

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2888 of 2013

- =====
1. Zaman Rehmani S/o Reyis Alam, resident of village -Sundarbari, P.O.-Sontha, P.S.-Kochadhaman, Distt-Kishanganj.
2. Tajalli Sofia Daughter of Nazir Ahmad, resident of village -Dohar Kazibasti, P.O.-Sontha, P.S.-Bahadurganj, Distt-Kishanganj. Petitioner/s
- Versus
1. The State of Bihar, through the Principal Secretary, Department of Human Resource, Patna
2. The Director, Primary Education, Govt. of Bihar, Patna
3. The District Education Officer, Kishanganj
4. The District Teachers Niyojan Appellate Authority, Kishanganj
5. The District Programme Officer (Estb.) Kishanganj
6. The Block Development Officer, Bahadurganj, Distt.-Kishanganj
7. The Mukhiya Gram Panchayat Raj, Dohar, Block-Bahadurganj, Distt.-Kishanganj
8. The Panchayat Sachiv, Gram Panchayat Raj- Dohar, Block-Bahadurganj, Distt-Kishanganj
9. Shaista Praveen D/o Sharafuddin, New Primary School, Munsitola Wohai, Distt-Kishanganj
10. Anjuman Ara D/o Zahidur Rahman, New Primary School, Manager Tola Dahur, Distt-Kishanganj
11. Mustari Begam D/o Md. Asfaque, New Primary School, Manager Tola Dahur, Distt-Kishanganj
12. Md. Azimudin S/o Md. Suleman, resident of village-Mahadevdiggi, P.S.-Bahadurganj, Distt-Kishanganj
13. Tanbir Zaki S/o Mohiuddin, resident of village -Sictihar, P.S.-Bahadurganj, Distt-Kishanganj. Respondent/s
- =====

Appearance :

For the Petitioner/s : M/s Amarendra Narayan and Deepak Kumar, Advs.

For the Respondent/s : Mr. Rajendra Pd. Singh, Sr. Adv.

Mr. Nirala Kumar Singh, Adv.

For Respondent nos. 7 & 8 : Mr. Jawed Gaffar Khan, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 03-02-2017

In the present case, petitioners are challenging the order dated 19th May 2012 (Annexure-1) passed by the District Teacher Employment Appellate Authority, Kishanganj, holding that the claim of petitioners, is not tenable and did not find any illegality in the selection and appointment of Panchayat Teacher.



The matter relates to appointment of Panchayat Teacher of first phase. An Advertisement was published in the year 2006, inviting application for General Teacher as well for Urdu Teacher in Gram Panchayat-Dohar, Block Bahadurganj, District-Kishanganj. Altogether 22 posts of Panchayat Teacher were advertised, out of which, 09 posts were for Urdu subject and 13 posts were for General subject and out of 22 posts, 20 posts were filled up and 02 posts remained unfilled. Out of 20 posts, one Md. Aslam tendered his resignation.

According to the pleading of the parties, petitioner no. 1, Zaman Rehmani belongs to General category candidate, having 71.05% of marks and petitioner no. 2, Tajalli Sofia has secured 72.17% of marks and she also belongs to General category candidate applied for Urdu post of Teacher.

Petitioner no. 1 is contesting his case with Md. Azimudin (Respondent nos. 12) and Tanbir Zaki (Respondent no.13), claiming that he has better marks than Respondent nos. 12 and 13, as Md. Azimudin, Respondent no. 12 has secured 68% of marks and Tanbir Zaki, Respondent no. 13 has secured 70.44% of marks whereas petitioner no. 2 is challenging the appointment of Respondent nos. 9 to 11, claiming that she has better marks than Respondent nos. 9 to 11 as Shaista Parveen (Respondent no.9) has secured 70.58% of marks, Anjuman Ara (Respondent no. 10) has



secured 64.66% of marks and Mustari Begam (Respondent no. 11) has secured 70.58% of marks.

Altogether, for 22 posts, 728 candidates applied, out of that, 453 candidates were for General subject Teacher and 275 persons were for Urdu subject Teacher aforesaid posts were divided in the following manner:-

“UR (Male) 06, UR (Female) 05, EBC (Male) 02, EBC (Female) 01, BC (Male) 01, BC (Female) 02, SC (Male) 02, SC (Female) 02 and Reserved Female-01 post.”

