

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Review No.426 of 2017
IN
L.P.A. No. 106 of 2016

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Surendra Mahto, Son of Sri Rameshwar Mahto, resident of Village-
Rasulpur, P.S. Sahebganj, District- Muzaffarpur.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Government of Bihar, Patna.
2. The Principal Secretary, Education Department, Government of Bihar, Patna.
3. The Director, Primary Education, Government of Bihar, Patna.
4. The District Teachers Employment Appellate Authority, Muzaffarpur through its Member.
5. The District Magistrate, Muzaffarpur.
6. The District Education Officer, Muzaffarpur.
7. The District Programme Officer (Establishment), Muzaffarpur.
8. The Block Development Officer, Sahebganj, Muzaffarpur.
9. The Block Education Officer, Sahebganj, Muzaffarpur.
10. The Mukhiya Panchayat Raj, Bangara Nizamat, Block Sahebganj, Muzaffarpur.
11. The Panchayat Secretary, Panchayat Raj, Bangara Nizamat, Block Sahebganj, Muzaffarpur.
12. The Headmaster, Primary School Vishnupur Chak, Pahar (Kanya), Sahebganj, Muzaffarpur.
13. Sohan Mahto, Son of Ramnath Mahto, resident of Village- Jagdishpur, P.S.- Sahebganj, District- Muzaffarpur.
14. Mritunjay Kumar Singh, S/o Sri Ram Naresh Singh, resident of Village- Bhindiya, P.O. Narayanpur, P.S.- Madhaura, District- Saran (Chapra) at present posted in Utkramit Middle School Bangra Bazar, Anchal- Sahebganj, District- Muzaffarpur.
15. Pushpraj Padmakar, Son of Sri Madan Prasad Singh, resident of Village+ P.O.- Madhopur, Hazarea, P.S. Sahebganj, District- Muzaffarpur. At present posted in Rajkiya Primary School, Bangra, Gachhi Tola, Sahebganj, District- Muzaffarpur.
16. Savita Kumari, Wife of Sanjay Kumar, resident of Village+ P.O. Madhopur, Hazarea, P.S. Sahebganj, District- Muzaffarpur. At present posted in Utkramit Middle School, Bangra, Gachhi Tola, Sahebganj, District- Muzaffarpur.

.... Respondents/Opposite Parties.

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Appearance :

For the Petitioner/s : Mr. Rakesh Ranjan, Advocate
For the State : Mr. Amrendra Kr. Pandey, A.C. to AAG 15
For the resp. no.13 : Mr. Krishna Kant Singh, Advocate
For the resp. no. 14 to 14 : Mr. S.S. Tiwary, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
And



HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)
Date: 06-10-2018

This application has been preferred seeking review of the common order dated 29.08.2017 passed in L.P.A. No. 106/2016 heard along with L.P.A. No. 67/2016 by the Hon'ble Division Bench of this Court.

2. Learned counsel representing the review petitioner admits that so far as the review petitioner is concerned, his contest was with Sohan Mahto (Opposite Party No. 13) who was earlier appointed against the only vacancy available for Extremely Backward Class (EBC).

3. It is submitted that even if it is accepted that the learned writ court had wrongly taken the marks of the review petitioner as 80.22% by adding 20% over and above the percentage of marks obtained by the petitioner in his qualifying examination, if Sohan Mahto (Opposite Party No. 13) who had secured 69.22% marks is sent to the general category by ousting the last candidate in the general category, this review petitioner would come to occupy the vacancy meant for EBC.

4. Learned counsel for the review petitioner does not controvert the finding of the Hon'ble Division Bench in very first paragraph of the impugned judgment wherein it has been held that the learned Single Judge has erred by not reading Rule 9 of the Bihar Panchayat Elementary



Teacher (Employment & Service Condition Conditions) Rules, 2006 in the right perspective because the 20 marks, which is required to be given by way of weightage, is not 20%. The Hon'ble Division Bench has rightly held that every candidate having certificate of experience can earn 20 extra marks in addition to the total marks in working out the percentage of the merit position but it is not required to be read as if after calculation of the percentage of marks, additional 20% is required to be given to a candidate on the basis of the certificate of experience.

5. It is in the aforementioned background that the Hon'ble Division Bench held in paragraph-4 of the impugned judgment as under:

“4. With only 20 marks added to the marks of Surendra Mahto (private respondent no. 14), his total marks do not added up to give him the benefit of continuance on the post of a Panchayat Teacher as the other respondents have more marks in terms of the percentage minus the weightage as such. It is, therefore, clarified that Surendra Mahto shall stand removed from his post as a Panchayat Teacher forthwith and so far as the respondent no. 13 (Sohan Mahto



and Kumari Anju) are concerned, since the learned Single Judge has allowed Sohan Mahto and Kumari Anju to continue to work on the post of Panchayat Teacher, no interference with that part of the direction or observation is required. It is expected that the two writ petitioners, Kumari Anju and Sohan Mahto, who are respondent no. 13 in these appeals, will continue in service as if they were not disturbed.”

6. From the aforementioned findings and admitted position that the review petitioner had originally moved the Tribunal challenging only the appointment of Sohan Mahto (Opposite Party No. 13) on the ground that the review petitioner had more marks than said Sohan Mahto, the Hon’ble Division Bench took a view that the review petitioner was wrongly counting 20% instead of 20 marks and thereby he was claiming himself better placed than Opposite Party No. 13 namely, Sohan Mahto. The Hon’ble Division Bench while deciding the L.P.A. has held that the Opposite Party No. 13 will continue in service as if he was not disturbed.

7. The contention of learned counsel representing the review petitioner that the order of the



Hon’ble Division Bench in the Letters Patent Appeal be reviewed and modified to the extent directing the last candidate in the general category to give way to Sohan Mahto (Opposite Party No. 13) and the review petitioner be appointed against the seat meant for EBC would amount to re-hear the appeal afresh which is not permissible in the review jurisdiction. No error apparent on the face of record could be pointed out to make out a case for interference with the impugned judgment under review.

8. We do not find any merit in the review petition, it is accordingly dismissed.

(Mukesh R. Shah, CJ)

(Rajeev Ranjan Prasad, J)

Rajeev/-

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CAV DATE	
Uploading Date	09.10.2018
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