

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.376 of 2022

In

Civil Writ Jurisdiction Case No.658 of 2018

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Santosh Kumar son of Sri Brijnandan Prasad, Resident of Village-Bishanpur,
Police Station-Govindpur, District-Nawada.

... .. Appellant/s

Versus

1. The State of Bihar through Additional Chief Secretary, Education Department, Government of Bihar, Patna.
2. The Additional Chief Secretary, Education Department, Bihar, Patna.
3. The Director, Primary Education, Bihar, Patna.
4. The State Appellate Authority, Bihar, Patna through its Chairperson.
5. The District Teachers Appointment Appellate Authority, Nawada, through its Presiding Officer.
6. The District Magistrate, Nawada.
7. The District Education Officer, Nawada.
8. The District Programme Officer (Establishment), Nawada.
9. The Block Development Officer, Govindpur, Nawada.
10. The Block Education Extension Officer, Govindpur, Nawada.
11. The Selection Committee of Panchayat Raj Budhwara, Police Station-Govindpur, District-Nawada.
12. The Mukhiya Panchayat Raj Budhwara, Police Station-Govindpur, District-Nawada.
13. The Panchayat Secretary, Panchayat Raj Budhwara, Police Station-Govindpur, District-Nawada.
14. Sri Nand Kumar son of Sri Sharda Prasad, Resident of Village-Nandlal Bigha, Police Station-Akbarpur, District-Nawada.
15. Prabhat Kumar, son of Sri Suresh Prasad, Resident of Village and Police Station-Govindpur, District-Nawada.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Y.V. Giri, Sr. Advocate
Mr. Ajay Kumar Pandey, Advocate
For the Respondent/s : Mr. Krishan Kant Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE RAJIV ROY



ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJIV ROY)

Date: 30-08-2022

The appellant-respondent no.14 is aggrieved by the order dated 05.07.2022 passed by Hon'ble Single Judge (Hon'ble Mr. Justice Sanjeev Prakash Sharma) in C.W.J.C. No.658 of 2018 by which the writ petition was allowed.

2. The matrix of facts giving rise to the present appeal is/are as follows.

3. Under Bihar Primary Teachers Appointment Rules, 2006 (henceforth for short 'the Rules') an advertisement was issued by the Selection Committee of Gram Panchayat Raj, Budhwara under Govindpur Block in the district of Nalanda inviting applications for the post of Panchayat Teachers.

4. The writ petitioner applied pursuant to it, appeared, submitted documents, the same were verified and accordingly, the merit list was prepared in which he found himself at Serial No.12 under backward class category. A waiting list was also prepared in which Santosh Kumar (the appellant herein) and Nand Kumar were also listed at Serial No.2 & 3.

(Annexure-1 to the writ petition)

5. Sidetracking the aforementioned merit list, the Selection Committee picked up names of the appellant herein and



Nand Kumar from the wait list, were offered employment and accordingly, they joined. It is said that subsequently Nand Kumar left the job.

6. Aggrieved by non-offering of appointment letter, writ petitioner Prabhat Kumar preferred C.W.J.C. No.2575/2008 which was disposed of on 25.08.2002 with a direction to file representation.

(Annexure-2 to the writ petition)

7. Accordingly, the writ petitioner preferred representation before the Block Development Officer, Govindpur (*henceforth for short* 'the BDO') who having found merit in his case gave direction vide its order dated 04.07.2009 for cancellation of employment of Santosh Kumar and Nand Kumar (Annexure-4 to the writ petition). This order was passed by 'the B.D.O.' only after the writ petitioner preferred contempt petition vide M.J.C. No.1902 of 2009.

8. Even though the order of appointment of the appellant herein was cancelled, however since no relief was granted to the writ petitioner, he preferred another writ petition vide C.W.J.C. No.4143/2011. The same was disposed of on 15.04.2014 holding that after analyzing 'the Rules' and appointment of Appellate Authority, the role of 'the B.D.O.' had



seized. The Court as such directed the writ petitioner to approach the District Teachers Employment Appellate Authority, Nawada (*henceforth for short* 'the District Authority').

9. Accordingly, the writ petitioner preferred petition vide Appeal No.39/2014 before 'the District Authority', which came to be rejected on 25.04.2015.

(Annexure-6 to the writ petition)

10. Aggrieved, the writ petitioner once again moved this Court vide C.W.J.C. No.8970/2015 which was disposed of on 08.03.2017 holding that against the order passed by 'the District Authority' the petitioner should approach the State Appellate Authority, Bihar (*henceforth for short* 'the State Authority') for the redressal of his grievance.

(Annexure-7 to the writ petition)

11. Thereafter, the writ petitioner preferred Appeal No.90 of 2017 before 'the State Authority'. It was heard and dismissed on 06.11.2017 holding that there is no error in the order of 'the District Authority' and as such the appeal is disallowed.

