

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11656 of 2019

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Mamta Kumari Wife of Praveen Kumar R/o Village + P.O.-Jhunathi, P.S.-
Parasbigha, District-Jehanabad

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Education, Bihar, Patna
2. The Director, Secondary Education, Bihar, Patna
3. The District Teacher's Appellate Authority, Jehanabad
4. The Deputy Development Commissioner-cum-Chief Executive Officer, Jehanabad
5. The Zila Parishad Employment Committee, Jehanabad through its Chairman
6. The Chairman, Zila Parishad, Jehanabad
7. The District Programme Officer (Establishment), Jehanabad
8. Pramod Kumar Pathak S/o Ganesh Ji Pathak, R/o Village-Dhanchua Chauri, P.S. Chauri, District-Bhojpur
9. Rakesh Kumar Sharma, S/o Ramashankar Sharma, R/o Village-Mitanghat, Gurhata, P.S. Khajekalan, District-Patna

... .. Respondent/s

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Appearance:

For the Petitioner/s	: Ms. Prakritita Sharma, Advocate
For Zaila Parishad Jehanabad	: Mr. Nikesh Kumar, Adv.
For the Respondent State	: Mr. Mukund Mohan Jha (AC to GP 27)

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
CAV JUDGMENT

Date : 24-12-2021

The instant case has been taken up for consideration through the mode of Video conferencing in view of the prevailing situation on account of COVID 19 Pandemic,



requiring social distancing.

2. The present writ petition has been filed for quashing the letter dated 16.01.2019 issued by the Deputy Development Commissioner-cum-Chief Executive Officer, Jehanabad whereby and whereunder the case of the petitioner for appointment on the post of Librarian has been rejected on the ground of non-availability of any vacant post. The petitioner has further prayed to direct the respondent authorities to include the name of the petitioner in the merit list prepared for the purposes of counselling for making appointment on the post of Librarian inasmuch as the petitioner has got more marks than others and further ensure her joining against a vacant post, as available on 26.07.2017 in terms of the order dated 26.07.2017 passed by the District Appellate Authority, Jehanabad in Appellate Case No. 42 of 2016.

3. The brief facts of the case are that in the year 2008 the respondents had initiated the appointment process within the district of Jehanabad for the post of Librarian and the eligibility criteria for the said post was that the candidate should be possessing graduation degree in Library science with minimum 50% marks. The petitioner being eligible, had applied for the said post of Librarian in the general quota on 11.11.2008 and



had enclosed the mark sheet of matriculation dated 22.02.1987, issued by the Principal of High School, Sarta on the basis of cross list, in which the petitioner was shown to have passed the matriculation examination in 2nd Division . However, the Board had issued the matriculation certificate on 25.08.1987, which could not be traced out on the date of filling of the application form, hence the mark sheet supplied by the Principal of the School on the basis of cross list was attached with the said application form and after the certificate was traced out, the petitioner had applied for supply of mark sheet, before the Board, which was supplied on 14.01.2009 and the same was immediately submitted with the respondent authorities.

4. It appears that on account of unavoidable circumstances, the appointment could not be made during the stipulated time, however, subsequently, the department of Education vide letter dated 03.07.2012, had directed the Zila Parishad, Jehanabad to undertake the process of appointment for the post of Librarian whereafter, the process of counselling was initiated in which the candidates were asked to submit their certificates and marks sheets pertaining to their academic qualifications, pursuant whereof, the petitioner had also submitted her documents but unfortunately again the process of



