

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 11139 of 2012

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Rameshwar Sah, Son of Late Kanu Sah, Resident of Village- Komla Bhelwa,
Prakhand- Kalyanpur, District- East Champaran, Motihari.

.... Petitioner/s

Versus

1. The State of Bihar through the Commissioner cum Secretary, Human Resources Development Department, Government of Bihar, Patna.
2. The District Magistrate, East Champaran.
3. The Block Development Officer, Kalyanpur, East Champaran.
4. The Block Education Officer, Kalyanpur, East Champaran.
5. The Mukhiya, Gram Panchayat- Raghunathpur, East Champaran.
6. The Panchayat Secretary, Gram Panchayat Raghunathpur, East Champaran, Motihari.
7. The District Teacher Employment Appellate Authority, East Champaran.
8. Digvijay Narayan Singh, Son of Raj Ballav Singh, R/O Village- Darmiya, Block & P.S.- Keshariya, District- East Champaran.
9. Prem Narayan, Son of Satrudhan Tiwary R/O- Village + P.O.- Gawandra Block, P.S.- Kalyanpur, District- East Champaran.
10. Binod Chaurasiya Son of Jokhu Bhagat R/O Village- Bakhari, Post- Koela Belwa, P.S.- Barachakia, District- East Champaran, Motihari, Pin 845412

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rajendra Prasad Singh, Sr. Advocate Mr. Gyan Prakash and Mr. Rakesh Kumar No. 1, Advocates
For the Respondent No. 8	:	Mr. Uma Kant Shukla and Mr. Sanjeev Kumar Singh, Advocates
For the Respondent No. 9	:	Mr. Siya Ram Shahi and Mr. Upendra Kumar Chaubey, Advocates
For the State	:	Mr. Arjun Prasad, A.C. to S.C. 3 Mr. Bipin Kumar, A.C. to S.C. 3

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 16-03-2017

Heard Mr. Rajendra Prasad Singh, learned senior counsel
assisted by Mr. Gyan Prakash, learned counsel for the petitioner; Mr.
Uma Kant Shukla, learned counsel assisted by Mr. Sanjeev Kumar
Singh, learned counsel for the respondent no. 8; Mr. Siyaram Shahi,



learned counsel assisted by Mr. Upendra Kumar Chaubey, learned counsel for the respondent no. 9 and Mr. Arjun Prasad, learned A.C. to S.C. 3 for the State.

The petitioner has moved the Court for quashing of order dated 21.03.2012 passed by the District Teachers Employment Appellate Authority, East Champaran (hereinafter referred to as the 'Authority') in Case No. 784 of 2011, by which the challenge to the appointment of Panchayat Teachers in Gram Panchayat Raj Raghunathpur made in the year 2008 has been partly interfered with and employment of two persons who have been held to have got appointment on forged certificates have been set aside and against such vacancies the respondents no. 8 and 9 from the general category have been directed to be employed.

The petitioner, along with four others, including respondents no. 8 and 9, had moved before the Authority in Case No. 784 of 2011 challenging their non selection on the post of Panchayat Teacher in the year 2008 in Gram Panchayat Raj Raghunathpur. The challenge partially succeeded and the Authority found that two candidates namely, Rajbanshi Prasad and Hemlata had obtained employment on the basis of forged certificates and thus, their selection was set aside. Further, since both of them belonged to the General Category, the respondents no. 8 and 9, who belonged to that



category, were directed to be appointed, but the petitioner was not given any relief on the ground that there was no vacant post of the Reserved Category to which the petitioner belonged.

Learned counsel for the petitioner submitted that the respondent no. 10, though belonging to the Reserved Category, because of him having higher marks than candidates appointed in the General Category, had to be adjusted against an unreserved/general post and the petitioner was required to be adjusted on the resultant vacant Reserved Category post. He further submitted that even otherwise, the petitioner, as per the merit list prepared, has 73.11 merit marks as compared to that of respondent no. 8, who has only 71.77. Learned counsel submitted that once the petitioner, though belonging to a Reserved Category and having applied under such category, having more merit points compared to the respondent no. 8, any vacancy, except of another Reserved Category, especially in the general/unreserved category, has to be first offered to him and thus, the direction to appoint the respondent no. 8 on such post is contrary to law. Learned counsel further submitted that the respondent no. 8 shall go further down in the merit list as the merit marks allotted to him are in excess due to wrong calculation of the percentage in his Intermediate examination. Learned counsel submitted that though the Bihar Panchayat Primary Teachers (Employment and Service



