

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1525 of 2015

In
Civil Writ Jurisdiction Case No.13067 of 2012

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1. Punam Kumari @ Punam Devi W/o Pramod Kumar Sharma, resident of vill- Baijnathpur, P.S.- Chhauradano, Dist.- East Champaran
 2. Archana Kumari D/o Nawal Kishore Thakur, resident of vill.- Dhabdhabwa, P.S.- Adapur, Dist.- East Champaran

... .. Appellants

Versus

1. The State Of Bihar
2. The Principal Secretary, Human Resources Development Department, Govt. of Bihar, Patna
3. The Director, Primary Education, Govt. of Bihar, Patna
4. The District Magistrate, East Champaran at Motihari
5. The District Education Officer, East Champaran at Motihari
6. The Member, District Teacher's Employment Appellate Authority, East Champaran.
7. The District Program Officer, East Champaran, Motihari
8. The Block Development Officer, Chhauradano, Dist.- East Champaran
9. The Block Education Officer, Chhauradano, Dist.- East Champaran
10. The Pramukh, Panchayat Samittee Chhauradano, Dist.- East Champaran
11. The Secretary-cum-Pradhan Shiksha Padadhikari, Chhauradano Block Teacher's Employment Committee, Dist. East Champaran
12. Nitu Kumari, D/o Dasai Sah, of vill.- Mahmada, P.S.- Chhauradano, Dist.- East Champaran
13. Shubhra Kumari, W/o Pramod Prasad, resident of village Jitpur, P.S. Jitua, District East Champaran
14. Babita Kumari, W/o Vijay Kumar, resident of village Khairwa, P.S. Chhauradano, District East Champaran
15. Daisy Rani, W/o Jawahar Lal Prasad, resident of village Bakhri, P.S. Adapur, District East Champaran
16. Puja Kumari, W/o late Rameshwar Prasad, resident of village Raghunathpur, P.S. Chhauradano, District East Champaran

... .. Respondents

Appearance :

For the Appellant/s	:	Mr. Chitranjan Sinha, Sr. Adv. Mr. Sangeet Deokuliar, Adv.
For the Respondent/s	:	Mr. Avnish Nandan Sinha, AC to GPXXI
For respondent no.12	:	Mr. Anish Akhtar, Adv.
For respondents no.13 & 15:	:	Mr. P.K.Shahi, Sr.Adv. Mr. Satyam Shivam Sundram, Adv.
For respondent no. 14	:	Mr. Ram Kishun Prasad, Adv.
For respondent no.16	:	Mr. Patanjali Rishi, Adv.

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)



Date : 01-03-2019

This intra-Court appeal arises from the judgment and order dated 8.7.2015 of a learned Single Judge of this Court passed in C.W.J.C.No. 13067/2012, whereby the writ petition has been dismissed and the order of the District Teachers Employment Appellate Authority, East Champaran in Case No. 793/2011, whereby the appointment of the appellants- petitioners as Prakhand Teachers in Chhauradano Block, in the district of East Champaran was set aside and the case of the respondent Nitu Kumari was upheld for appointment in their place, has been upheld by the learned Single Judge.

The facts of the case lie in a very narrow compass and those essential for disposal of the appeal briefly stated are that an advertisement was published inviting application for appointment to the post of Prakhand Teachers in Chhauradano Block, in the district of East Champaran in the year 2008. The appellants possessing requisite qualification applied for the post under BC-II (Other Backward Class) category. The selection so initiated went through some tremors until 28.12.2010 when counselling of 102 applicants was made including the petitioners, the appellants herein. In between this period the caste 'Lohar' to which the petitioners- appellants belong was placed in BC-I (Extremely Backward Class) Category vide notification bearing Memo No.



1170 dated 25.3.2010 and the appellants under impression that their category had undergone a change, made a request for consideration of their respective cases against the vacancies earmarked for the BC-I category. The application of the petitioners was considered against the vacancies ear-marked for the BC-I category and as per their position in the merit list they were issued appointment letter on 28.12.2010, copies of which are enclosed at Annexures 3 series to the writ petition.

The respondent Nitu Kumari also coming under BC-I category had objections to the appointment of these appellants and she alongwith 23 other objectors moved the District Teachers Employment Appellate Authority (hereinafter referred to as 'the Appellate Authority'), East Champaran in Case No. 793/2011 to question the appointment of these appellants as according to her, whereas she had obtained 59.44 marks which was more than the marks obtained by the appellants, yet she had not been appointed.

The Appellate Authority taking note of this aspect of the matter upheld the claim of the respondent Nitu Kumari to quash the appointment of these appellants and directed for appointment of the said Nitu Kumari. It is feeling aggrieved by that part of the order which concerns the appellants that they moved this Court



through C.W.J.C.No. 13067/2012 and which has been dismissed by the judgment and order under challenge and hence, this appeal.

Before this Court the appellants filed I.A.No. 6583/2017 seeking to bring on record some other respondents which prayer was allowed and respondents no. 13 to 16 were added as party respondents to the appeal. While respondent no.12 comes under BC-I category and replaced the appellants with higher marks, respondents no. 13 to 15 come from BC-II category and respondent no.16 was appointed against the post reserved for Female category.

I have heard learned counsel for the parties and have perused the records and I find absolutely no infirmity with the order of the learned Single Judge on merits requiring interference for if the appellants chose to shift in between BC-II and BC-I category while the selection process was on, they would have to bear the consequences of such shifting and this is exactly what the learned Single Judge has held when he opines that it is the category to which the appellants belonged at the stage of filing of the application which would confirm the category against which they are to be appointed and not on change of course during the pendency of the selection process. The opinion of the learned Single Judge is in conformity with the factual position. These



appellants came under BC-II category when they filed their respective application for appointment to the post and while selection remained pending that 'Lohar' caste to which the appellants belonged, was placed in BC-I category and which prompted these appellants to seek a consideration against the changed categorization of the 'Lohar' caste. The request was accepted and resulted in appointment which has been struck down rightly by the Appellate Authority because these appellants could not have been permitted to change their category and they would continue to remain in BC-II category even if the caste status has changed during the pendency of selection.