appointment was stopped. Again in the year 2015, the Director, Secondary Education, Bihar, Patna, vide letter dated 10.12.2015 had fixed 21.12.2015 as the date of counselling. However, surprisingly the respondent Zila Parishad Employment Unit/ Committee prepared the merit list for counselling on 18.12.2015 from which the name of the petitioner was removed, without asking the petitioner to clarify the doubts/ confusion, if any and a remarks was appended as follows:- “Matric mark sheet After Apply Not Match”. The petitioner had then challenged the said action of the Zila Parishad Employment Unit/ Committee, of removing her name from the merit list before the District Teachers’ Appellate Authority, Jehanabad by filing an appeal bearing Appellate Case No. 42 of 2016. The District Teachers’ Appellate Authority, Jehanabad had heard the case in detail and by an order dated 17.07.2017 had allowed the appeal, finding that the petitioner has been successful in her claim and had quashed the decision of the Zila Parishad Employment Unit/ Committee, Jehanabad dated 18.12.2015/ 25.07.2015 [specially the one contained in paragraph No.5 (ii) thereof], whereby the name of the petitioner was removed from the final merit list. The District Teachers’ Appellate Authority, Jehanabad had further directed the Zila Parishad Employment Unit/ Committee,



Jehanabad to verify the marks sheet of the petitioner and upon finding the same to be correct, include the name of the petitioner in the merit list in general category for the post of Librarian, taking into account the left over vacant post, and take further follow up action.

5. The petitioner is stated to have then made representations before the Deputy Development Commissioner cum Chief Executive Officer, Jehanabad i.e. the respondent no. 4, however, no steps were taken, compelling the petitioner to approach this Court by filing a writ petition bearing CWJC No. 11426 of 2018 and the same was disposed of by an order dated 05.09.2018 with a direction to the respondent no. 4 to ensure implementation of the order dated 17.07.2017 passed in Appellate Case No. 42 of 2016 by the District Appellate Authority, Jehanabad. Thereafter, the petitioner had filed a contempt petition bearing M.J.C. No. 4623 of 2018, in view of non-compliance of the order dated 5.9.2018, passed by this Court, whereafter the respondents came out with a decision contained in Memo dated 16.01.2019 issued under the signature of the respondent no. 4, by which despite having found the petitioner to be eligible to be appointed on the post of librarian, her candidature had been rejected on the ground of non-



availability of post.

6. The learned counsel for the petitioner has submitted that the learned District Appellate Authority/ Tribunal, Jehanabad had quashed the decision of the respondent Zila Parishad Employment Unit/ Committee, Jehanabad dated 18.12.2015, whereby the name of the petitioner had been removed from the merit list, by an order dated 17.07.2017 passed in Appellate Case No. 42 of 2016 and the respondents had been directed to include the name of the petitioner in the merit list, but the respondents did not comply with the said direction. It is also submitted that despite the respondent Zila Parishad Employment Unit/ Committee, Jehanabad, knowing fully well that the petitioner has approached the Appellate Tribunal, Jehanabad and her appeal is pending, it had taken a decision on 22.07.2017 to fill up the vacant posts of Librarian in light of order dated 25.04.2017 passed in CWJC No. 2048 of 2017 as well as in view of the letter dated 30.06.2017, issued by the Principal Secretary, Education Department. It is also submitted that the Principal Secretary, Education Department, by its letter dated 30.06.2017 had only directed the respondent no.4 to take steps for appointment of the applicant on vacant posts after following the due process of law, however, the Zila



Parishad, Employment Unit, Jehanabad, despite an order having been passed by the District Appellate Authority, Jehanabad on 17.07.2017, had taken a decision in haste and appointed two persons, namely Pramod Kumar Pathak (60.20%) and Rakesh Kumar Sharma (59.9%) i.e. private respondents no. 8 & 9 who are having lesser marks than the petitioner (62.50%). It is submitted that admittedly at the time of passing of the order by the learned Tribunal, two posts of librarian were vacant but in order to circumvent the order of the learned Tribunal, the Zila Parishad Employment Unit/ Committee, Jehanabad took a decision in haste to appoint the said persons who have got lesser marks than the petitioner. The learned counsel for the petitioner has relied on the judgments rendered by the Hon'ble Apex Court in the case of *C. Channabasavaih v. State of Mysore*, reported in (1965) 1 SCR 360 : AIR 1965 SC 1293 and the one rendered in the case of *Atma Ram Mittal v. Ishwar Singh Punia*, reported in (1988) 4 SCC 284.

