

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1133 of 2018

In
Civil Writ Jurisdiction Case No.12204 of 2017

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Sudha Kumari wife of Laxmi Narayan Mishra, resident of village Chakdah,
P.S. Rajnagar, District Madhubani.

... .. Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department,
Govt. of Bihar
2. The District Teacher's Employment Appellate Authority, Madhubani.
3. The District Education Officer, Madhubani.
4. The District Programme Officer (Establishment), Madhubani.
5. The Block Education Officer, Block Rajnagar, Madhubani.
6. The Panchayat Secretary, Gram Panchayat Raj Ranti, Rajnagar, Madhubani.
7. The Mukhia, Gram Panchayat Raj Ranti, Rajnagar, Madhubani.
8. Renuka Kumari, wife of Pankaj Kumar Choudhary resident of village
Chakdah, P.S. Rajnagar, District Madhubani.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Anju Mishra, Advocate
For the Respondent/s : Mr.Ashutosh Ranjan Pandey- AAG-15

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

C.A.V. JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA MISHRA)

Date : 13-09-2019

A series of litigation between the litigating parties followed by repeated orders of remand to the District Appellate Authority, Madhubani has led to the filing of the present Intra Court Appeal wherein the impugned judgement dated 16.05.2018 delivered by the learned Single Judge in C.W.J.C. No. 12204 of 2017 has been assailed whereby the



learned Single Judge has once again remitted the issue to the Appellate Authority, Madhubani in the following terms :-

“In the totality of facts situation discussed hereinabove and considering the order passed by the writ court in C.W.J.C. No. 14195 of 2012 the order of the Tribunal is quashed and the matter is remitted back for decision afresh after opportunity of hearing to the Sudha Kumari and Renuka Kumari. The Tribunal is required to consider the issue as to the claim of the petitioners Sudha Kumari and Renuka Kumari on verification of record and as to participation of the petitioner Sudha Kumari in the counseling and if it transpires from the record that Sudha Kumari has participated in the selection process, the Tribunal is required to adjudicate the issue as to the merit position of the petitioner Sudha Kumari. In the event if it is found that Sudha Kumari has not participated in the counseling the other enquiry is now academic and is not required to be taken into account. The Tribunal is required to examine the case of the petitioners Sudha Kumari and Renuka Kumari and liberty shall be available to the petitioner



Sudha Kumari and Renuka Kumari to raise all objection including the issue of participation in the counseling in the matter of selection including the forged certificate experience certificate and participation in the counseling.”

2. Three writ applications bearing C.W.J.C. No. 929 of 2016 (Monaj Kumar & Ors Vs. The State of Bihar & Ors.), C.W.J.C. NO. 12204 of 2017 (Sudha Kumari Vs. State of Bihar & Ors. with private respondent no. 8, Renuka Kumari), and C.W.J.C. No. 14112 of 2016 (Renuka Kumari Vs. State of Bihar & Others with private respondent no. 11, Sudha Kumari) came up for consideration before this Court. The said applications were filed challenging the order dated 01.12.2015 passed by the Tribunal which had interfered with the selection of all the candidates and had passed the order in the following terms :-

“It is the contravention of the statutory rules. So *void ab-initio* it is not necessary to issue show cause notice to each selectee. Only way out would be to cancel the whole selection.”

3. The contention raised was that the appointments of the selected candidates could not have been



disturbed by the Tribunal, as the remand order from this Court had given specific instruction in C.W.J.C. No. 14195 of 2012 **(Renuka Kumari Vs. The State of Bihar & Ors.)**, as to the manner in which the Tribunal was to proceed. While setting aside the earlier order of the Tribunal, this Court had remanded the matter to the Tribunal on 24.09.2013 for reconsideration of the entire case of the petitioner vis-à-vis the respondent no. 11 of the said case **(Sudha Kumari)**. The text of the order is extracted hereinunder for ready reference :-