Conditions) Rules, 2006 (hereinafter referred to as the 'Rules') provide for reservation, but the actual recruitment on unreserved/general posts would be strictly as per merit, whereas on the Reserved post only a person belonging to that particular reserved category could be given employment. For such proposition, learned counsel has relied upon a decision of the Hon'ble Supreme Court in the case of **Rajesh Kumar Daria v. Rajasthan Public Service Commission** reported as **A.I.R. 2007 S.C. 3127**. Learned counsel submitted that a vital factual aspect of the matter is that one Rajbanshi Prasad, who was also a candidate belonging to the Reserved Category, had been appointed on the General Category post on the basis of having higher merit marks and thus, the same rule should apply in the present case also. He submitted that in the present case, when there is a vacancy of the General Category, merit marks are required to be counted and not the category of a candidate.

Mr. Arjun Prasad, learned AC to SC-3 representing the State, when called upon to take a categorical stand has supported the contentions of learned counsel for the petitioner.

Learned counsel for the respondent no. 9 submitted that because of the controversy now being between the better claim of the petitioner compared to that of respondent no. 8, he is not required to assist the Court on merits. However, he submitted that as far as his



appointment is concerned, it is valid and legal.

Learned counsel for the respondent no. 8, who is the sole contesting respondent submitted that the petitioner is precluded from seeking the relief against the respondent no. 8, for the reason that before the Authority, he had prayed that the respondent no. 10, who had higher marks, be adjusted on an unreserved General Category post and the resultant vacancy of the Reserved seat be given to him. He further submitted that even before this Court, he has made the same prayer, that respondent no. 8 be appointed against the unreserved/general class post. Learned counsel submitted that the Rules are self contained and provided for all contingencies which incidentally does not provide for a Reserved Category candidate to be appointed on the General Category post since such Rule is only for Government Service and the present is not Government service and it is only an employment. Learned counsel submitted that the petitioner, thus, can have a claim only against a Reserved Category seat and further the two seats which have been held to be vacant, belonging to the General Category, have to be filled up by the candidate belonging to the General Category and thus, the respondent no. 8, among the General Category candidates was at number two and has rightly has been appointed. Learned counsel has drawn the attention of the Court to a decision of a co-ordinate bench of this Court in the case of **Md.**



Shami Uddin vs. State of Bihar reported as **2011 (4) PLJR 230**, for the proposition that a candidate belonging to the Reserved Category can only be appointed against such category and cannot be given the vacancy of a General Category. He has also relied upon the decision of a co-ordinate Bench in the case of **Dr. Narendra Kumar vs. Chancellor of Universities of Bihar** reported as **2013(3) PLJR 892**. Learned counsel also relied on the decision of the Hon'ble Supreme Court in the case of **Union of India v. Dalbir Singh** reported as **2010(1) PLJR (SC) 5**.

Having considered the rival contentions, in the opinion of the Court, the order impugned cannot be sustained in part. The petitioner admittedly had 73.11 merit marks compared to the respondent no. 8 who had 71.77 marks, and once there is a vacancy which was not reserved for any other Reserved Category, the same being general/unreserved, had to be filled up by the person who had not been appointed and had the most merit marks. On such parameter, the petitioner clearly outscores the respondent no. 8. Further, the said principle was also applied in the present employment, inasmuch as, Rajbanshi Prasad, though belonging to the Backward Class Category, was appointed on the general/unreserved post on the ground of him being trained. When such principle has been followed in the same transaction, which in the opinion of the



Court is also correct, the Authority, after finding the appointment of two General Category candidates to be bad in law due to their certificates being forged, the resultant first vacancy was rightly given to the respondent no. 9 but when it came to decide the fate of the second vacancy, the Authority has erred in holding the right of the respondent no. 8 on that post, failing to appreciate that the petitioner, having higher merit marks had the first claim to such post. The Court in this context would refer to paragraphs no. 7-8 in the case of **Rajesh Kumar Daria** (supra) relied upon by learned counsel for the petitioner which read as under:

“7-8. The second relates to the difference between the nature of vertical reservation and horizontal reservation. Social reservations in favour of SC, ST and OBC under Art. 16(4) are ‘vertical reservations.’ Special reservation in favour of physically handicapped, women etc., under Art. 16(1) or 15(3) are ‘horizontal reservations.’ Where a vertical reservation is made in favour of a back-ward class under Art. 16(4), the candidates belonging to such backward class, may compete for non-reserved posts and if they are appointed to the non-reserved posts on their own merit, their numbers will not be counted against the quota reserved for the respective backward class. Therefore, if the number of SC candidates, who by their own merit, get selected to open competition vacancies, equals or even exceeds the percent-age of posts reserved for SC candidates, it cannot be said the reservation quota for SCs has been filled. The entire reservation quota will be intact and available in addition to those selected under Open Competition category. (Vide Indira Sawhney (supra); R. K. Sabharwal v. State of Punjab (1995 (2) SCC 745); Union of India v. Virpal Singh Chauhan (1995 (6) SCC 684) and Ritesh R. Sah v. Dr. Y. L. Yamul



