

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.484 of 2019

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Shandhya Kumari @ Sandhya Kumari Daughter of Mithilesh Kumar Sharma
Resident of Nasira, Police Station-Daudpur, District-Saran

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Primary Education Department, Govt. of Bihar, Patna
2. The State Appellate Authority Education Department, Govt. of Bihar, Patna
3. The Director Primary Education, Govt. of Bihar, Patna
4. The Member, District Teachers Employment Appellate Authority, Saran
5. The Commissioner, Saran, Division at Chapra.
6. The District Magistrate Saran
7. The District Programme Officer, (Establishment), Saran
8. The Block Development Officer Manjhi Block, Saran
9. The Mukhiya, Gram Panchayat Raj Nasira, P.S.-Daudpur, District-Saran
10. The Panchayat Secretary, Gram Panchayat Raj, Nasira, P.S.-Daudpur, District-Saran
11. Kavita Kumari D/o Sri Bharat Singh Resident of Village-Mairwa, P.O.-Rushi, P.S.-Daudpur, District-Saran

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Prashant Kashyap, Adv. Mr. Ashok Kumar
For the Respondent/s	:	Smt. Shilpa Singh, GA 12 Ms. Namrata Singh, AC to GA 12
For the Respondent No.11:	:	Mr. Rakesh Prabhat

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL JUDGMENT

Date : 06-11-2023

1. The present writ application has been filed for quashing the order dated 10.08.2018 (Annexure-6) passed by the State Appellate Authority, Education Department, Bihar in Appeal Case No. 344 of 2017 whereby the appellate authority has upheld the order dated 28.05.2012 passed by District



Teachers Employment Appellate Authority, Saran observing that the claim of the petitioner for appointment as Panchayat Teacher against the vacancy of the year 2006 is not justified. The petitioner has further prayed for quashing of the order dated 28.05.2012 passed by District Teachers Employment Appellate Authority, Saran at Chapra in Case No. 75 of 2011 (Annexure -4) whereby the appeal filed by the petitioner was dismissed observing that the petitioner did not appear in the counseling and hence not entitled to be selected.

2. Brief facts giving rise to the present writ application is that pursuant to the advertisement published in the year 2006 for appointment of Panchayat Teacher in the Gram Panchayat Nasira, under Manjhi Block, Saran, the petitioner as well as the respondent no. 11 both applied for the said post in unreserved (female) category against 13 vacancies. The 1st list on the basis of merit and reservation roster was published on 03.01.2007 with names of thirteen candidates. The petitioner did not find place in the said list. Out of the 13 selected candidates only 7 appeared in counseling and were issued appointment letter. Thereafter, on 17.02.2007 the Commissioner- cum- Secretary, H.R.D. Department directed for filling up the remaining 6 vacancies and to complete the employment process for the same



in pursuance of which B.D.O., Manjhi and B.E.O., Manjhi held a meeting in which it was decided that three candidates against each vacant post should be selected on the basis of merit list and reservation roster and called for counseling. On 05.02.2007 a meeting of the panel preparation committee of the Panchayat was held and the second list of selected candidates was published in the Upgraded Middle School, Chamrahiya and intimation was sent to them through U.P.C. on 06.02.2007. The candidates in the merit list were asked to appear in counseling from 07.02.2007 to 14.02.2007. The name of the petitioner also appeared in the list of eighteen candidates in UR (F) category. Since the petitioner could not appear for counseling, the respondent no. 11 / Kavita Kumari who was next in the panel and appeared in counseling was issued appointment letter in response to which she joined school. The petitioner obtained the final panel list relating to appointment of Panchayat Teacher of Gram Panchayat- Nasira, Saran in which she was placed at serial no. 157 with 580 marks having 64.4% whereas the respondent no. 11 – Kavita Kumari was placed at serial no. 299 with 570 marks having 63.3% marks.

3. The contention of the petitioner is that she could not appear in counseling as she was not informed about counsel-



ing though she was having higher marks whereas the respondent no. 11 contends that notice with regard to counseling was sent through U.P.C. to all the candidates and since she appeared in counseling she was appointed. Being aggrieved, the petitioner moved before District Magistrate, Saran at Chapra on 02.08.2007 in his Janta Darbar wherein the District Magistrate ordered for an enquiry to be made by the Director, Accounts, Administration and Self Employment District Rural Development Agency, Saran. The enquiry report was submitted to the D.M. vide letter no. 1451 dated 19.09.2007 stating that notice for counseling was sent through U.P.C. which is not a reliable source of communication.