7. Per contra, the learned counsel for the respondents no. 4 to 6, Shri Nikesh Kumar, Advocate, has submitted that this Court in a writ petition bearing CWJC No. 2048 of 2017 had passed an order dated 25.04.2017 whereby and where under the Principal Secretary, Education Department, Government of



Bihar, Patna was directed to pass a reasoned order upon the representation to be made by the writ petitioners regarding their grievance pertaining to filling up of vacant posts of Librarian in the Government Schools in the district of Jehanabad, whereafter the Principal Secretary had passed a reasoned order dated 30.06.2017, directing the respondent no.4 to appoint the petitioners of CWJC No. 2048 of 2017 on the post of Librarian as per rule, whereupon the Zila Parishad Employment Unit/ Committee, Jehanabad took a decision on 22.07.2017 to appoint the respondents no. 8 and 9 against unreserved vacant posts of Librarian and only after filling up of such posts on 22.7.2017, the District Appellate Authority, Jehanabad had passed an order in Appellate Case No. 42 of 2016, purportedly in the date of 17.07.2017, though communicated vide Memo dated 26.07.2017, which was received in the office of the Zila Parishad, Jehanabad only on 29.07.2017, however, since no vacant post was available in the Zila Parishad Employment Unit, Jehanabad, the petitioner could not be appointed. It is further submitted that the District Appellate Authority had specifically mentioned in the order dated 17.07.2017 that the appointment of the petitioner may be made subject to availability of post and since no post was available under the



unreserved category, the petitioner could not be appointed.

8. I have heard the learned counsel for the parties and gone through the materials on record from which the events, which have unfolded in the present case, are not at all in dispute. Apparently, the Zila Parishad Employment Unit, Jehanabad had initiated the appointment process for the post of Librarian in the year 2008, however, the same could not be completed on account of unavoidable reasons and ultimately the Director, Secondary Education, Government of Bihar, Patna, vide letter dated 10.12.2015 had fixed 21.12.2015 as the date of counselling, however, the merit list prepared on 18.12.2015, by the Zila Parishad Employment Unit, Jehanabad, for the purposes of counselling to be held on 21.12.2015 did not contain the name of the petitioner, hence the said action of the Zila Parishad, Jehanabad was challenged by the petitioner before the District Appellate Authority, Jehanabad by filing an appeal bearing Appellate Case No. 42 of 2016 and after the respondent No. 4 i.e. the Deputy Development Commissioner-cum-Chief Executive Officer, Zila Parishad, Jehanabad had filed his written reply and submitted all the requisite documents, the learned Tribunal by an order dated 17.07.2017 had allowed the case of the petitioner and quashed the decision of the Zila Parishad



Employment Unit/ Committee, Jehanabad dated 18.12.2015/ 25.07.2015 [specially the one contained in paragraph No.5 (ii) thereof], whereby the name of the petitioner was removed from the final merit list. The District Teachers' Appellate Authority, Jehanabad had further directed the Zila Parishad Employment Unit/ Committee, Jehanabad to verify the marks sheet of the petitioner and upon finding the same to be correct, include the name of the petitioner in the merit list in general category for the post of Librarian, taking into account the left over vacant post, and take further follow up action.

