

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.513 of 2015

In
Civil Writ Jurisdiction Case No.17698 of 2013

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Kavita Kumari D/o Late Suresh Rai. R/o At P.O.- Gauspur, Sarsauna, P.S.-
Tajpur, District - Samastipur.

... .. Appellant

Versus

1. The State Of Bihar
2. The District Magistrate, Samastipur.
3. The District Teachers Employment Appellate Authority, Samastipur.
4. The Block Development Officer, Tajpur, Samastipur.
5. The Block Education Officer, Tajpur, Samastipur.
6. The Employment Committee, Gram Panchayat Raj Gauspur, Sarsauna Block -
Tajpur, District - Samastipur
7. The Panchayat Secretary, Gram Panchayat Raj Gauspur, Sarsauna, Block
Tajpur, District - Samastipur.
8. Kumari Kamini. D/o Sri Rama Nand Sharma and W/o Sri Naresh Kumar
Sharma. Resident of village P.O.- Ali Nagar, Levadhan, P.S.- Baligaon, District
- Vaishali Hajipur.

... .. Respondents

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Appearance :

For the Appellant/s	:	Mr. P.K.Shahi, Sr. Adv. Mr. Mrityunjay Kumar, Adv.
For the Respondent/s	:	Mr. Upendra Kumar Singh, AC to GA-8
For respondent no.8	:	Mr. Shashibhushan Kumar, Adv. Mr. Returaj Chaudhary, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 16-01-2019

This intra-Court appeal arises from the judgment and order dated 15.1.2015 passed by a learned Single Judge in C.W.J.C.No. 17698/2013, whereby the order of rejection to the appeal filed by the private respondent bearing Appeal No. 1665/2012 has been set aside and which is followed by a direction to the Panchayat Teachers Appointment Committee to consider the implementation of an earlier order passed by the appellate



authority in Appeal No. 1330/2010 preferred by the appellant, whereby the Appointment Committee was directed to fill up the vacant post of a Panchayat Teacher in the Backward category from amongst those with merit points in the category including the claim of the appellant herein.

We fail to appreciate the cause of action for the appellant to move in appeal because it is in the implementation of that very order so referred to by the learned Single Judge in Appeal No. 1330/2010 and in course of its implementation that the Panchayat Teacher Appointment Committee made her appointment and on which post she still continues which appointment was not interfered with by the learned Single Judge.

Mr. Mrityunjay Kumar, learned counsel appearing for the appellant, while accepting this position submits that it is in view of stigmatic reference made by the learned Single Judge at paragraphs 1 and 2 of the order at Page-2 which practically disqualifies her simply because the appellant happens to be the daughter of the Mukhiya even when neither the Service Rules regulating such appointment debars any such candidature nor any such objection was taken by any of the candidate (s) including the private respondent nor there is anything on record which would reflect nepotism by the Mukhiya. He submits that a simple co-



incidence has led to such adverse opinion reflected in the order which has a prejudicial effect. Having noted the reasons for which this appeal has been filed we are persuaded to record certain relevant events which had led to the order impugned in this appeal which would have a bearing as to whether at all, there was a reason for interference by the learned Single Judge in a well discussed order of the Appellate Authority passed in Appeal No. 1665/2012.

The pleadings on record would confirm that the process of selection for appointment of a Panchayat Teacher amongst the different categories was initiated way back in the year 2006. The competent Committee so constituted under the Service Rules regulating appointment of the Panchayat Teacher fixed 24.2.2007 as the date of counseling on which date the appellant, private respondent and one Urmila Devi and some others appeared. A merit list on the basis of marks secured by each on their educational achievement was prepared which placed Urmila Devi at serial no.1, the private respondent at serial no.2 and the appellant herein below them apart from some other applicants to the post who also figured in the list. It is following this exercise that Urmila Devi was appointed and which appointment on being questioned was set



aside by the Appointment Committee as the certificates submitted by her were not found to be correct.