The first counselling was conducted on 15th, 16th, 17th and 18th January 2007. The petitioners appeared for counselling on 16th January 2007. Another counselling was conducted on the direction the Block Development Officer on 7th March 2007, in which, petitioner no. 1 was not called and petitioner no. 2 did not appear and the panel was prepared on 21st July 2007 by the Panchayat Secretary and the Mukhiya.

In the present case, claim has been made that the entire selection process suffers from illegality, as petitioner nos. 1 and 2, being General category candidates, applied for Urdu subject Teacher, having been rejected on illegal ground. Claim has been made by the petitioners that there was a single form for all the candidates, either they have applied for General subject Teacher or



Urdu subject Teacher.

The petitioners being Maulvi, have also applied for Urdu subject Teacher, but claim has been made by the petitioners that there was no separate column indicating whether the persons have applied for General subject or Urdu subject.

As per the case of the petitioners, there was no separate nature of form for Urdu category candidate or General category candidate, single form was prescribed for both (General and Urdu) categories of candidate and the Unit was obliged to separate the forms of candidates, those who were holding Maulvi degree, were eligible for Urdu subject and the persons, who were holding General degree, were to be separated for General subject of Teacher.

As per the claim of the petitioners, in terms of Rules, 2006, the legislature has not prescribed separate column in the form for Urdu subject and for General subject..

It has been submitted by the counsel for the petitioners that the Appointment Unit has wrongly treated the petitioners to have applied for General subject Teacher in view of fact that they were/are holding Maulvi degree, were/are to be treated for the post of Urdu Teacher. As the person holding Maulvi degree, cannot be appointed as teacher of General subject.

The petitioners belong to General category candidates and Respondent nos. 12 and 13 were also from the General category



candidate, but petitioner no. 1 has wrongly been shown that he had applied for the post of General subject Teacher whereas Rule 06 provides that the person holding Maulvi degree, can only be appointed on the post of Urdu subject Teacher, not on the post of Teacher of General subject. With respect to petitioner no. 2-Tajalli Safia, it has been said that she has better marks than Respondent nos. 9 to 11, they were wrongly appointed in General category candidate whereas they are holding Maulvi degree, can only be appointed in Urdu subject. This is the manipulation has been engineered with a view to accommodate them and to deprive her.

If the selection process would have rightly been followed by the Panchayat Unit then petitioner nos. 1 and 2 could not have been ignored to be appointed as Panchayat Teacher.

The counsel for the petitioners, in support of his submission, has placed reliance on Rule 06, which provides that the person holding qualification of Maulvi, can only be appointed in Urdu subject. He further submits that petitioners have wrongly been shown to have applied for General subject whereas in their application forms, petitioners have never indicated that they have applied for General subject, but have wrongly been deprived by the Appointing Unit. It has further been submitted that both the petitioners appeared in the first counselling whereas in the second counselling, petitioner no 1 was not called for, nor petitioner no. 2



appeared on the day of second counselling, i.e. 07.03.2007 as she did not receive any notice in this regard.

As per claim of the State, petitioner no. 1 has applied for the post of Teacher in General subject, he has lesser marks amongst the candidates of General subject as he was at serial no. fourteen, on that account, he was not called for the final counselling and was not selected whereas petitioner no. 2 applied for the post of Urdu subject Teacher, but she preferred to remain absent on the final day of second counselling, i.e. 07.03.2007 though she was given notice for her appearance.

All the candidates were given notices through Under Certificate of Posting.

It has further been submitted that Respondent nos. 9 to 11 cannot have any dispute with petitioner no. 2, as they were appointed in General subject Teacher, not for Urdu subject Teacher inasmuch as petitioner no. 2 remained absent and one Dilbahar Begum, who is not a party, having been appointed in place of petitioner no.2. If the Roster will be interfered by this Court, in that circumstance, there may be many more persons, above the petitioners would approach for similar treatment and in that circumstance, petitioner no. 1 cannot be appointed.

The argument, which has been laid by the State, has been accepted by the private respondent.



