

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4311 of 2010

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Rajesh Das S/O Shri Jagdish Das R/O Vill.- Mobarkpur, P.O.- Shankh, P.S.-
Muffasil Begusarai, Distt.- Begusarai, At Present Posted And Working As
Panchayat Teacher In Govt. Primary School Tulsipur, Anchal- Begusarai, Distt.-
Begusarai

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Human Resources Development Deptt., Govt. Of Bihar,
Patna
3. The Director, Primary Education Bihar, Patna
4. The District Magistrate, Begusarai
5. The Divisional Commissioner, Munger Division, Munger
6. The Deputy Development Commissioner-Cum-Chairman, District Education
Establishment Committee, Begusarai
7. The District Superintendent Of Education , Begusarai
8. The District Superintendent Of Education-Cum-District Programme Coordinator
Bihar Education Project, Begusarai
9. The Block Development Officer Begusarai, Distt.- Begusarai
10. The Block Education Officer Begusarai, Distt.- Begusarai
11. Shrimati Ramlila Devi W/O Shri Ram Pratap Sharma R/O Vill.- Rajmahala,
P.O.- Shankh, P.S.- Muffasil Begusarai, Distt.- Begusarai, The Mukhiya Of Gram
Panchayat Raj Shankh, Block- Begusarai, Distt.- Begusarai
12. Shri Ram Udgar Paswan The Panchayat Secretary Of Gram Panchayat Raj
Shankh, Block- Begusarai, Distt.- Begusarai
13. The District Teacher Employment Appellate Authority, Begusarai
14. Shri Manoj Kumar S/O Shri Lalo Chaudhary R/O Vill.- Rajmahala, P.O.-
Sankh, P.S.- Begusarai Muffasil, Distt.- Begusarai

.... Respondent/s

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Appearance :

For the Petitioner	:	Mr. Umesh Kumar Mishra, Advocate
For the State	:	Mr. Nirbhay Prashant, AC to SC 17
For the Respondent No. 14	:	Mr. Rajendra Narain, Sr. Advocate with Mr. Anant Kumar Sinha and



Mr. Umesh Kumar Roy, Advocates

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 09-03-2017

Heard learned counsel for the parties.

The petitioner has moved the Court against the order contained in Memo No. 109 dated 10.02.2010 passed the District Teachers Employment Appellate Authority, Begusarai (hereinafter referred to as the 'Authority') by which Appeals No. 898 of 2009 and 1061 of 2009 filed by the petitioner have been dismissed, confirming the order contained in Memo No. 08 dated 16.06.2009 issued by the Gram Panchayat Raj Shankh, in the district of Begusarai.

The petitioner, along with the respondent no. 14 and one another person, was appointed in the said Gram Panchayat as Shiksha Mitra in the year 2005 on the post reserved for Scheduled Caste. Later, in the year 2008, it was detected that out of 3 posts, one Awadhesh Das is undisputedly having the maximum percentage/weightage point whereas between the petitioner and respondent no. 14 only one seat was available for the General Scheduled Caste category whereas the other seat was for the Scheduled Caste female category. The dispute arose as to whether the petitioner or the respondent no. 12 should be deemed to have been



wrongly appointed on the post of Scheduled Caste female candidate, initially the respondent no. 14 was removed and, thus, he moved before the Selection Committee, which after going through the entire records has come to a finding that in terms of the merit list, the petitioner was having less merit compared to the respondent no. 14 and, thus, the petitioner was directed to be removed and the rightful candidate, i.e., the female person belonging to the Scheduled Caste was to be appointed. The petitioner being aggrieved by the same, moved before the Authority and by order dated 10.02.2010 the said appeals have been dismissed.

Learned counsel for the petitioner submitted that initially the appointment of the petitioner on the post of Shiksha Mitra in the year 2005 was correct, as in terms of the guidelines for awarding of percentage marks/weightage points, the petitioner having first division in Intermediate was to be given 15 points whereas the respondent no. 14, who had less than 60% marks, was to be given 10 points for Intermediate qualification and as he had less than 60% marks in his Graduation, only 4 points were admissible, making the total 14 and thus, the petitioner having 15 points was higher in merit compared to the respondent no. 14. Learned counsel submitted that the controversy arose with regard to the counting of the marks of vocational subject, which has regularly been done in a routine manner till the year 2007



when a clarification came, and the same is no more being counted for the purposes of preparing the merit list. Learned counsel further submitted that as per the decision of a co-ordinate Bench of this Court in the case of **Hari Shankar Sah vs. State of Bihar** reported as **2016 (4) PLJR 173** it has been held that the Authority has no power to examine the legality of appointment of Shiksha Mitra. He further placed reliance on a Full Bench judgment of this Court in the case of **Kalpana Rani vs. State of Bihar** reported as **2014 (2) PLJR 665** wherein it has been held that the power of the Authority to go into the merits of the appointment of Shiksha Mitra does not exist and no direction can be given for appointment on the post of Shiksha Mitra. Learned counsel has also relied upon an unreported decision of this Court in the case of **Kiran Kumari Vs. The State of Bihar & Ors.** (C.W.J.C. No. 8921 of 2009) dated 07.02.2012 by which the Court with regard to the same Panchayat has interfered in the matter and set aside the disengagement on the ground that before passing of that order, no show cause was given to the writ petitioner.