9. It appears that during the interregnum period, a writ petition bearing CWJC No. 2048 of 2017 was filed by the aspirants of the post of Librarian in the Government schools, in the district of Jehanabad, which was disposed of by a co-ordinate Bench of this Court vide order dated 25.04.2017 with liberty to the petitioners of the said case to approach the Principal Secretary of the Education Department, Government of Bihar, Patna who was in turn directed to pass a reasoned order upon their representation, however, it was clarified that the Court has not expressed any opinion on the merits of the matter and the Principal Secretary, Education Department, Government of Bihar, Patna shall be free to take an independent



decision after considering all the aspects, in accordance with law. It appears that the petitioners of the said writ petition bearing CWJC No. 2048 of 2017 had then filed a representation before the Principal Secretary, Education Department, whereupon the learned Principal Secretary by an order contained in Memo dated 30.06.2017 had directed the respondent no.4 herein to make appointment against remaining nine posts of Librarian in the District of Jehanabad, whereafter the Zila Parishad, Employment Unit/ Committee, Jehanabad had in haste made appointments of two persons on the post of Librarian i.e. of the private respondents no. 8 and 9, although they have lesser marks than the petitioner herein, in utter disregard to the order dated 17.07.2017, passed by the Ld. District Appellate Authority, Jehanabad in Appellate Case No. 42 of 2016.

10. It is a matter of record that the petitioner had then made representations before the Deputy Development Commissioner cum Chief Executive Officer, Jehanabad i.e. the respondent no. 4, to comply the order dated 17.07.2017, passed by the Ld. District Appellate Authority, Jehanabad in Appellate Case No. 42 of 2016, however, since no steps were taken, the petitioner had approached this Court by filing a writ petition



bearing CWJC No. 11426 of 2018 and the same was disposed of by an order dated 05.09.2018 with a direction to the respondent no. 4 to ensure implementation of the order dated 17.07.2017 passed in Appellate Case No. 42 of 2016 by the District Appellate Authority, Jehanabad. The petitioner was then compelled to file a contempt petition bearing M.J.C. No. 4623 of 2018, in view of non-compliance of the order dated 05.09.2018, passed by this Court, leading to the respondent no. 4 passing an order dated 16.01.2019, rejecting the claim of the petitioner on the ground that there is no vacant post of Librarian in the general category, which is under challenge in the present proceedings.

11. This Court further finds that the respondent No. 4 to 6 have brought on record a letter dated 08.10.2018, issued by the Principal Secretary, Education Department, Government of Bihar, Patna, in light of a judgment dated 31.10.2017 passed by the Hon'ble Patna High Court in C.W.J.C. No. 21199 of 2013, whereby and whereunder, it has been declared that any action taken by the Employment Units after 31.10.2017 for making appointments are illegal and recognition to such appointments shall not be granted from the level of the department.

12. In order to ascertain the actual position, this Court



had called for the records of the District Teachers' Appellate Authority, Jehanabad pertaining to Appellate Case No. 42 of 2016, which have been made available by the learned counsel for the respondent State and a bare perusal of the records would show that on 17.07.2017, though, neither the petitioner nor the respondent no.4 herein or his representatives were present, nonetheless, the Presiding Officer of the District Teachers' Appellate Authority, Jehanabad had passed the final order by merely stating in the order sheet that since the case is fixed for Orders, the order is being passed and he had further stated therein that the appeal of the appellant i.e. the petitioner herein is accepted and the order has been scripted in 14 pages, which is enclosed with the records and the same is directed to be typed. It is also a matter of record that the typed copy of the order dated 17.07.2017 was issued vide memo dated 26.07.2017. This Court, upon perusal of the records also finds that prior to passing of the order dated 17.07.2017, the previous date on which the case was heard, was 03.07.2017, however, on the said date it had merely been stated in the order sheet that the clerk of the respondent no. 4 herein has submitted the certified copy of the documents/ file, as directed to be submitted, however, no next date of hearing or date for passing of the order was fixed,



thus leading to neither the petitioner herein nor the respondents being present on the date when the order was passed i.e. on 17.07.2017. This Court also finds that apparently, a hand written order was kept with the records, which was directed to be typed, however, this Court has not been able to find the said hand written order on record, but it appears that upon direction issued by the Presiding Officer on 17.07.2017, the hand written order appears to have been typed and only on 26.07.2017, the same was sent to the respondents i.e. to the District Magistrate, Jehanabad, the Deputy Development Commissioner-cum- Chief Executive Officer-cum- Secretary, Employment Unit Zila Parishad, Jehanabad, Chairman, Zila Parishad, Jehanabad, District Education Officer, Jehanabad, District Programme Officer (Establishment), Jehanabad and the petitioner herein.

