

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19818 of 2012

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Punam Kumari W/O Mr. Vivek Veer Vikram Singh Sakeen- Daunkhurd, P.S.-
Darauli, District- Siwan.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Human Resource Development Authority, New Secretariat, Patna, Bihar.
2. The Principal Secretary, Human Resource Development Authority, New Secretariat, Patna.
3. District Teacher Appointment Appellate Authority, Siwan.
4. The District Magistrate, Siwan.
5. Block Education Extension Officer, Block- Daarunda, District- Siwan
6. Panchayat Secretary, Panchayat Raj- Harshar, Block- Dauranda, District- Siwan.
7. Mukhiya, Panchayat Raj- Harshar, Block- Dauranda, District- Siwan
8. Om Prakash Singh S/O Chandeshwar Singh Resident Of Sherpur, District- Siwan.
9. Kaushlendra Prasad Verma S/O Satya Narayan Prasad Verma Sakeen- Pokhra, District- Siwan.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Anurag Saurav, Adv. Mr. Priyajeet Pandey, Adv. Mr. Abhinav Alok, Adv.
For the Respondent/s	:	Mr. Ashok Kumar Gupta, AC to GP-10

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

7 29-07-2019 Heard learned counsel for the petitioner and the
counsel appearing on behalf of the State.

Petitioner has challenged the order dated 31.10.2011
contained in Annexure-5. It appears that the District Teachers
Employment Appellate Tribunal directed consideration of the
case of respondent no.8, Om Prakash Singh for appointment in
place of respondent no.9, Kaushlendra Prasad Verma.



Learned counsel for the petitioner submits that respondent no.9 obtained job as Panchayat Shikshak on the basis of forged certificate, his appointment was challenged by respondent no.8 before District Teachers Employment Appellate Tribunal. On 31.10.2011, the District Teachers Employment Appellate Tribunal has passed order in favour of respondent no.8 and directed the appointment of respondent no.8, Om Prakash Singh in place of respondent no.9, Kaushlendra Prasad Verma whose appointment was found to be invalid on account of use of forged and fabricated documents.

Petitioner thereafter filed appeal before the District Teachers Employment Appellate Tribunal saying that her merit position is above Om Prakash Singh and as such petitioner deserve consideration of her case, before consideration the case of Om Prakash Singh. The District Teachers Employment Appellate Tribunal rejected the contention of the petitioner vide order dated 03.08.2012.

In this case notice was issued to the respondent no.8 and 9 which was validly served. Respondent no.8 although entered appearance by filing Vakalatnama but no counter affidavit has been filed on his before to contest the writ application. In the present proceeding, neither the private respondents has filed counter affidavit, nor State has filed counter affidavit.



In view of the law laid down by the Apex Court in the case of *Smt. Nasim Bano Vs. State of U.P. and others (AIR 1993 SC 2592)*, the Court has to proceed as if the averment made in the writ application are admitted as if there is no counter affidavit filed by the respondents in the present proceeding. In this situation where appointment procured on the basis of forged certificate was interfered with and Appellate Authority entered into the merit of such appointment, it was incumbent upon the District Teachers Employment Appellate Authority to direct consideration of all eligible candidates in accordance with merit but instead of directing consideration of person above in the merit list above Om Prakash Singh, the Tribunal confined the direction to consideration of the case of Om Prakash Singh and on the basis of order as contained in Annexure-5 he has been offered appointment. It appears that taking advantage of appointment on the basis of Annexure-5, the respondent no.8, Om Prakash Singh has avoided the present proceeding despite filing Vakalatnama.

Under the aforesaid circumstanced, the Court is constrained to decide the present application, the order contained in Annexure-5 is bad for the reason that the District Teachers Employment Appellate Tribunal has directed consideration of Om Prakash Singh and not issued direction to the employment Unit to consider the case of others in the merit



list when appointment procured by Kaushlendra Prasad Verma was held to be obtained on the basis of forged certificate. Annexure-5 is accordingly quashed. The Court also find error in the decision contained in Annexure-1 rejecting the appeal preferred by this petitioner.

Accordingly, the order dated 31.10.2011 contained in Annexure-1 is also quashed, the employment unit is directed to take appropriate decision for appointment on the post of Panchayat Shikshak in against the vacancy occasioned on account of displacement of Kaushlendra Prasad Verma as Panchayat Shikshak on declaration of his appointment bad on account of forged certificate.

Necessary decision in this regard must be taken by the respondent Employment Unit at the earliest preferably within a maximum period of 60 days from the date of receipt/production of a copy of this order.

With the aforesaid, the writ application stands disposed of.

(Anil Kumar Upadhyay, J)

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