The counsel for the State in order to substantiate the claim that petitioner no. 1 has applied for General subject Teacher, having relied on Annexure-D, is the attendance sheet bearing the details of petitioner no. 1, including his signature and there is a tick mark at the word 'General', on that basis, the State submits that the petitioner had applied for General subject Teacher, not for Urdu subject, inasmuch as the State has also produced the counselling Register where different columns are made, one column is for General is column no. 13, against signature, subject has been mentioned, but it appears that this column has not been filled up by the person, who put his or her signature rather it has been filled up by a 3rd person and on that basis, the State submits that in the column of petitioner no. 1, the word subject has been shown as 'Samanya', but his qualification of Maulvi has been mentioned whereas counsel for the petitioner submits that the petitioner has not applied for the post of General subject Teacher though the writing in the attendance register, is of the petitioner, but the tick mark, which has been given, is not by the petitioner, but a 3rd person has put the tick mark and for proper verification of the option of petitioner, which could have been verified by the original application form.

This Court had directed the State to produce the original record with respect to the application form and the attendance sheet, but it has been informed that the application form



of the petitioners, including the original attendance sheet are missing, in such view of the matter, the State failed to produce aforesaid documents. It has been submitted that the original records of certain other persons are available, but not of the petitioners.

The counsel for the State submits that the original record of the petitioners have been misplaced whereupon the counsel for the petitioners submits that the State is trustee had to keep the record properly and it is the State has produced the photo copy of the Attendance sheet. If the State has produced the photo copy of the record then certainly the State should explain how, in absence of original record, from where, it has produced the photo copy of the record.

Before going into the merit of the case, it will be relevant to examine that when the petitioners were not selected, petitioner no. 1 approached the Block Development Officer, who at the relevant time, was the Appellate Authority passed the order on 12.03.2008, giving direction that petitioners should be considered for Urdu subject Teacher, not for General subject Teacher and the counselling should be done accordingly and he could not be treated under the category for the post of General subject Teacher. When the order was not implemented by the Employment Unit then letter no. 534 dated 17.06.2008 of the District Grievance Authority, was addressed to the District Panchayat Raj Officer, Kishanganj



informing that the then Mukhiya and the Panchayat Secretary were violating the order passed by the Block Development Officer. It further appears that the Block Development Officer, on 24.5.2008, again informed that the entire selection process suffers from illegality and it has been recorded that the wrong process was adopted in selection of Panchayat Teacher.

Petitioner no. 1 and other approached the Chief Minister's Janta Darbar by filing complaint petition reached to the Appellate Authority, which was registered as Appeal No. 218 of 2009 and the Appellate Authority, without impleading the parties, has dealt with the matter elaborately and found that the entire selection process marred by illegality in long way, the provision of selection has been violated, in that circumstance, the entire selection itself was found not sustainable, directed for fresh counselling. This order was challenged before this Court in C.W.J.C. No. 12049 of 2009 where the petitioner no. 2 was made party respondent no. 8, claim has been made that the impugned order, which has been passed by the Appellate Authority without impleading and hearing the parties, suffers from procedural illegality and the same is not sustainable, accepting the plea of the writ petitioner, set aside the order of the Appellate Authority and remanded back the matter for fresh consideration and after receipt of the order passed by this Court, the Appellate Authority, after hearing the parties, has held



that there was no illegality in the selection and respondents have rightly been appointed in accordance with law.

In the present case, the question has been raised as to whether petitioner no. 1 has applied for General subject or for Urdu subject whereas petitioner no. 2 though she has applied for Urdu subject, but she was not selected, as she did not appear on the day of second counselling, which was held on the direction of the Block Development Officer, in that circumstance, it has to be seen, from different angles, whether petitioner no. 1 had applied for General subject Teacher whether it was the duty of the Employment Unit that instead of sending the notice through U.P.C., the notice should have been sent under registered cover and the value of the notice sent through the U.P.C., has only proof of posting, not it is a proof of reaching to the destination, in such situation, when the residence of petitioner no. 2 is standing at arms length the notice could have been served through Process Server, second question would arise whether there is a provision in scheme for second counselling. When a candidate has already appeared in the first counselling and has produced all the testimonials, but failed to appear in the second counselling, can he/she be deprived of his/ her appointment. The 3rd point has to be looked into whether the persons, who are holding Maulvi subject, can be appointed in General subject. If this arrangement has been made for the purposes of depriving the



rightful candidate, in such circumstance the whole selection suffers from illegality or not? With respect to the petitioner No. 1, if the finding is arrived in his favour that the person holding qualification of Maulvi, in terms of Rule 06, he/she can only be considered for the post of Teacher of Urdu subject and in no stretch of imagination, they can be taken into consideration for General subject.