4. Under such circumstances, the petitioner filed C.W.J.C. No. 3363 / 2008 before this Court which was disposed of by order dated 01.07.2011 with liberty to the petitioner to approach the appellate authority in the matter. In pursuance thereof the petitioner filed Case No. 75 of 2011 before the District Teacher Employment Appellate Authority, Saran which was dismissed vide order dated 28.05.2012 (Annexure -4) observing that though the petitioner was having higher marks and was not appointed as she did not appear in the counseling, the notice for which was sent to her through U.P.C. Being



aggrieved with the order passed by the District Teachers Appellate Authority the petitioner again filed C.W.J.C. No. 18906 / 2012 and this Hon'ble Court vide order dated 21.08.2017 disposed of the writ application directing the petitioner to file an appeal before the State Appellate Authority. In pursuance thereof petitioner filed appeal before the State Appellate Authority bearing Appeal No. 344 of 2017 which also got dismissed observing that the petitioner did not appear in counseling and there is no stipulation either in the Rules or in the Guidelines that intimation for counseling should be sent by registered post. The Panchayat also did not have funds for such communication by registered post. The notices have been sent through U.P.C. to all the applicants uniformly. The Panel was also published on the wall of the Upgraded Middle School, Chamrahiya. Since the appellant belongs to the same village, she was expected to see the notice. Further the judgment relied by the petitioner is of the year 2010 reported in 2010 (4) PLJR 421 and is not applicable in which it has been held that once the panel is prepared notice must be sent by registered post, whereas the process of employment in the present dispute was completed in the year 2007 when the aforesaid decision of the High Court was not available.



5. Learned counsel for the petitioner submits that the impugned order passed by the District Appellate Authority as well as State Appellate Authority is ultra vires and illegal as the same has been passed without applying judicial mind. The appellate authorities have failed to take cognizance of the fact that U.P.C. by which the petitioner is said to have been informed about counseling is only to hide irregularities committed by the employment unit of the Gram Panchayat / Selecting Body. In the final merit list the petitioner was placed at serial no. 157 with 580 marks having 64.4 % whereas respondent no. 11 / Kavita Kumari was placed at serial no. 299 with 570 marks having 63.3 %. The petitioner contends that she could not appear in counseling as she was not informed about counseling though she was having higher marks. Learned counsel further submits that despite the fact that respondent no. 11 / Kavita Kumari was having lesser marks than that of the petitioner she was collusively and illegally appointed as Panchayat Teacher by the respondent no. 9 & 10 i.e. Mukhiya & Panchayat Secretary including the employment unit.

6. Learned counsel for the respondent no. 11 argued that she was appointed on 15.02.2007. The State Appellate Authority has rightly dismissed the appeal as U.P.C. is a valid



means of notice and the judgment relied upon by the petitioner reported in 2010 (4) PLJR 421 in which it was held that notice must be sent through registered post is not applicable for notice sent in the year 2007. He next submits that it is an admitted fact that petitioner has got higher marks i.e. 64.4 % whereas respondent no. 11 has got 63.3% marks and in the final merit list petitioner was placed on serial no. 25 and respondent no. 11 was placed at serial 28. Based on final merit list prepared on 05.02.2007 notices were sent on 06.02.2007 through U.P.C. to all the candidates. Since petitioner did not appear for counseling hence the respondent no. 11 was selected in UR (f) category on 15.02.2007. The impugned order passed by the District Appellate Authority is having no infirmity inasmuch as while holding that the order of High Court cannot be applied retrospectively because on the date of sending the information through U.P.C. there was no instruction from the higher authorities that in what manner candidates had to be informed about their selection. Neither any guideline was provided for communication through registered post nor fund was provided for communication through registered post. Therefore, it was not practicable for the respondent Mukhiya / Employment Unit of the Gram Panchayat to communicate all the candidates by registered post.



7. Learned counsel for the State submits that petitioner applied for appointment on the post of Panchayat Teacher in the 1st phase of employment held in 2006 but since petitioner did not appear in the counseling therefore could not be appointed by the employment unit.

8. Learned counsel for the petitioner in reply submitted that large scale irregularities were committed in appointment of Panchayat Teacher for the Gram Panchayat in question for which inquiry was conducted by the Office of the District Rural Development Authority, Saran at Chapra which vide its letter dated 19.09.2007 submitted its inquiry report to the District Magistrate, Saran.