“The Court would accordingly set aside the impugned order passed by the Tribunal and remit the matter back for reconsideration of the entire case of the petitioner vis-à-vis respondent no. 11 with specific reference to the entire selection procedure of Panchayat teacher in terms of Rule 9 of the Rules. The Tribunal will firstly look into as to whether a merit list prepared after publication of the draft merit list in as much as the register which has been produced before the Tribunal for effective reconsideration by the Tribunal, will go to show that at no point of time any draft merit list was prepared. In fact there is also no proof of even preparation of final merit list



and its being published and therefore the Tribunal in all fairness will be required to go into the entire gamut of the process of selection and appointment of not only this petitioner but also all of others who were selected in the same selection process namely, Nitu Kumari, Manoj Kumar, Ramnaresh Singh, Kamalnath Paswan, Baby Kumari, Gopal Krishna, about whom there is reference of selection and appointment in the proceeding dated 13.08.2010, 28.12.2010 and 29.12.2010.

The Tribunal will also examine the experience certificate of the petitioner by not only calling for the report from the District Mass Education Officer, Madhubani but would also look into the documents produced by the petitioner as referred in her experience certificate such as her selection appointment and training as an Instructor in Non-Formal Education coupled with the proof of her actual working as an Instructor in the light of payment of remuneration made to her. After these documents are filed by the petitioner they will be sent to the District Mass Education Officer,



Madhubani for its verification and the final decision on the merit point awarding of 20 weightage marks for experience to the petitioner will be taken by the Tribunal after considering all these materials.

Finally the Tribunal will find out that if the appointment of the petitioner was vitiated on account of an invalid experience certificate which would took away 20 weightage marks and reduce her to 57.44%, it would not be required to go into the large exercise of examining the appointment of others but if it finds the experience certificate of the petitioner is valid it may go to the large issue by examining the entire selection procedure.”

4. The Tribunal, however, when seized of the matter has proceeded to reopen the entire issue and while holding the entire selection process to be void ab-initio, set aside the entire selections which led to the filing of the three writ applications. Thereafter, the learned Single Judge while setting aside the interference made by the Tribunal with regard to the appointment of the petitioners in C.W.J.C. No. 929 of 2016 once again remitted back the case of Sudha Kumari



(petitioner in C.W.J.C. No. 12204 of 2017) and that of Renuka Kumari (petitioner in C.W.J.C. No. 14112 of 2016). It is against this order that the present appellant seeks setting aside the same on the grounds and on facts which are detailed hereinafter.

5. The brief facts from which the present lis emanates is that :-

(a) The appellant, Sudha Kumari applied for the post of Panchayat Teacher pursuant to the advertisement published in 2008 in Gram Panchayat Raj Ranti, Madhubani and participated in the counseling held on 28.02.2009. However, she was denied appointment by showing her absence in the counseling whereas respondent no. 8 Renuka Kumari was appointed though she was having lesser marks than the petitioner and was having a forged certificates.

(b) The appellant filed the Complaint Case No. 836 of 2011 before the District Teachers Employment Appellate Authority (hereinafter referred to as the “Appellate Authority”) which gave the finding that the petitioner had appeared in the counseling and that respondent no. 8 was in possession of a forged experience certificate and vide order dated 29.06.2012 set aside the appointment of



respondent no. 8 and ordered the appellant-petitioner to be appointed in her place.

(c) Respondent-Renuka Kumari challenged the said order of the Appellate Authority before this Court in C.W.J.C. No. 14195 of 2012 and vide order dated 24.09.2013, the matter was remanded back to appoint the petitioner if the certificate of the respondent is found false, text of the order has already been quoted hereinabove.

(d) However, the Appellate Authority on remand vide order dated 01.12.2015 again gave the finding that the experience certificate of respondent no. 8 was forged but did not appoint the petitioner in her place.

(e) This order again came under challenge in C.W.J.C. No. 12204 of 2017 but the learned Single Judge, instead of deciding the issue on the basis of the findings arrived at by the Appellate Authority, once again remanded back the whole issue setting the entire exercise of the appellate authority at nought constrained by the aforementioned order of the remand, the appellant has preferred to challenge the same in the present Intra Court Appeal.