It has to be seen when the State has not produced the original record whether adverse inference would be taken against the State.

It has to be seen that as Dilbahar Begun, who has been appointed in place of petitioner no. 2, having been not made party, has any effect on the merit of the case of petitioner no. 2.

Before deciding this case on merit, this Court feels that certain fact is to be stipulated, in what manner, the State-respondents have suppressed certain materials and did not bring the original record for perusal and examining the genuineness of the document of which photo copy has already been attached to the counter affidavit of the State.

This Court, vide order dated 16.09.2016, has directed the State to file supplementary counter affidavit bringing on record the application that has been filed by the petitioner for the post.

The Court, vide order dated 03.10.2016, has passed the following order:-



“The counsel for the petitioners has drawn attention of this Court to the photo copy of the application of the present petitioner attached with counter affidavit of Respondent nos. 7 and 8 and when this Court has asked the State to produce the original records, they have stated that the original records are not with them.

Respondent nos. 7 and 8 have filed an affidavit, annexed the photo copy of the application of the present petitioners. There cannot be a photo copy without the original copy, either it is lying with the Mukhiya or the Ex-Panchayat Secretary, Sahdeo Prasad Singh. The Mukhiya and the Ex-Panchayat Secretary, Sahdeo Prasad Singh are directed to remain physically present and file an affidavit, from where they have obtained the photo copy of the application of the present petitioner and if the original copy of the application filed by the petitioner is lying with them, they must produce the same.

As prayed for, let this case be listed on 24th October 2016.

The original record of the State is returned to its counsel and whenever it will be required, the State



counsel will produce the same.”

The order dated 21.11.2016 stipulates as follows:-

“The Panchayat Secretary and Ex-Panchayat Secretary are physically present. They have filed the affidavit, in which they have stated that they have not received the original record whatever they have received is in the form of photocopy with regard to these petitioners and as such, they have shown their inability to produce the original applications filed by the petitioners.

The respondents have placed heavy reliance on two documents, namely, the application form, i.e. Annexure-R/1 attached with the counter affidavit of Respondent nos. 7 and 8 and the attendance sheet, i.e. Annexure-D to the counter affidavit of the State, on that basis, claim has been made by the respondents that petitioner no. 1 has applied for the post of General Teacher, not for Urdu Teacher and as such, he has rightly been placed in the merit list of the candidate for the post of General Teacher and as he did not come within the merit list, he could not be appointed, but one thing is very much clear that the original records are not available, the respondents are placing reliance on photo copy. Primarily, it is the original record that can be used in evidence and in absence of the original record, in case of challenge, the photo copy cannot have any



evidentiary weightage for the purposes of deciding the case, inasmuch as it causes adverse inference in terms of Section 114 (g) of the Indian Evidence Act, in such circumstances, the merit of the case has to be looked into in absence of original record and surrounding circumstance.

As per the claim of the petitioner, he is holding Maulvi degree and in terms of Rule 6 of Bihar Panchayat Elementary Teacher (Employment and Service Condition) Rules, 2006 which stipulates that the person, who is holding Urdu qualification and having Maulvi degree, will be selected for the post of Urdu Teacher and admittedly the Government has taken a decision that the person, who is holding the Maulvi qualification, cannot be appointed on the General post.

As per the claim of the petitioner, he has never applied for the post of General Teacher, but his application was confined to the post of Teacher of Urdu subject, as he was holding Maulvi qualification, he could not have been appointed on the post of Teacher of General subject.

The order passed by the Block Development Officer dated 12.03.2008 makes it clear that the petitioner had approached the Block Development Officer raising his grievance that the Panchayat Unit has wrongly put him in the merit list of candidate of General subject of Panchayat Teacher whereas he ought to have



been kept in list of candidate of post of Urdu Teacher and the Block Development Officer has directed to correct mistake, conduct a fair counselling of the petitioner for his selection and report to him within fifteen days.

It is not in dispute that at that relevant time, the Block Development Officer was an Appellate Authority, as Rule 18 has been amended which has been enforced with effect from 03.07.2009 and the Block Development Officer being a competent person at relevant time, has jurisdiction to rectify the mistake committed by the Employment Unit so letter no. 534 dated 17.06.2008 (Annexure-3) is written by the Incharge Officer, District Grievance Cell to the District Panchayat Officer pointing out that the then Mukhiya and the Panchayat Secretary have not been discharging their duty in consonance with the Panchayat Raj Act and recommended to take corrective action in terms of Rule 18 (5) of the Bihar Panchayat Raj Act.

