

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11359 of 2017

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1. Shivdatt Kumar Pal, Son of Shri Shashilendra Kumar Pal, resident of village + P.O.- Nanand, P.S.- Silao, District- Nalanda, Bihar, 803115.
2. Ajay Kumar, Son of Suresh Prasad, resident of Village + P.O. + P.S.- Makhdumpur, District- Jehanabad, Bihar.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Principal Secretary, Education Department, Govt. of Bihar, Patna.
3. District Magistrate, Patna.
4. Municipal Commissioner, Cum-Secretary, Nagar Madhyamik Sikshak Niyojan Samiti, Patna.
5. District Programme Officer, (Establishment), Patna.
6. District Education Officer, Patna.
7. Secretary, Patna Municipal Corporation, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Raj Shekhar with Mr. Murli Dhar, Advocates
For the State	:	Mr. Madhav Prasad Yadav, GP 23
For the PMC	:	Mr. Prabhakar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 25-08-2017

Heard learned counsel for the petitioners, State and Patna Municipal Corporation (hereinafter referred to as the 'Corporation').

2. The petitioners have moved the Court for the



following reliefs:

“ (i.) For issuance of an appropriate order/s, directions, writ/s, in the nature of certiorari, quashing the order dated 17.07.2017, passed by the Chairperson, State Appellate Authority, Education Department, Bihar, Patna, hereinafter referred to as “ the State Tribunal” in case no. Appeal /95/2017 (Annexure- 5) whereby and where under, the appeal preferred by the respondents was allowed.

(ii) For issuance of an appropriate order/s, directions, writ/s, in the nature of mandamus commanding the respondent/s to appoint, the merit list teacher Niyojan year 2014-15, in the subject of social science,

(iii) For issuance of an appropriate order/s, directions, writ/s, in the nature of mandamus commanding the respondents/s to first complete the selection process of fourth leg then proceed for further leg.

(iv) For any other relief/s for which the petitioners may found entitle.”

3. The story begins with counselling held for the post of contractual teachers under the Corporation for which on the date of counselling, persons from various subjects were called and counselling held. Thereafter, at the time of issuing appointment letter, the petitioners belonging to Social Sciences category were not given



their appointment letter though chosen candidates of other disciplines were given such appointment letter. The petitioners, along with two others, being aggrieved, moved before the District Teachers Employment Appellate Authority, Patna (hereinafter referred to as the 'Authority') in Appeal Cases No. 44, 45, 46 and 47 of 2016, which was allowed in their favour by order dated 30.01.2017 with a direction to the Employment Unit to appoint the petitioners. The Corporation, being aggrieved, moved before the State Appellate Authority in Case No. Appeal/95/2017 which has been allowed by order dated 17.07.2017. Being aggrieved, the petitioners have moved the Court in the present writ application.

4. Learned counsel for the petitioners submitted that pursuant to counselling being made, the selection process has not been held to be bad and the only plea taken against them is that they were not eligible to participate in the counselling as they were not possessing the minimum cut off marks fixed for their category. It was submitted that the same is erroneous for no cut off list was ever displayed either on the website of the N.I.C. or on the Notice Board where counselling was held and thus the petitioners having taken part in the counselling and they being finally selected, there is no infirmity in their selection. It was further submitted that if at all, the process has been vitiated and the petitioners have wrongly been allowed to take



part in the counselling, then the exercise, as a whole, has to go and it cannot be restricted to the petitioners in the subject of Social Sciences. Learned counsel further submitted that the petitioners have been prejudiced without there being any fault or laches on their part. Learned counsel submitted that the order of the Authority was well discussed, and reasons have been given why the selection of the petitioners was correct but the State Appellate Authority has arbitrarily interfered in the matter. It was further submitted that the State Appellate Authority, by the impugned order, had directed fresh counselling with videography and adequate police arrangement to be done within one month from the date of the order, which also has not been done. Learned counsel submitted that the cut off marks not being uploaded on the N.I.C. website, it cannot be considered to be the cut off marks and the same being mandatory as per the guidelines, the whole procedure is vitiated.

5. Learned counsel for the Corporation submitted that the order passed by the Authority is both erroneous and perverse. It was submitted that the same suffers from convoluted reasoning and is totally illegal, both on facts as well as in law. Learned counsel submitted that the reasoning given in the said order is quite contrary to law, for example, it has been held that there were different number of persons, who were called for counselling in various subjects and



because persons were not called for in the same ratio in all the subjects, it was improper, the said finding given by the Authority shows lack of understanding and incompetence of the author of the order for the reason that number of persons is dependent on the cut off marks and has nothing to do with the actual number who have to be called and in no two subjects, the number can be the same. It was submitted that the moment the cut off is fixed, all persons coming within the particular cut off limit have to be given opportunity of taking part in the counselling. It was further submitted that the very reasoning given in the order of the Authority cannot be sustained for, on the one hand it has been stated that cut off marks were not displayed or made known to the candidates but on the other hand, it is accepted that certain number of persons were called for the counselling in various subjects. Learned counsel submitted that if the cut off was not displayed anywhere, there would not be any occasion for a fixed number of persons to be called. Once it is accepted that only a fixed number of persons were called for counselling, the only basis being the cut off, it is obvious that the cut off marks was also known to all concerned. Learned counsel further submitted that the appointment letter issued to all other persons selected in other subjects was for the reason that there is no error or dispute with regard to counselling and they do not come below the cut off marks set for



those subjects. Learned counsel submitted that in the present case, the controversy is that the petitioners, despite not coming within cut off limit, managed to forcibly attend the counselling, which has led to the present situation. Learned counsel submitted that it is not in dispute that the petitioners had come for counselling and the reason for cut off not being uploaded was due to malfunctioning in the software but the cut off was displayed widely at the place of counselling, which reason has already been accepted by the State Appellate Authority while considering the matter.

6. Having considered the rival contentions, the Court does not find any merit in the writ petition.

7. The contentions raised by the petitioners have been appropriately dealt with by the State Appellate Authority and the reasoning given is logical, cogent and sound. The Court is also in agreement with the submissions of learned counsel for the Corporation that because the website of the N.I.C. remained non-functional on the date of counselling, the modality of cut off marks being pasted on different walls of the counselling centres, including the main gate, was the best option available. Further, many candidates, after seeing the notice regarding cut off marks, had returned from the counselling centre and did not participate in the same. With regard to the stand taken relating to discussions made by



the Authority, in view of the discussions made in the order impugned itself, the Court finds that rightly the said order has been interfered with. The Court also approves the view taken by the State Appellate Authority that the entire exercise is not vitiated and fresh counselling has to be restricted with regard to the remaining vacancies including that in the stream of Science and Social Science, which has been directed.

8. At this stage, learned counsel for the Corporation informed the Court that the entire process of counselling has been completed and appointment letter shall be issued on 28th of this month, which is the date fixed for the same.

9. For the reasons discussed hereinabove, the writ petition stands dismissed.

(Ahsanuddin Amanullah, J)

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