

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1148 of 2015

In
Civil Writ Jurisdiction Case No.5433 of 2013

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Akhilesh Kumar Sah, S/O Shri Dudhnath Sah, Resident of village- Harpur
Chatawa, P.O.- Suhayee Sahpur, P.S.- Baniapur, District- Saran.

... .. Appellant/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Education Department, Government of Bihar, Patna.
3. The Director, Secondary Education, Education Department, Government of Bihar, Patna.
4. The District Magistrate, Saran at Chapra.
5. The Deputy Development Commissioner-cum-Chief Executive Officer, Zila Parishad, Saran at Chapra.
6. The Chairman, Zila Parishad, Saran at Chapra.
7. The District Education Officer, Saran at Chapra.
8. The District Programme Officer (Establishment), Saran at Chapra.
9. The Member, District Teacher Employment Appellate Authority, Siwan.
10. Sikandar Kumar Mandal, Son of Dhaneshwar Prasad Mandal, Resident of Village- Labha, P.O.- Mahadeopur, P.S.- Pranpur, District- Katihar.
11. Chandan Kumar, Son of Shri Indradeo Mandal, Resident of Village- Budh Chauk, Police Station- Kahalgaon, District- Bhagalpur, at present posted as Secondary Zila Parishad Teacher in Govt. High School Khanpur, District- Saran.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Ravi Ranjan, Adv. Mr. Kislay Raj, Adv.
For the Respondent-State	:	Mr. Prabhakar Jha, GP-27 Mr. Mukund Mohan Jha, AC to GP-27
For the Respondent No.10	:	Mr. Sudish Kumar, Adv.
For the Respondent No.11	:	Mr. Shashi Bhushan Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

and

HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 15-05-2019



This appeal arises from a judgment and order of the learned Single Judge dated 17.12.2014 passed in CWJC No.5433 of 2013, whereby the writ petition has been dismissed and the order of the District Teachers Employment Appellate Authority (hereinafter referred to as 'the Appellate Authority') in Case No.252 of 2010 has been upheld.

We have heard Mr. Ravi Ranjan, learned counsel appearing for the appellant-writ petitioner, Mr. Prabhakar Jha, learned Government Pleader No.27 for the State, Mr. Shashi Bhushan Kumar, learned counsel appearing for the respondent no.11 and Mr. Sudish Kumar, learned counsel appearing for the respondent no. 10.

Facts lie in a very narrow compass and it is the appointment of the appellant-writ petitioner and the respondent no.11, Chandan Kumar along with some others which was put to question before the 'Appellate Authority' by the respondent no.10, Sikandar Kumar Mandal in Case No. 252 of 2010.

The Appellate Authority while issuing notice to the appellant-writ petitioner refrained from doing so in so far as the respondent no.11 is concerned because the address was incomplete and obviously in between the appellant-writ petitioner and the respondent no.10 who was the applicant before the 'Appellate



Authority', since the applicant was having higher marks than the appellant-writ petitioner that the 'Appellate Authority' while quashing the appointment of the appellant-writ petitioner and without examining whether or not the respondent no.11, Chandan Kumar had better or lesser marks than the appellant-writ petitioner, directed for appointment of the applicant in his place. This aggrieved the appellant-writ petitioner to move this Court in the writ petition in question which has been dismissed and hence this appeal.

The arguments inter-party persuaded us to call for the records and which has given a new light to the inter-party contest which stands noted in our order dated 05.02.2019 which we are persuaded to reproduce herein because it practically concludes the contest and runs under:

“The facts briefly noted from the pleadings on record is that following a selection process initiated for appointment of Panchayat Teacher in Social Studies stream under Scheduled Tribe category that three persons were appointed under Zila Parishad, Saran at Chapra, namely, Amaresh Kumar with 62.91%, Akhilesh Kumar Sah, the appellant-writ petitioner with 62.11% and Chandan Kumar, private respondent no.11 with 61.16%. This appointment came to be challenged by one Sikandar Kumar Mandal claiming to be an applicant against one such post. This challenge posed by Sikandar Kumar Mandal before the District Teachers Employment Appellate Authority gave rise to Case No. 252/2010. According to the applicant, while he had secured 62.42%, the appellant- writ petitioner with 62.11%



and the private respondent no.11 Chandan Kumar with 61.16% had managed to obtain appointment in preference to his claim.