(Annexure-8 to the writ petition)

12. Against the said order of 'the State Authority', the writ petitioner preferred CWJC No.658/2018. The matter was



taken up by the Hon'ble Single Judge and vide an order dated 05.07.2022 the said writ petition was allowed holding as follows:

“8. Learned counsel appearing for the State fairly concedes that the petitioner was having higher merit than the respondents and also does not deny the fact that consent is obtained after issuance of the employment letter. Candidates from the waiting list can be only issued employment letter after the candidates from the main list do not join. This is the procedure of selection being followed at all places. In the present case, this Court notices that the petitioner was never offered an employment and, therefore, there was no occasion to submit a consent letter. On the said premise, he, therefore, could not have been ousted from his valuable right of selection and appointment. At the same time, this Court finds that the Panchayat Employment Committee has acted in arbitrary manner and accepted the consent letters of those candidates who did not find place in the main merit list at all and were in the merit list. Such person who are in the waiting list do not have any right of employment and their rights only come into picture, once the candidates who are in the main list do not join.

9. In the present scenario, this Court find that there is no such fact which has come on record that the candidates from the main list did not join and in the illegal and arbitrary manner person with much less in merit have been employed at the level of the Panchayat.

10. This Court notices a unique feature where the Mukhiya and the



Panchayat Secretary conduct selection of teachers. This Court takes notice of the fact that a Mukhiya is an elected person and is not required to have any educational qualification for participating in the election (during some period a person who was 8th Class passed was allowed to participate in the election). Even the Secretary Panchayat is only 8th Class passed which has now been enhanced to qualification of minimum 10th Class Pass.

11. Be that as it may, it is shocking and surprising that such persons should be allowed to conduct selection and appointment of teachers.

12. Be that as it may, in the present case, this Court finds that the power granted by the State Government to make selections/appointments on the post of Panchayat Teachers has been grossly misused by the members of the Panchayat Committee which included the Mukhiya and the Panchayat Secretary. Such appointments are also examined by the concerned District Programme Officer of the concerned District. Thus a responsibility lies on the concerned District Programme Officer to see that the selections are done fairly and in accordance with law.

13. This Court finds that the gross injustice has been done with the petitioner, who was otherwise entitled to be appointed on the post of Panchayat Teacher way back in the year 2007 and has been fighting for his rights for almost 15 years.



14. The order passed by the District Appellate Authority dated 25.04.2015 and the order passed by the State Appellate Authority dated 06.11.2017 are found to be wholly perverse and are accordingly quashed and set aside.

15. Considering the aforesaid, this Court finds that the writ petition deserves to be allowed accordingly.

16. The petitioner would be entitled to be offered appointment from the date the respondents have been appointed and would also be entitled for continuity of service and fixation of salary. However, as he has not worked, the notional benefits for the entire period shall be granted to the petitioner and actual benefits shall be granted to him from the date of passing of the order dated 4th July, 2009 by the B.D.O., Govindpur Block as this Court finds that on factual grounds the order passed by the B.D.O. was correct and in accordance with law. The only aspect was that he had lost the authority to pass the said order. The benefit would, therefore, accrue too to the petitioner from that date.

17. So far as the respondents are concerned, as they were not even in the main list. Their appointment is found to be wholly illegal and the same is cancelled.

18. The salary paid to the respondent nos. 14 and 15 shall be recovered from the Mukhiya, Panchayat Raj, Budhawara, Govindpur; Nawada and Panchayat Secretary, Panchayati Raj, Budhawara, Govindpur, Nawada (respondent nos. 12 & 13 respectively) and



recovery should also be made from the District Programme Officer.

19. It is further observed that the District Programme Officer has also failed to perform his duty and in this regard, it is left for the Principal Secretary, Education to take appropriate action with respect to the Officers of the State.

20. The order is being passed for recovery, as the State Exchequer cannot be burdened with salary of two persons on the same post and the principle of accountability must be applied and persons who indulge in making such wrongful appointments must be dealt with severe and shaken.

21. Learned counsel appears for the respondents and supports the orders.

22. The writ petition is allowed accordingly.

23. The compliance be made positively within a period of two months, failing which the petitioner would be free to initiate contempt proceeding without further notice.”

13. Now it was the turn of the appellant herein who was enjoying the fruits for the last more than one decade to move in LPA being aggrieved by the order dated 05.07.2022 in C.W.J.C. No.658/2018.

14. Heard counsel for the parties.



15. Mr. Y.V. Giri, learned Senior Counsel for the appellant submitted that the writ court completely erred in not appreciating the facts that there was Government deadline to complete the process by 30.11.2017. Although, admittedly the writ petitioner was in the merit list, as he failed to submit original documents, the wait list came into picture and accordingly, the appellant was selected and provided employment.

16. It is his further submission that both 'the District Appellate Authority' and 'the State Appellate Authority' decided in favour of the appellant and as such the learned writ court should not have overlooked the same and pass an order in favour of the writ petitioner particularly in the background of the fact that the appellant is working since the year 2007.