Having observed thus, I am also constrained to note the irresponsible conduct of the Selection Committee in allowing the appellants to change their category for if the request would have been rejected, the case of these appellants would have been considered against BC-II category on their respective merit position. Somewhere down the lane, the Appointment Committee is also to be blamed for this confusion. As I have observed, the learned Single Judge has rightly opined that the case of these appellants should have been considered against BC-II category to which these appellants belonged at the stage of filing of the application but the learned Single Judge fell short of giving



direction to the Appointment Committee to consider the claim of these appellants against the said category on the ground that the selection process has come to a close.

In my opinion, the appellants cannot be wronged in either position for if their selection against BC-I category was held illegal then definitely they had a right to be considered for appointment against the category in which they had originally applied i.e. BC-II and against which vacancies, the respondents no. 13 to 15 have been appointed. There is yet another category of 'Reserved Female' and against which the respondent no.16 has been appointed. In my opinion, even if the opinion of the learned Single Judge in so far as it endorses the order of the Appellate Authority, suffers no infirmity warranting interference, it definitely has fallen short of the consequences flowing from such order which should have been considered in favour of the appellants for as I have held, they certainly were entitled for consideration against the vacancies in BC-II category. Whether or not the appellants were entitled to appointment against the BCII category, I shall be discussing later.

Perhaps it is for this reason that by filing an interlocutory application, the respondents no. 13 to 15, who have been appointed against BC-II category, were arraigned together



with respondent no.16 who was appointed against the 'Reserved Female' category because according to these appellants, they had a better claim in BC-II/ reserved Female category than respondents no. 13 to 16. In my opinion to the extent so discussed, the learned Single Judge has failed to appreciate that the matter required a remand to the Appointment Committee for consideration of the case of these appellants against such category. To such extent I am in respectful disagreement with the opinion of the learned Single Judge. It is for such purpose that by the order dated 25.9.2018 on hearing learned counsel appearing for the parties, we directed the respondent Department to place the following information on record:

- (a) Whether the appellants come within merit position in the BCII category;
- (b) Whether the vacancies are existing in the BCII category; and
- (c) Whether these appellant- writ petitioners can be accommodated in the BCII category without disturbing any of the private respondents.

It is in compliance of our order that a counter affidavit is filed by respondent no.9 i.e. the Block Education Officer, Respondent no.9 and the statements present at paragraph-4 onwards does confirm the prejudice caused to the appellants by the failure of the Appellate Authority as well as by the learned Single



Judge to remit their case for consideration by the Appointment Committee against the post ear-marked for the BCII category. Paragraph-4 of the counter affidavit gives the details of the vacancies and since the claim of the petitioners needs to be considered against Backward Class Category (BC-II) and not Extremely Backward Class (BC-I) category, I would be taking note of the vacancies coming under the Backward Class Category which shows six vacancies for the Females in such category. The chart further shows that three posts were also reserved for Females. The deponent Block Education Officer has given the details of respondents no. 13 to 15 at paragraph 9 and which are as follows:

(i) Respondent no.13 Subhra Kumari- 60.88

(ii) Respondent no.14 Babita Kumari- 55.22

(iii) Respondent no.15 Daisy Rani- 52.88

Puja Kumari, respondent no.16 was appointed against one of the three posts reserved for Female Category with 50.10 merit points, which is manifest from the chart enclosed in the counter affidavit of the official respondents filed in the writ proceedings.

The details that I have taken note of above would confirm that whereas appellant no.2 Archana Kumari was eligible



for appointment against BC Female category post having better merit points than Daisy Rani, in so far as appellant no.1 Punam Kumari is concerned, with 54.33 points she is better placed than Puja Kumari with 50.10 points to claim berth in 'Reserved Female' category. The services of these two appellants thus could not have been dispensed with and to such extent not only the Appellate Authority but even learned Single Judge have overlooked this relevant aspect of the matter. It is bearing note of our query present at (iii) above that the respondent Block Education Officer has given the details at paragraph 10 of the counter affidavit which reads under:

“ That it is humbly submitted with regard to vacancy position of the said phase, it is humbly stated that no posts under BC category is available and therefore, they cannot be accommodated against the BC category without disturbing the private respondents, however, 4 posts of the said phase is vacant for the present on account of resignation of appointees i.e. 1 post of EBC (F), 1 post of EBC and 2 post of UR category and the appellants can be accommodated against any of the vacant posts, under the direction/ order of this Hon'ble Court.”

The details present in paragraph 10 shows that there are two posts available in unreserved category and in my opinion, since even on merits these two appellants had a claim over the



respondent nos. 15 and 16 for continuance in service, the Appellate Authority should have issued such directions to the Appointment Committee and the learned Single Judge also having failed to appreciate this aspect of the matter, I am persuaded to direct the concerned authorities in the Education Department including respondents no. 2 to 11 to take steps for reinstatement of the appellants- petitioners against the two posts available in the 'unreserved category' and which process of reinstatement be completed within a period of six weeks of the receipt/ production of a copy of this order.

The judgment and order of the learned Single Judge passed in C.W.J.C.No. 13067 of 2012 is modified to that extent.

The appeal is allowed with the directions above but with no order as to costs.

(Jyoti Saran, J)

Nilu Agrawal, J I agree.

(Nilu Agrawal, J)

Surendra/-

AFR/NAFR	NAFR
CAV DATE	31.10.2018
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Transmission Date	NA