Learned counsel for the State and respondent no. 14 submitted that there is no illegality, either in the order of the Gram Panchayat Selection Committee dated 16.06.2009 or in the appellate order passed by the Authority dated 10.10.2010. It was submitted that the records show that initially the respondent no. 14 and one



Awadhesh Das were two persons selected in the Scheduled Caste category, whereas the name of the petitioner was added after all other categories, which clearly indicate that the petitioner was considered and selected against the 3rd post which was reserved for female. Learned counsel further submitted that only during issuance of appointment letter, respondent no. 14 has been shown to have been appointed on the 3rd post, due to which initial order was passed against him but on representation made to the Selection Committee itself the same has been rectified, after going through the original records relating to the said appointment. Learned counsel submitted that the contention of the petitioner that the vocational marks be added, is also misconceived, for the reason that the marksheet itself discloses that only for the purpose of improving the grade such marks are to be counted after subtracting 30% marks obtained in the vocational subject, but the same shall not be added for the purpose of arriving at the percentage obtained by the candidate in the examination. It was further submitted that the petitioner having himself moved before the Authority, he cannot now take the stand that he was not heard while passing of the original order, as the Authority has considered the matter on merits after hearing him.

Having considered the rival contentions, the Court does not find any merit in the present application.



The petitioner can come above the respondent no. 14 on merit only if he can show that he has obtained more than 60 % marks in the Intermediate examination. From the marksheet issued to him, copy of which is Annexure 2 to the writ application, his total marks obtained in the compulsory and optional subject is 519, out of total of 900, whereas in the vocational subject he has obtained 82 out of 100. Thus, for the purposes of only improving the division, after subtracting 30 marks from the marks obtained in the vocational subject, only if by adding the rest results in improving the division of the candidate, such improved division shall be awarded but the percentage shall not change. In the present case, the exercise of awarding points/weightage points/ merit marks was based only on percentage obtained in the examination and not on the division. If it is accepted that the petitioner was awarded first division, his total marks obtained comes to 571 including 52 of the vocational subject, but the division is only by taking into account the total of the compulsory and optional subjects, i.e., 900. Thus, if the vocational subject total is also added, then the total has to be divided by 1000 and then the percentage shall come to 57.1 i.e., below 60 %. Thus, from any angle, the requirement being that 15 points would be given to the person obtaining 60% and more, though in the marksheet the petitioner is shown to have got 571 marks, but his percentage is not 60% or above



and thus, he is not entitled to 15 points and only to 10 points. Thus, the respondent no. 14 having 14 points, is ahead of the petitioner. Coming to the point that there is violation of principles of natural justice, even if it is accepted that the Selection Committee while considering the matter afresh had not given opportunity of hearing to the petitioner, but in view of the fact that the petitioner himself had moved before the Authority where he got full opportunity to present his case and after hearing the same, the order was passed, such objection not only stands waived, the requirement of the principle of natural justice stands satisfied. Further, the objection taken by the petitioner that the Authority has no jurisdiction, cannot be taken by the petitioner as he has himself moved before the Authority and was not defending himself in an appeal filed by some other person. The judgments in the case of **Hari Shankar Sah** (supra) and **Kalpana Rani** (supra) are of no help to the petitioner. In the case of **Hari Shankar Sah** (supra), the jurisdiction of the Authority was under challenge whereas in the present case the order is that of the Selection Committee of the Panchayat itself, which has also been upheld by the Authority. In fact, in the case of **Kiran Kumari** (supra) a coordinate Bench of this court has held that the Selection Committee had the jurisdiction to go into the matter. The Court would only like to add that here is a case where illegality has been detected where a person



was appointed on a post which was reserved for some other category, i.e., female of the Scheduled Caste, and such illegality cannot be allowed to be perpetuated just because of efflux of time. The reliance of the petitioner on the order passed by a co-ordinate of this Court in the case of **Kiran Kumari** (supra) with regard to the matter being remanded to the Selection Committee of the Panchayat for considering afresh as she was not heard is definitely unexceptionable but in the present case, when the Authority has gone into the merits of the matter after considering the objection of the petitioner and this Court has also gone into the merits of the matter, it would be a futile exercise to remand the matter to the Selection Committee as it would be a mere formality, as it is a well settled principle of law that only for the sake of formality, the Court should not interfere, when otherwise, the Court is convinced that on merit, the order is sound. Thus, it would be a fruitless exercise to remand the matter when the Court is convinced that it shall result in passing of the same order.

For the reasons aforesaid, the writ petition fails and is accordingly, dismissed.

(Ahsanuddin Amanullah, J)

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