The termination order was questioned by the said Urmila Devi before the District Teachers Employment Appellate Authority giving rise to Appeal No. 736/2007 and it was dismissed by the appellate authority on 21.10.2009. This order of the appellate authority was questioned by Urmila Devi before this Court in C.W.J.C.No. 18581/2009 and a learned Single Judge of this Court vide order passed 3.8.2010 dismissed the writ petition finding no merit therein. A copy of the order passed by the learned Single Judge is enclosed at Annexure 'A' to the State's counter affidavit filed in the writ proceedings.

Feeling aggrieved by the dismissal order, Urmila Devi filed intra-Court appeal giving rise to L.P.A.No. 1691/2010 which met the same fate and was also dismissed on 25.7.2011 by the Division Bench which order is enclosed at Annexure 'C' to the same affidavit.

It is because the post fell vacant with no effort by the respondents to fill up the same that the appellant herein filed an application before the Appellate Authority giving rise to Appeal No. 1330/2010 and the Appellate Authority on examination of the claim put forth by the appellant herein, vide order passed on



28.1.2011 enclosed at Annexure 'B' to the State's counter affidavit referred to above, directed the Appointment Committee to fill up the post from amongst those in the merit list and in case the appellant was found to be superior in merit for appointment, then take decision accordingly.

It is following this direction of the Appellate Authority that the matter was examined by the Appointment Committee and has led to the resolution passed on 9.2.2011, whereby the Committee on consideration of the candidates on record chose to appoint the appellant herein to the post and following which appointment letter was issued. This appointment was questioned by the private respondent before the Appellate Authority through Appeal No. 1665/2012 and which has been dismissed by the Appellate Authority vide order passed on 21.12.2012 impugned at Annexure 1 to the writ petition. Feeling aggrieved the private respondent moved through the writ petition in question and which has been allowed on terms as we have already discussed above, which aggrieves the appellant herein and hence, this appeal.

We have heard Mr.P.K.Shahi, learned Senior Counsel assisted by Mr. Mrityunjay Kumar, learned counsel appearing for the appellant, Mr. Upendra Kumar Singh, learned AC to GA-8 for



the State and Mr. Shashibhushan Kumar, learned counsel for the private respondent and have perused the records.

It is taking note of the nature of contest that we also have directed for records of the selection which has since been produced by Mr. Singh. A cursory glance of the two registers which contains proceedings of the Appointment Committee dated 24.2.2007 whereby initial appointment process was undertaken as well as the register containing the exercise undertaken by the Appointment Committee following the order passed by the Appellate Authority on Appeal No. 1330/2010, we do notice that in the proceedings of the Appointment Committee recorded on 24.2.2007 while Urmila Devi with 69.2 marks was far above the appellant and the private respondent, the private respondent with 60.33 marks and the appellant with 55.8 marks followed her. The register also records a proceeding on 6.3.2007 wherein it is recorded that the candidates were called after counselling and on which date five candidates did appear in the B.C. Category including the appellant and Urmila Devi but the name of the private respondent is missing. Since obviously Urmila Devi was superior amongst the candidates that she was appointed on the basis of this exercise and what followed thereafter we have already discussed and requires no repetition.



The only issue which falls for consideration is whether in view of the order passed by the Appellate Authority in Appeal No. 1330/2010, the implementation of which has resulted in the appointment of the appellant, the private respondent waking from a slumber of almost five years, the challenge posed, merited any consideration in the light of the materials on record.

While according to Mr. Shashibhushan Kumar, learned Counsel for the respondent-writ petitioner, in view of the order passed by the Appellate Authority in Appeal No. 1330/2010 all such candidates who were on merit, had to be considered and since undisputedly the private respondent secured higher marks than the appellant, the Appointment Committee was under an obligation to consider her candidature and to notice her but they failed to do so rather it is simply because the appellant happened to be the daughter of the Mukhiya that she could take march over the private respondent, this argument has been endorsed by the learned Single Judge by the judgment under challenge. However, in between this argument and the opinion recorded, the records of the selection process has not been examined.