9. I have heard learned counsel for the parties and perused the materials available on record including the impugned order passed by the State Appellate Authority. The facts are not in dispute that pursuant to the advertisement for appointment of Panchayat Teacher both petitioner and respondent no. 11 applied under UR (F) category. It is also not in dispute that respondent no. 11 secured lesser marks than the petitioner. The petitioner was placed at serial no. 157 with 580 marks having 64.4 % whereas respondent no. 11 was placed at serial no. 299 with 570 marks having 63.3 %.



10. The inquiry report submitted before the District Magistrate vide letter no. 1451 dated 19.09.2007 states that notice for counseling was sent through U.P.C. which is not a reliable source of communication. It is specific case of the petitioner that she did not receive any notice for counseling / distribution of appointment letter and verification of documents. The respondent no. 11 was appointed despite having lesser marks because the petitioner failed to participate in counseling. It appears that notice under U.P.C. was deliberately sent to the petitioner in order to keep her away from the process of appointment despite having secured higher marks in the merit panel.

11. A Bench of this Court in Chitranjan Kumar Singh versus The State of Bihar & Ors. reported in 2010(4) PLJR 183 has held as follows:-

“5. Now, I may come to the plea that was taken before the Panchayat Secretary that notices were sent by U.P.C. to all the candidates as most of them did not appear for counseling pursuant to the notice, petitioners who were below in the merit list were appeared and selected. In relation to this, this Court would first observe, as to why when advertisements are issued calling for applications, date, time and place for scrutiny of application, counseling and preparation of merit list and date of issuance of appointment letters are not fixed at hand and made known to public. This Court has found that in some cases in some districts this is a practice that is fol-



lowed. That makes the system of selection transparent. Here, why was this not followed is not known. Here, the merit list was prepared in January, for two months there was no activity, then suddenly on 08th March activities start and between 8th to 10th of March postal notices (did as U.P.C.) are issued, counseling held and appointment letters issued. Appointment is, admittedly, denied to much more meritorious candidates. If this is not fraud, I wonder what it is. In connection of U.P.C., all I can say is that a similar plea was taken in the case of Gadakh Yashwantrao Kankarrao Vs. E.V. alias Balasaheb Vikhe Patil and Ors. since reported in AIR 1994 Supreme Court 678. In paragraph 59, this is what the Apex Court has held:-

“.....It is also of significance that Gadakh alleges having sent a letter dated 16th May, 1991 under certificate of posting to the Maharashtra Times Office disputing correctness of the news-item (Exh.90). The receipt of that letter by the addressee is denied and the likelihood of its dispatch by Gadakh is extremely doubtful since it was not sent by registered post and a certificate of posting being easy to obtain is not reliable. Expense being immaterial in that election for both sides, it is extremely unlikely that Gadakh would send such a letter under certificate of posting and not by registered post....”

6. Obviously, the plea of U.P.C. was fraudulent. No letters can be delivered within 24 hours, it was only applied to deny legitimate candidates their appointment and give unfair advantage to the petitioners.”

12. In view of the attending facts involved in the



present case and the law laid down by this court (Supra) in my considered opinion sending notice under U.P.C. mode to the petitioner cannot be considered as a valid mode of notice. A certificate of posting is easy to obtain thus is not reliable. There is no presumption in law in favour of service of notice by U.P.C. mode. Notice under U.P.C. gave unfair advantage to respondent no. 11. It does not stand to reason that petitioner who participated in the selection process, secured higher marks would fail to appear on the date of counseling for verification of documents / testimonials and for receipt of appointment letter. Certainly the action of the concerned Panchayat Secretary and other members of the employment unit sending notice to the petitioner by U.P.C. mode is a fraudulent action with ulterior motive in order to favour the respondent no. 11 who is less meritorious than the petitioner.

13. Upon consideration of the facts and discussions held hereinabove, I am of the view that the order passed by the State Appellate Authority as well as District Appellate Authority are not sustainable and the same are hereby set aside.

14. Since the respondent no. 11 was wrongly appointed having lesser marks by deliberately keeping the petitioner out from appointment process, the action of the employ-



ment unit insofar as the present case is concerned is vitiated. In the result, the appointment of respondent no. 11 is also quashed.

15. Since in 2023 the Bihar State School Teachers (Appointment, Transfer, Disciplinary Proceedings and Service Conditions) Rules, 2023 has come into force as such no direction can be issued for appointment of the petitioner after fresh counseling on the post vacated by the respondent no. 11. However, the State respondents shall be free to make appointment on the post vacated by respondent no. 11 afresh as per the Rules 2023.

16. Accordingly, writ application is partly allowed.

(Anil Kumar Sinha, J)

praful/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	19-12-2023
Transmission Date	NA