The appellate authority while choosing to issue notice to the appellant- writ petitioner accepting the contentions, in absence of address of the private respondent no.11 did not issue notice to him. Thus, even when respondent no.11 had lesser marks than the appellant- writ petitioner, the Appellate Authority, Saran at Chapra taking a short route, decided the matter on the basis of the parties appearing i.e. applicant and the respondent-writ petitioner, who chose to appear and contest the matter and resultantly, even when the private respondent no. 11 had lesser marks than the appellant-writ petitioner, yet the appellate authority proceeded to set aside his appointment and gave direction for appointment of the applicant which has since taken place vide Annexure-17 to the writ petition.

It is too obvious that the appellant-writ petitioner feeling aggrieved approached this Court through the writ petition in question and a learned Single Judge while taking note of the grievance has refused to interfere therewith to dismiss the writ petition but while observing that the inter-party dispute between the appellant-writ petitioner and respondent no. 11 can be raised before an appropriate forum.

This matter was taken up for consideration on 14.12.2016 and a Co-ordinate Bench noting the marks obtained by the appellant-writ petitioner qua the applicant before the Appellate Authority i.e. Sikandar Kumar Mandal recorded a prima facie satisfaction that since Sikandar Kumar Mandal had a better claim, to that extent, neither the order of the Appellate Authority nor the order of the learned Single Judge required interference.

Notice was issued to respondent no. 11 who has appeared through Mr. Shashi Bhushan Kumar as led by Mr. Y.V. Giri, learned Senior Counsel.

When the matter came up for consideration upon service of notice on the private respondent no. 11, Mr. Ravi Ranjan, learned appellant counsel



reiterated the position that if any person had to make way for the appellant before the appellate authority, it was respondent no. 11 who had lesser marks than the appellant-writ petitioner and in no circumstance the Appellate Authority should have set aside the appointment of the appellant-writ petitioner. He has also raised issues regarding failure of the applicant before the Appellate Authority, Sikandar Kumar Mandal to participate either in the counselling or in figuring in the provisional list. In addition to such submission, it was argued by Mr. Ravi Ranjan that simply because Sikandar Kumar Mandal failed to give the details of the respondent no. 11 that conveniently the Appellate Authority refused to issue notice to him and on this count itself the order of the Appellate Authority is unsustainable which relevant aspect of the matter has escaped the notice of the learned Single Judge.

It is rather strange that even when the respondent no.11 had lesser mark than the Appellant-writ petitioner, simply because the applicant before the Appellate Authority, Sikandar Kumar Mandal failed to provide the address, the Appellate Authority waved of this mandatory requirements which actually has fractured the decision taken thereon.

The illegality does not stop here and even though a Co-ordinate Bench while hearing this matter on 14.12.2016 recorded a satisfaction on the inter-party merits between the appellant-writ petitioner and the applicant before the Appellate Authority, our direction to the respondent State to produce the records have given some strange result for the provisional list so prepared in the category of Scheduled Tribe does not contain the name of the applicant Sikandar Kumar Mandal.

We are of the view that since neither the learned Single Judge nor a Co-ordinate Bench while expressing a prima facie opinion on 14.12.2016 issued direction for production of the records, this relevant aspect of the matter could not come to surface.

Mr. Prabhakar Jha, learned State Counsel in reference to the records so produced has submitted



that neither Sikandar Kumar Mandal participated in the counselling nor his name figures in the provisional list nor did he file any objection before Appointment Committee and thus the Appellate Authority has gone beyond jurisdiction to order for his appointment.

