

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12517 of 2017

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1. The State of Bihar through the Principal Secretary, Education Department, Govt. of Bihar, Patna.
 2. The District Education Officer, Bhojpur, Ara.
 3. The Block Development Officer, Barhara Block, Bhojpur, Ara.

... .. Petitioner/s

Versus

Angad Kumar Singh S/o Rajnandan Singh Resident of Village - Keshopur,
P.S. Barhara, District - Bhojpur.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Sunil Kumar
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT

Date : 01-05-2018

Heard learned counsel for the petitioner and the counsel
appearing on behalf of the respondents.

2. The State is petitioner before this court, aggrieved by
the decision of the State Appellate Authority dated 28.4.2017.
Manifold submission was advanced by Shilpa Singh, learned
counsel appearing on behalf of the State.

3. Learned counsel for the petitioner has led emphasis
on the conduct of the respondent. She would submit that
respondent is not entitled for any relief on account of his
misconduct, she submitted that the original marks sheet of the
respondent would indicate that respondent has scored 66.7 marks
but in the merit list it was shown 86 per cent. Argument was
advanced on behalf of the petitioner that candidates were given



opportunity to raise objection but respondent has not filed any objection when in the merit list his marks was shown as 86 per cent instead of 66 per cent and as such by his conduct he is not entitled to any relief.

4. Learned counsel submits that that objection was invited because the respondent has to approach the authority to rectify the mistake reflected in the merit list since it was in favour of the respondent, therefore, he has not filed objection and as such respondent conduct should be taken into consideration while granting any relief. Learned counsel submits that in the totality of facts situation the wrong was committed by the respondents and as such respondents is precluded from any relief but the State Appellate Authority has granted indulgence in favour of the respondent.

5. From the materials available on record, it appears that there is no dispute that persons having lower marks were appointed. Learned counsel submits that on account of failure on the part of the respondent to approach the competent authority for rectification and for default of the respondents persons below in the merit list were appointed. There is no dispute that the Camp was held on 26.7.2014 and after the Camp notice was issued to the respondent in 2016 and thereafter respondent service was



dismissed. The respondent approached the District Teachers Employment Appellate Authority but his appeal was dismissed.

6. Aggrieved by the said decision, the respondent filed Appeal No. 34 of 2017 before the State Appellate Authority. The State Appellate Authority has considered the entire facts and circumstances of the case and allowed the appeal notwithstanding the fact that the Appellate Authority has recorded that initially there was misrepresentation by the respondent. Learned counsel for the petitioner would submit that the Appellate Authority has recorded the finding that initial appointment of the appellant was wrong but he had superior merit and as such there was no justification for not considering his case. Highlighting the aforesaid observation of the State Appellate Authority, learned counsel for the State submits that once Appellate Authority has held out that initial appointment of the appellant was wrong there was no occasion for the Appellate Authority to grant any relief.

7. On the other hand, Smt. Mahasweta Chatterjee, learned counsel appearing on behalf of the respondent submits that in the totality of the facts situation one cannot dispute the fact that petitioner was better in the merit list than the candidates appointed and State cannot take advantage of their failure in scrutinizing the record and correcting the merit list which even if



corrected would justify the claim made by the respondents. She submits that there is absolutely no case that at the time of appointment the respondent has failed to file any document or misrepresented the authority that respondent has scored 86 per cent of marks. The State authorities cannot take advantage of their failure in scrutinizing the document. The error in the marks shown in the merit list cannot be a ground to dispense with the service of the respondents and the State Appellate Authority has rightly allowed appeal of the respondent.

8. Considering the rival submission and on perusal of the original record produced by Shilpa Singh the court is of the considered view that the petitioner in his original application has not claimed 86 per cent of marks. The error was committed at the level of the employment unit, therefore, for the fault of the employment unit the respondent cannot be made to suffer.

9. Law in this regard is well settled. Justice Chagla, the Chief Justice of Bombay High Court has occasion to settle the principle that one cannot take advantage of its own wrong and held out in the case of All India Groundnut Syndicate Ltd. Vs. Commissioner of Income -tax , Bombay City reported in 1954 B om.232 which reads as follows:-



“But the most surprising contention is put forward by the Department that because their own officer failed to discharge his statutory duty, the assesses is deprived of his right which the law has given to him under sub-section (2) of S.24. In other words, the Department wants to benefit from and wants to take advantage of its own default. It is an elementary principle of law that no person --we take it that the Income-tax Department is included in that definition---can put forward his own default in defence to a right asserted by the other party. A person cannot say that the party claiming the right is deprived of that right because “I have committed a default and the right is lost because of that default.”

10. Considering the present case at this stage and the law laid down by the Bombay High Court which was followed by the various courts with approval, the court is of the view that when the original records reflects that there is no misrepresentation or manipulation or claim contrary to what was the real marks obtained by the respondent one cannot even find fault with the respondent and the error committed by the employment unit while preparing merit list and reflecting erroneous marks what was not claimed by the respondent cannot be a ground to dispense with the service of the respondent. The court finds substance in the submission of the learned counsel for the respondents that on



scrutiny by the Employment Unit with open eye the respondent cannot be faulted for the wrong committed by the Employment Unit. She is justified in her submission that the original marks obtained by respondent if taken into the consideration, the respondent is above in the merit list and as such respondent is entitled to be appointed. Once it is found that merit position of the respondent is above all those appointed, the action of the State Authority dispensing with the service of the petitioner on the spacious plea that respondent has failed to file objection notwithstanding the fact that in the merit list wrong marks was reflected is unsustainable.

11. Law with regard to open eye theory is well settled in the case of Kurukhstra University AIR 1976 SC 376, the Apex Court has occasioned to lay down principle of open eye theory.

12. In view of the above it was solemn obligation of the Employment unit on verification of record to rectify mistake and if they committed mistake in preparation of the merit list it was their duty to rectify the mistake and they cannot fasten liability on the respondents for the wrong committed by the Employment Unit particularly when the original record indicate that the respondent has not made any false claim and even the corrected marks would not alter the merit position of the respondent.



13. Considering the aforesaid facts and circumstances, the court is of the considered view that no indulgence is required in the decision rendered by the State Appellate Authority. The writ petition accordingly, dismissed.

14. The original record produced before this court by the State counsel is returned.

(Anil Kumar Upadhyay, J)

Ravi/-

AFR/NAFR	NAFR
CAV DATE	
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