(1996 (3) SCC 253)]. But the aforesaid principle applicable to vertical (social) reservations will not apply to horizontal (special) reservations. Where a special reservation for women is provided within the social reservation for Scheduled Castes, the proper procedure is first to fill up the quota for Scheduled Castes in order of merit and then find out the number of candidates among them who belong to the special reservation group of 'Scheduled Castes-Women.' If the number of women in such list is equal to or more than the number of special reservation quota, then there is no need for further selection towards the special reservation quota. Only if there is any shortfall, the requisite number of Scheduled Caste women shall have to be taken by deleting the corresponding number of candidates from the bottom of the list relating to Scheduled Castes. To this extent, horizontal (special) reservation differs from vertical (social) reservation. Thus women selected on merit within the vertical reservation quota will be counted against the horizontal reservation for women. Let us illustrate by an example:

If 19 posts are reserved for SCs (of which the quota for women is four), 19 SC candidates shall have to be first listed in accordance with merit, from out of the successful eligible candidates. If such list of 19 candidates contains four SC women candidates, then there is no need to disturb the list by including any further SC women candidate. On the other hand, if the list of 19 SC candidates contains only two women candidates, then the next two SC woman candidates in accordance with merit, will have to be included in the list and corresponding number of candidates from the bottom of such list shall have to be deleted, so as to ensure that the final 19 selected SC candidates contain four women SC candidates. (But if the list of 19 SC candidates contains more than four women candidates, selected on own merit, all of them will continue in the list and there is no question of deleting the excess women candidate on the ground that 'SC women' have been selected in excess of the prescribed internal quota of four.)"



From the above it is clear that as per the constitutional provisions where there is vertical reservation prescribed, the same has to be filled up first by the persons having highest merit, except for those roster points where there is a special category reserved. In such cases, the particular Reserved Category candidate shall be appointed, but the moment the list moves down, in the General Category, the same has to be filled purely on merit. The result is that persons belonging to the Reserved Category, if otherwise having more marks, shall be appointed on an unreserved/general category post and such filling up the post will not be considered to be appointment on a Reserved Category post, which shall be filled up as per the roster point by a candidate belonging to such Reserved Category. As far as the decisions relied upon by learned counsel for the respondent no. 8 are concerned, the foundational facts are quite different. In the case of **Md. Shami Uddin** (supra), the Court was considering the provisions of Bihar Reservation of Vacancies in Posts and Services (For Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1991. In the present case, the Court is neither relying upon nor there is any consideration with regard to the present matter being governed by the aforesaid Act of 1991. Similarly, in the case of **Dr. Narendra Kumar** (supra), the fact was that a person belonging to the Reserved Category was appointed on a general post but upon him not



joining, the post was sought to be filled up by a candidate belonging to the Reserved Category, even though he had less marks than the writ petitioner, who belonged to the General Category, and the same was held impermissible. Further, in the case of **Union of India** (supra), the person belonging to OBC category had applied for such post and two separate merit lists were prepared, one for the General Category and another for the OBC, to which he did not object and further his very candidature was rejected on the ground that the certificate produced by him was suspicious. Thus, once the very candidature was rejected, his claim for appointment on any category, particularly, the General Category, did not survive.

This Court finds that the judgment relied upon by learned counsel for the petitioner in the case of **Rajesh Kumar Daria** (supra) fully supports the contentions of learned counsel for the petitioner.

For the reasons aforesaid, the writ petition is allowed. The impugned order of the Tribunal dated 21.03.2012, passed in Case No. 784 of 2011 is set aside to the extent of there being a direction to appoint the respondent no. 8. The order stands modified to the extent that there shall be a direction for appointment of the petitioner on the unreserved/general category post of Panchayat Teacher in the concerned Panchayat, in terms of the said order, in place of the respondent no. 8. The exercise be completed within one month from



the date of production of a copy of this order before the respondents
no. 4, 5 and 6.

The writ petition stands allowed in the
aforementioned terms.

(Ahsanuddin Amanullah, J.)

P. Kumar

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