17. We have gone through the resolution of the Selection Committee and have found that after the applications were preferred, the documents were scrutinized and a merit list was prepared in which the writ petitioner Prabhat Kumar was at Serial No.12 with 69.44% marks. Along side the merit list, there was a wait list also in which the appellant herein found placed at Serial No.2 with 67.00% and Nand Kumar at Serial No.3 with 66.74% marks.



18. We further marked that thereafter the Selection Committee gave direction to inform the selected candidates to submit their original documents. However, thereafter, there is nothing on record to show when was the said direction issued, what was the date for the submission of the original documents and further details of the candidates who submitted their documents on that particular day/failed to submit their respective documents. There is nothing further on record to show that any decision was taken relating to the candidates, in particular, the writ petitioner, Prabhat Kumar.

19. This Court further finds that immediately after the decision was taken to direct the selected candidates in the merit list to submit their original documents, the Selection Committee issued appointment letters amongst other to the two wait list candidates in which it was incorporated that consent letter was taken from them in view of the deadline and accordingly, the appointment letters were issued.

20. This Court reiterates that on perusing the minutes of the Selection Committee, it is clear that the column relating to writ petitioner at Serial No.12 is blank inasmuch as there is no recording of the fact that:



(i) he was directed to submit credentials by
a particular deadline;

(ii) he chose not to submit the same and/or
did not gave his consent and;

(iii) as such the appointment letter is not
being offered to him.

21. The aforesaid factual aspects of the matter clearly reveals complete illegality on the part of the Selection Committee in denying appointment to the writ petitioner in the guise of accommodating the appellant herein. This Court has observed that this is not an isolated case relating to the Gram Panchayat Raj, Budhawara, Govindpur, Nawada, but across the State, the Selection Committees of different Gram Panchayats have committed same irregularity/ illegality in ignoring the genuine claim of the meritorious candidates on one or the other ground to accommodate the blue eyed candidates.

22. Be that as it may, so far as the present case is concerned, learned Senior Counsel tried to impress upon this Court that once 'the District Appellate Authority' and 'the State Appellate Authority' had given findings in favour of appellant, the writ court completely erred in overlooking the same and passing an order adverse to appellant's cause.



23. With great respect, this Court holds that facts come first and the truth is/was that the minutes of the Selection Committee do not incorporated any such fact that the writ petitioner was ever directed to submit his credentials and/or offered the letter of appointment and/or he refused to accept the same and in absence of that, the Selection Committee committed complete illegality in picking up wait list candidates and issuing appointment letters to them.

24. In the absence of such facts, it is clear that both 'the District Appellate Authority' and the 'the State Appellate Authority' did not go into the merit of the case and barely accepted the averments made in the petition to deny the writ petitioner his rightful dues.

25. In the process, one can only pity on the person (writ petitioner) who otherwise should have been appointed in the year 2007 but was denied the same and had to prefer four writ petitions before the Patna High Court as also a contempt petition, two appeals before the District Authority and State Authority and one representation before the Block Development Officer between 2007 to 2018.

26. Learned Senior Counsel next submitted that the appellant herein having served for more than a decade he had



accrued rights to continue in service. In the considered opinion of this Court, a person whose entry into service was through an illegal manner cannot claim his rightful dues only because he has illegally continued for more than a decade in the background of the fact that right from the beginning, the writ petitioner relentlessly pursued and knocked the doors of each and every judicial forum for the redressal of his grievance. This Court also cannot take its eyes away from the fact that it was due to the appellant herein that the writ petitioner suffered the same number of years during which period the appellant remained in service.

27. In support of our view we would like to bring on record the observation of the Hon'ble Apex Court in **M.S. Patil (Dr.) vs. Gulbarga University & Ors.** reported in (2010) 10 SCC 63 in paragraphs 16 to 17 which read as under:

“16. But at this stage once again a strong appeal is made to let the appellant continue on the post where he has already worked for over 17 years. Mr Patil, learned Senior Counsel, appearing for the appellant, submitted that throwing him out after more than 17 years would be very hard and unfair to him since now he cannot even go back to the college where he worked as Lecturer and from where he had resigned to join to this post.

17. We are unimpressed. In service law there is no place for the concepts of adverse



possession or holding over. Helped by some University authorities and the gratuitous circumstances of the interim orders passed by the Court and the delay in final disposal of the matter, the appellant has been occupying the post, for all these years that lawfully belonged to someone else. The equitable considerations are, thus, actually against him rather than in his favour.”

28. Thus Court is in complete agreement with the order passed by the Hon’ble Single Judge and further directs the concerned authority to take immediate steps to comply the order dated 05.07.2022 passed by the learned writ court.

29. With the aforesaid observations, we hold that there is no error in the order passed by the Hon’ble Single Judge.

30. The appeal fails and is accordingly dismissed.

(P. B. Bajanthri, J)

(Rajiv Roy, J)

Prakash Narayan /-

AFR/NAFR	AFR
CAV DATE	NA
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