6. Learned counsel for the appellant, thus, urged



that the order of the learned Single Judge in remanding the issue once again appears to be erroneous on the face of it as in the earlier round of litigation the findings which have been arrived at with regard to the participation of the present appellant in the counseling was not touched and, therefore, became final and binding in so far as it related to her participation in the counseling. The remand order passed in C.W.J.C. No. 14195 of 2012 was with certain specific directions. So far as the direction with regard to the petitioner vis-à-vis Renuka Kumari, respondent no. 8 herein is concerned it was with regard to ascertaining the authenticity of the experience certificate of Renuka Kumari and in case the same was found to be forged the appellate authority was to proceed to in the following manner :-

“In the event, the Tribunal will find that the appointment of the petitioner is bad on account of award of 20 weightage points, to which she will not be entitled on account of the inadmissible experience certificate, the Tribunal will also look that as who is the best candidate for filling of these vacancies created on account of removal of respondent no. 11 and the petitioner. All this exercise will be



completed by the Tribunal within a period of six months from the date of receipt of this order.

7. Learned counsel for the appellant submitted that though the learned Single Judge has observed that the order dated 29.04.2013, by which this Court had remanded the matter to the Tribunal, was limited to the extent for a decision only in reference to the petitioner, Renuka Kumari and Sudha Kumari, respondent no. 11 therein, the District Teachers Employment Appellate Authority had enlarged the scope and intention of the order, as contained in the order of the writ court, to venture into issues which were not open to it. It was contended that the Court had confined the remand only to be examined by the Tribunal with respect to the interest of the petitioner and respondent no. 11 and not others selectees, who were not party to that proceeding. Nevertheless, the Tribunal, which is a forum of limited jurisdiction widened its own scope and assumed plenary powers which was wholly contrary to the “horizon of demand of enquiry on remand” and declaring the entire selection process of others to have been in contravention of statutory rules and so *void ab-initio*. It was further contended by the appellant, who was the petitioner in C.W.J.C. No. 12204 of



2017 that the dispute was only between herself and Renuka Kumari in all the litigation before this Court as also before the Tribunal, but even though the learned Single Judge appreciated the said contentions, the learned Single Judge ignoring the order passed and the finding arrived at by the District Appellate Authority in Case no. 836/2008 (Sudha Kumari Vs. Panchayat Secretary, Ranti, Rajnagar) wherein it has been recorded that when the petitioner Sudha Kumari was not appointed a complaint was made to the DEO who vide Memo No. 4120 dated 08.12.2010 called for the records of the selection but when the same was not given vide Memo No. 4499 dated 29.12.2010, a direction was given to the Mukhiya and Secretary to look into the matter and if the claim of the petitioner was found to be true, she may be appointed. In the said order, which followed the inquiry, a categorical finding was given that the *Neyojan Ekai* had deliberately shown the petitioner to be absent so as to negate her candidature, petitioner and instead appoint Renuka Kumari on the post of unreserved women, though she belonged to the extremely backward category and was having lesser merit position which was thus, contrary to rules.

“उपर्युक्त तथ्य से स्पष्ट होता है कि नियोजन इकाई द्वारा जानबूझकर आवेदिका को कांन्सीलिंग में वंचित रखकर एवं अनुपस्थित दिखाकर इनके नियोजन को



नजरअन्दाज करते हुए अनारक्षित महिला के पद पर
अत्यन्त पिछड़ी जाति की (अस्पष्ट) रेणुका कुमारी
पति पंकज चौधरी को आवेदिका से कम मेधा अंक
रहने पर भी नियोजित किया गया है जो नियम के
प्रतिकूल है।”

8. Learned counsel for the appellant, thus, submitted that in view of such finding the only issue which remains to be resolved was regards the fake and forged certificate of Respondent, Renuka Kumari, but the Tribunal has gone much beyond the said scope and cancelled the candidature of all candidates. The learned Single Judge, however, clearly overlooked this finding of the Appellant Authority and has also remanded the matter on such issues and, therefore, it was urged by the learned counsel for the appellant that the entire exercise was an exercise in futility and there should be an end to litigation, as the appellant has already been subjected to multiplicity of litigation in the past. It was, thus, prayed that the order of remand was grossly unjustified and only encouraged further litigation and was also violative of the rule of law.