We have noted these relevant facts because of the observation made by a Co-ordinate Bench on 14.12.2016 in not finding it necessary to notice the respondent no. 10, who was the applicant before the Tribunal and perhaps considering the marks obtained by the appellant-writ petitioner qua applicant before the Appellate Authority Sikandar Kumar Mandal, the Coordinate Bench had reason to do so but having perused the records which demonstrates the non-participation of Sikandar Kumar Mandal in the selection process, we have different views to issue notice to Sikandar Kumar Mandal, respondent no. 10.

Accordingly, let notice issue to respondent no.10, for which requisites under ordinary process as well as registered cover with A/D be filed by 12th February, 2019, failing which the Memo of Appeal, as against him, shall stand rejected without further reference to the Bench.

List this matter for consideration on 25th March, 2019 under the heading 'For Orders' for passing appropriate order for fixing the date of hearing at the admission stage.

The records produced by Mr. Jha is returned to him to be kept in his custody until disposal of the matter.”

It is following the notice issued that the respondent no.10, Sikandar Kumar Mandal has appeared through counsel Mr. Sudish Kumar and we have heard the learned counsel appearing for the parties at length.



The facts that we have noted in our order reproduced hereinabove, are on examination of the records and which confirms the non-participation of the applicant before the 'Appellate Authority' in the counselling before the Appointment Committee. It is for this reason perhaps, that his name did not reflect either in the provisional or the final list of appointees. Our repeated query to learned counsel appearing for the respondent no.10 who was the applicant before the 'Appellate Authority' to demonstrate whether, the selection process as a whole, was put to question on this irregularity has gone unanswered because learned counsel has failed to satisfy us on this aspect which would persuade us to remand the matter back to the 'Appellate Authority' for examination of the issue afresh.

The records do confirm to a valid selection process, in which some of the applicants responded and were called for counselling. It is on examination of merit that the appellant and the respondent no.11, Chandan Kumar were appointed. It is relevant to note that at no stage of the appointment proceedings, does the name of the respondent no.10 figures in the selection process and that is how his name did not figure in the list of successful candidates. Even before us, nothing is shown on the participation of the respondent no.10, in the counselling. In case the respondent



no.10 was not called for counselling then he should have protested but it is not on this count rather it is purely on inter-party merits that a complaint was made by the respondent no.10 before the 'Appellate Authority' seeking appointment to the post. Obviously since the respondent no.10 had higher marks than both the appellant-writ petitioner and the respondent no.11 that the 'Appellate Authority' without examining this relevant aspect of the matter where the records do not confirm his participation in the counselling, concluded in his favour without examining the records of the appointment committee which would have confirmed two relevant aspects of the matter, namely:

- (a) The non-participation of the applicant-respondent no.10 in the appointment process; and
- (b) If anyone had to go, it was respondent no.11, Chandan Kumar who has lesser marks than the appellant-writ petitioner.

In the undisputed facts noted hereinabove, in our opinion where the applicant failed to question the selection process on its transparency or fairness rather limited the contest on inter-party based upon the marks obtained by each of the candidates, the 'Appellate Authority' committed a serious illegality in not examining the locus of the applicant to challenge the appointments



by perusal of the records. In our considered opinion the facts transpiring from the records of the appointment committee indicate no infirmity committed by the appointment committee in appointing the appellant and the respondent no.11, Chandan Kumar against the vacant post. Unfortunately this relevant aspect of the matter has escaped the notice of not only the ‘Appellate Authority’ but even the learned Single Judge.

In such view of the matter and while expressing respectful disagreement with the opinion expressed by the learned Single Judge in CWJC No. 5433 of 2013, we set aside the order dismissing the writ petition dated 17.12.2014 to allow the writ petition and consequently to set aside the order dated 19.03.2012 passed by the ‘Appellate Authority’ in Case No. 252 of 2010 to restore the appellant- writ petitioner to his post.

The appeal is allowed.

(Jyoti Saran, J)

(Anjani Kumar Sharan, J)

Anjula/Skpathak

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	19.06.2019
Transmission Date	NA

