

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10125 of 2015

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Veena Kumari, daughter of Nawal Prasad Singh, Resident of Village- and Post-
Mahrath, P.S.- Halsi, District- Lakhisarai.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Bihar, Patna.
2. The Collector, Lakhisarai.
3. The Director, Primary Education, Bihar, Patna.
4. The District Education Officer, Lakhisarai.
5. The District Programme Officer, (Establishment) Lakhisarai.
6. The Block Education Extension Officer, Halsi, Lakhisarai.
7. The District Teachers Niyojan Appellate Authority, Lakhisarai, through its Secretary.
8. The Mukhiya-cum-Chairman of Panchayat Employment Unit Ballopur, Halsi, Lakhisarai.
9. Manju Kumari, wife of Surendra Singh, resident of village Mahrath, Post-Matasi, P.S.- Halsi, District- Lakhisarai.
10. Panchayat Secretary Ballopur Gram Panchayat Raj Block Halsi, P.S. Halsi, District Lakhisarai

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Mukesh Kumar, Adv.
Mr. Vijay Kumar Pandey, Adv.
For the Respondent/s : Mr. Anil Kumar Singh, GP-26
For respondents no. 8 and 10: Mr. Ram Vinay Pd. Singh @ Sanjay, Adv.
For respondent no.9 : Mr. Rajesh Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL JUDGMENT
Date: 13-02-2017

Heard Mr. Mukesh Kumar, learned counsel appearing for
the petitioner, Mr. Anil Kumar Singh, GP-26, for the State, Mr. Ram
Vinay Prasad Singh, learned counsel for the Mukhiya and Panchayat
Secretary and Mr. Rajesh Kumar, learned counsel for respondent no.9.

The petitioner is aggrieved by the order dated 21.4.2015 of
the District Teachers Appointment Appellate Authority, Lakhisarai in



Appeal Case No. 18/2013-14, whereby on remand of the matter by this Court, the appointment of the petitioner was examined and was held illegal. Appropriate orders were issued for termination of the petitioner and for appointment of Manju Kumari, respondent no.9 in her place.

The facts of the case briefly stated is that advertisement(s) were issued by the Human Resources Department, Govt. of Bihar, copies of which is placed on record vide Annexure 'A' and 'B' to the counter affidavit of respondent no.9, whereunder applications were invited for appointment to the post of Panchayat Teachers. While notification dated 25.8.2008 invited applications to different post with effect from 25.9.2008 to 15.10.2008, the second advertisement at Annexure 'B' allows the applicant to file their applications from 29.10.2008 to 17.11.2008. Selection process started and in which the petitioner was appointed. The appointment of the petitioner was questioned by the private respondent before the appellate authority in Appeal Case No. 106/2010-11, which was heard alongwith Appeal Case No. 109/2010-11 and was set aside. The petitioner alongwith one other came before this Court in C.W.J.C.No. 18222/2003 and a Bench of this Court finding no merit in the claim of the other petitioner, permitted the petitioner to file a fresh complaint before the Tribunal, who was permitted to examine the matter afresh. It is



thereafter that the petitioner filed Appeal Case No. 18/2013-14 and vide order impugned at Annexure 6 the appeal was dismissed and the appointment of the petitioner was held illegal, inter alia, on grounds that she had filed her application beyond prescribed period. Annexure 2 is the receipt issued by the Panchayat Secretary and shows that the application of the petitioner was examined on 29.12.2008, meaning thereby it was after the last date fixed for receipt of applications, mentioned in the advertisement. The order of the Tribunal impugned herein shows that this date was extended by the Mukhiya without authorization by the department. It is in this view of the matter that the appointment of the petitioner was held illegal by the appellate authority and direction was given for appointment of the respondent no.9.

The issue argued by Mr. Mukesh Kumar, learned counsel for the petitioner, to question the impugned order is that a limited jurisdiction was vested in the appellate authority to examine the matter and which is manifest from the operative portion of the judgment passed by this Court in the previous round of litigation, a copy of which is annexed at Annexure 5. In reference thereto, he submits that the petitioner was only required to produce marks sheet before the appellate authority and the appellate authority was required to examine inter se merit on that basis. He submits that there was no



occasion for the appellate authority to go beyond testing the inter se qualification, by examining the very selection process.

Learned counsel for the present Mukhiya, who is the successor in office, submits that the previous Mukhiya was the sister-in-law of the writ petitioner and who without any authorization, had extended the last date of receipt of application.

Learned counsel for the State also informs that no authorization was given by the State to the Mukhiya to extend the last date.

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

The only issue that is being raised by Mr. Mukesh Kumar, learned counsel for the petitioner, to question the impugned order is that the appellate authority could not have gone beyond the scope of remand.

In my opinion, such submission is a misconception. There is no limitation to the exercise of quasi judicial powers by a statutory body examining an appointment especially if it is resting on illegality or is void ab initio or is resting on forged document or where the applicant is over age on the date of appointment or where the application was filed beyond the prescribed time. All such issues go to the root of the matter and which disentitles the applicant on her



candidature itself and this can be examined by the appellate body. The filing of an application within the prescribed date is a first step towards seeking a valid appointment. According to the petitioner herself, she filed her application only on 29.12.2008. The petitioner thus admits that her application was filed after the prescribed date. There is nothing on record of the proceeding which shows that the Mukhiya was authorized to extend date for receiving application. On the contrary, both learned counsel for the Mukhiya as well as the State have admitted that there was no such authorization and any extension in the date for receipt of the application for appointment to the post, could have been done only by the Department and not the Mukhiya.

Reverting to the argument advanced by Mr. Mukesh Kumar, learned counsel for the petitioner, as regarding the limitations on the appellate authority to examine the appointment, in my opinion, the moment this Court has directed the appellate authority to examine inter se claim of the parties, all issues arising therefrom become open for discussion. In such view of the matter, there is absolutely no error in exercise of jurisdiction by the appellate authority to examine whether at all the application filed by the petitioner was within the prescribed period and since there is no dispute that the application was filed belatedly coupled with the fact that neither any advisory was issued by the department to extend the last date nor any authorization



was given to the Mukhiya to do so, the acceptance of the application itself was illegal and since the appointment of the petitioner was resting on such illegal acceptance of the application, the opinion expressed by the appellate authority is in tune with the facts on record.

Mr. Mukesh Kumar, learned counsel for the petitioner, at this stage, submits that there are other appointments which are similar in nature, but have not been interfered with. In my opinion, the petitioner shall be at liberty to draw the attention of the authorities on the same but since those appointments are not put to question before this Court, this Court would not express any opinion thereon save and except that any such grievance raised would be considered by the authority concerned and disposed of in accordance with law.

Concluding on the issue raised and contested, the termination order impugned suffers from no illegality requiring any interference by this Court. The writ petition is dismissed.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	01.03.2017
Transmission Date	NA