Another letter dated 24.05.2008 also shows that the Panchayat Unit has conducted the counselling in an illegal manner and it has been recorded that the selection has not been made in terms of the Rule, as they have adopted the course, which is not in consonance with the Rule though this letter indicates that when the petitioner could know that he has been treated as a candidate for General post, he has immediately filed a complaint, inasmuch as he



has Maulvi degree, in terms of Government scheme, he could not have been considered for the counselling in General category of post.

So far petitioner no. 2 is concerned, it is an admitted fact that in the category of Urdu Teacher, the private respondent nos. 9 to 11, who are pitted against the petitioner, have secured lesser marks. Petitioner no.2 has been refused appointment on the plea that she had not appeared in the second counselling, which was conducted on the direction of Block Development Officer, admittedly she had appeared in the first counselling and produced her entire educational testimonials, but she has been deprived of consideration.

The plea has been taken by petitioner no. 2 that she has not received any notice for second counselling whereas her house is just at arms length and they have conducted the purported second counselling at secret place, which was not known to her, that has been denied by the respondents, but the admitted fact is that the notice was sent through U.P.C. not by the registered post. The evidentiary value of U.P.C. only shows that of posting, it does not give the presumption of reaching the document to the addressee. Only the registered cover with correct address would give presumption of service of notice, even if that letter does not return, reliance can be placed on (2010) 9 S.C.C. 157 (Greater Mohali Area



Development Authority and others Vs. Manju Jain and others) and (2007) 6 S.C.C. 555 (C.C. Alavi Haji Vs. Palapetty Muhammed and another). The second aspect is very important that Respondent nos. 11 to 13 have lesser marks than the petitioner but maneuvering has been done in the whole procedure of selection with sole motive to deprive the petitioner no. 2, Respondent nos. 9 to 11 were wrongly treated for the post of Teacher of General subject, which the Panchayat Unit could not have done it, as Respondent nos. 11 to 13 were possessing the certificate/qualification of Maulvi, even it is presumed, the plea has been taken that the State Government has issued the Circular that whosoever is possessing Maulvi degree, having been appointed in a General post, will not be removed from the service and the additional post upto that number that was sanctioned by the State, even if, additional post has been granted, in that circumstance, it was required that the case of the petitioner was also required to be considered in the same term as that of Respondent nos. 11 to 13. There cannot be a differential treatment meted to petitioner no. 2 vis-à-vis Respondent nos. 11 to 13. Admittedly, the petitioner has higher marks than the private respondents certainly even in the post of Teacher of General subject, she has a right for her consideration.

The Appellate Tribunal has not properly conducted enquiry and examined the aspect of the matter, petitioner could not



have been enlisted in the General category candidate looking to the qualification of petitioner no. 1, simply held that petitioner no. 1 had applied for the General post, without looking to the fact that the person holding the Maulvi degree, could not have been treated to have applied for the post of General Teacher, for that the complaint was made by the petitioner no. 1 and letters of the Block Development Officer and other concerned officer give strong inference that the petitioner no. 1 always made complaint that he had not applied for the General post. The reliance of judgments vide 2009 (1) PLJR 712, 2016 (2) PLJR 474 have no relevance to the facts of this case.

At this stage, it will be relevant to discuss the register, which bears the signature of petitioner and other candidates. Of course, in the register, the signature of petitioner no. 1 is standing, but it does not establish that the rest of the columns have been filled by the petitioner, as in the earlier proceeding, the Appellate Authority has recorded the fact that selection suffers from several illegalities, U.P.C. does not reflect the date and seal of the Post Office, as it is illegible, cannot be deciphered. As the Appellate Tribunal has not dealt with several aspect of the matter, such as one production of original application form, none submission of original attendance sheet, whether every column has been filled by petitioner.

In view of aforesaid discussion the order of the



Appellate Tribunal is set aside and the matter is remanded back for fresh consideration.

Accordingly, this petition is allowed to the aforesaid extent.

(Shivaji Pandey, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	06.02.2017
Transmission Date	