13. This Court thus finds, considering the sequence of events, that in one another writ petition bearing CWJC No. 2048 of 2017, a Co-ordinate Bench of this Court vide order dated 25.04.2017 had remanded the matter pertaining to appointments to be made on the vacant posts of Librarian in the Government Schools in the district of Jehanabad, to the Principal Secretary, Education Department, Government of Bihar, Patna whereupon the said Principal Secretary had passed an order dated



23.6.2017/ 30.06.2017, directing the Employment Unit, Zila Parishad, Jehanabad to make appointment on nine vacant posts of Librarian in the district of Jehanabad as per roster point in accordance with law, whereafter the Employment Unit, Zila Parishad, Jehanabad had taken a decision on 22.7.2017 to appoint the private respondents no. 8 and 9 on the vacant posts of Librarian in the unreserved category and it is only then that the order of the District Teachers' Appellate Authority dated 17.07.2017 was received in the office of the Zila Parishad, Jehanabad on 29.7.2017 and since the learned District Teachers' Appellate Authority had directed that the name of the petitioner be included in the merit list and action be taken for considering the case of the petitioner for appointment on the post of Librarian under the general category against the remaining vacant posts, appointment could not be offered to the petitioner, since no vacant post was available.

14. Having regard to the facts and circumstances of the case, considering the sequence of events as also the materials available on record and taking into account the records of Appellate Case No. 42 of 2016, made available to this Court from the District Teachers' Appellate Authority, Jehanabad, this Court finds that firstly on account of no date being fixed for



passing of the order by the learned District Teachers' Appellate Authority, Jehanabad and secondly due to late communication of the order passed by the learned Appellate authority, Jehanabad, which was only issued vide memo dated 26.7.2017 and was received in the office of the Zila Parishad, Jehanabad on 29.07.2017, the vacant post had stood filled up during the interregnum period, hence the petitioner could not be offered any appointment on the post of Librarian on account of non-availability of any vacant post in the general category, especially considering the fact that even the District Teachers' Appellate Authority, Jehanabad had, by its order dated 17.7.2017, directed to consider the case of the petitioner against the remaining vacant post. Thus, this Court finds that on account of efflux of time and the pace of events, the petitioner has been left behind whereas the private respondents no. 8 and 9 have succeeded in getting appointment, thus no relief can be granted to the petitioner at this juncture. The Judgments referred to by the ld. Counsel for the petitioner are of no help to the petitioner in the peculiar facts and circumstances of the present case. Hence, the writ petition stands dismissed.

15. It would not be out of place to state here that even the petitioner did not take any step for bringing the order of the



learned Appellate Authority, Jehanabad dated 17.07.2017 to the knowledge of the Zila Parishad, Jehanabad in time and in fact no representation annexing the copy of the order dated 17.7.2017 passed by the learned Appellate Authority, Jehanabad has been brought on record of the present writ petition to show that the petitioner had approached the Zila Parishad, Jehanabad and communicated the aforesaid order dated 17.7.2017, in time.

16. Nonetheless, this Court finds from the supplementary affidavit filed by the petitioner that vacant posts of Librarian are still available. If that be so, the respondent no.4 is directed to consider the case of the petitioner for appointment on the post of Librarian under the unreserved category, in accordance with law. It is needless to state that in case appropriate representation is filed by the petitioner within a period of eight weeks from today, before the respondent no.4, the respondent no.4 shall take a decision thereon by passing a reasoned and a speaking order within a further period of eight weeks, thereafter.

(Mohit Kumar Shah, J)

Tiwary/-

AFR/NAFR	AFR
CAV DATE	27.08.2021
Uploading Date	25.01.2022
Transmission Date	N/A

