consideration which has vitiated the orders, hence we set aside both the appellate order as well as the order passed by the learned Single Judge.

20. We also come to a conclusion that on the admitted facts that the experience certificates submitted by respondent no. 11 was not genuine, her placement in the merit list at serial no. 4 with 80.66% and then calling her for appointment on 14.08.2010 and finally appointing her were not just and proper. Hence, we hold that appointment of respondent no. 11 is bad and the same is hereby set aside. Since during this period, the Rules



relating to recruitment of Panchayat Teachers have been completely changed, we refrain from giving any direction for appointment of the appellant. The authorities may fill-up the vacancy arising out of exclusion of respondent no. 11, by following the procedure and in accordance with law.

21. The Letters Patent Appeal is allowed to the extent indicated hereinabove.

(Rajeev Ranjan Prasad, J.)

Ajay Kumar Tripathi, J. – I agree.

Rajeev/-

(Ajay Kumar Tripathi, J.)

AFR/NAFR	AFR
CAV DATE	22.06.2017
Uploading Date	30.06.2017
Transmission Date	N.A.