9. We have heard learned counsel for the appellant and learned counsel for the State and perused the order which has come on record in the previous writ applications. A perusal of order dated 01.12.2015 reveals that



the admitted position is that the appellant's name was at serial no. 19 in the merit list and she obtained 76 per cent merit marks whereas the respondent, Renuka Kumari obtained 75.44 marks and her name was at Serial no. 21 of the merit list.

10. It appears from the text of the order that the appellate authority on remand misconstrued that this Court in C.W.J.C. No. 14195 of 2012 had set aside the order of the Tribunal dated 29.06.2012 passed in case no.836/08/2011 and remitted back the Tribunal for reconsideration of the entire case on the basis of the observation given by the Hon'ble Court.

11. We have, however, perused the entire order passed in C.W.J.C. No. 14195 of 2012. The analysis as made by the appellant is, however, faulted on account of the fact that the order specifically states that the remand of the matter back for reconsideration of the entire case of the petitioner vis-à-vis respondent no. 11 with specific reference to the entire selection procedure of the Panchayat Teacher in terms of Rule 9 of the Rules. There is no doubt that the Appellate Authority has gone into the depth of the matter but what is evident is that it found the entire selection process to be violative of the Rule 9 of the selection Rules and, therefore, cancelled the entire appointment. It is true that the learned Single Judge has set aside the order of



removal passed against the petitioner of C.W.J.C. No. 929 of 2016 on the premise that they were not parties to the proceeding before the Appellant Authority but the learned Single Judge has failed to notice on both issues namely :

- (i) That the appellant, Sudha Kumari could not support her case that she had appeared in the counseling on 28.02.2009, as there was no signature on the counseling register dated 28.02.2009. The order with regard to the presence of appellant, Sudha Kumari is extracted hereinunder:-

“Counseling register filed by Panchayat Secretary shows that total eleven candidates participated in counseling dated 28.02.2009 all puts their signatures in the counseling register dated 28.02.2009. The name of the petitioner Sudha Kumari is not in counseling register dated 28.02.2009. There is no cutting, overwriting additions, Deletions in counseling conducted on 28.02.2009. So it appears



that petitioner Sudha Kumari had not participated in counseling conducted on 28.02.2009. So she was not appointed although she obtained 75% marks which was more than the marks of Renuka Kumari.”

- (ii) The authenticity of the certificate of Renuka Kumari was also examined and the order which has been passed with regard to genuineness of the experience certificate has been mentioned in the order which is quoted hereinunder:-

“A report was received from the office of District Programme Officer, Madhubani vide letter no. 411 dated 13.08.14 by which it has been reported that experience certificate has been issued to Renuka Kumari vide letter no. 963 dated 13.11.2008. It has also been reported that the office copy of the experience certificate has been destroyed by miscreants for which a



S.D.E. No. 463108 dt. 15.11.2008 has been lodged. Dist. Mass Education Officer, Madhubani vide letter No. 257 dt. 18.09.2014 directed Renuka Kumari to deposit her employment letter. Training certificate, payment of remuneration and affidavit but that has not been filed. In the circumstances, it appears that the experience certificate issued in favour of Renuka Kumari is not a valid document.”

12. Thus, in the event of such categorical findings by the appellate authority, we are of the considered opinion that the enquiry having been conducted in depth by the Appellate Authority, there could not be any further enquiry in this regard and the Court would not substitute its view to replace the findings of quasi judicial body which has given categorical findings which form the subject matter of the remand in the impugned order. We, thus, uphold the order of the learned Single Judge C.W.J.C No. 929 of 2016 but set aside the impugned order of remand, as passed by the learned single



Judge in sofaras it relates to the petitioners of C.W.J.C. No. 12204 of 2017 and C.W.J.C. No. 14112 of 2016 and hold that the authority having come to this finding need not delve further as we are informed that pursuant to the order of remand no action has taken place.

13. With the aforementioned observations and directions, the Appeal is disposed off and is accordingly consigned.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

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