As we have noted, it is under the orders of this Court that the records have been produced to show that following the counselling on 24.2.2007 the candidates were called on 6.3.2007



for giving consent although according to Mr. Shashibhushan Kumar, this exercise was uncalled for because the Rules do not permit as such. He also argues that this lapse has also led to institution of the cases/ proceedings which creates a doubt as to whether any such exercise took place on 6.3.2007.

May be, Mr. Shashibhushan Kumar has instructions to advocate as such but neither the records have been seized if any such proceedings has been initiated nor the private respondent at any stage did question the selection process on this alleged irregularity. In fact a very relevant aspect of the matter which has gone unnoticed by the learned Single Judge is that the private respondent practically abandoned her claim since after counseling took place on 24.2.2007 which led to appointment of Urmila Devi for in between the date of counseling i.e. 24.2.2007 until the filing of the appeal by the private respondent bearing Appeal No. 1665/2012, a period of more than five years had lapsed and our repeated query to the learned counsel whether the private respondent at any stage raised her claim for such appointment before any forum, went unanswered.

May be, the order passed by the Appellate Authority in Appeal No. 1330/2010 filed by the appellant herein, the faint copy of which is at Annexure 2 and legible copy is at Annexure 'B' to



the counter affidavit of the State in the writ proceeding, did direct the Appointing Authority to examine the merit points before making appointment on the post falling vacant following termination of Urmila Devi and while doing so consider the claim of the appellant as well but then it is undisputed that neither the private respondent raised any claim for appointment following such order nor the records so produced does show that the private respondent did appear for her consent. Whether or not, this exercise of seeking consent was required or was done unnecessarily, is not a subject matter here rather we are persuaded to take notice of this fact because it is following the exercise of counselling on 24.2.2007 followed by the consent taking on 6.3.2007 that the appointment of Urmila Devi was initially made and this exercise was never questioned by the private respondent either on the validity of appointment of Urmila Devi or on the exercise being dehors the statutory requirements.

In the circumstances so noted where as per records so available before the Appointment Committee, only a limited number of candidates were to be considered for appointment in the light of the order passed by the Appellate Authority in Appeal No. 1330/2010 and since the minutes of the meeting of the Appointment Committee dated 6.3.2007 does not record



appearance of the private respondent for giving a consent, the plea taken by Mr. Shashibhushan Kumar that the private respondent needed a notice, does not hold good because as per the records available her candidature lost its force when as per minutes she failed to appear for giving her consent.

We have already recorded above that the private respondent since after her counseling on 24.2.2007 did nothing to claim the post rather it is only on the appointment of the appellant herein on 9.2.2011 that after a lapse of five years since the initial selection and even after one year of the appointment of the appellant herein that an appeal was filed bearing Appeal No. 1665/2012 and the Appellate Authority after discussing the matter threadbare and taking notice of the superior candidature of the private respondent, yet did not find merit in the claim to dismiss the appeal.

For the reasons and discussions above, we record our respectful disagreement with the opinion of the learned Single Judge both on the merits of the order passed by the Appellate Authority as well as his observation as to the candidature of the appellant herein, in absence of any such prohibition in the Rule or objection taken by any of the candidates.



In result, the order of the learned Single Judge passed in
C.W.J.C. No. 17698/2013 is set aside

That the appellant has already been appointed and her
appointment has not been interfered with even by the learned
Single Judge, she would continue on her post as per the
appointment order.

Let the registers produced by Mr. Upendra Kumar
Singh, learned AC to GA-8, be returned forthwith.

The appeal is allowed with no order as he costs.

(Jyoti Saran, J)

(Arvind Srivastava, J)

Surendra/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	12.02.2019
Transmission Date	NA

