

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2256 of 2023

Madhuri Kumari Wife of Yogendra Pandit, Resident of Village- Kamar Chak,
P.O.- Vishambhrapur, P.S.- Kalyanpur, District- East Champaran.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of Human Resources Development, Govt. of Bihar, New Secretariat, Patna.
2. The Principal Secretary, Department of Human Resources Development, Govt. of Bihar, New Secretariat, Patna.
3. The Director, Primary Education, Human Resource Department, Govt. of Bihar, New Secretariat, Patna.
4. The District Magistrate, East Champaran.
5. The Chairman, District Teacher Appellate Authority, East Champaran.
6. The District Superintendent of Education, East Champaran.
7. The Block Education Officer, Kalyanpur, East Champaran.
8. The Block Development Officer, Kalyanpur, East Champaran.
9. The Mukhiya, Gram Panchayat Barwa Bakhari, Block- Kalyanpur, District- East Champaran.
10. The Panchayat Secretary, Gram Panchayat Barwa Bakhari, Block- Kalyanpur, District- East Champaran.
11. Krishna Devi the then Mukhiya, Gram Panchayat Barwa Bakhari, Block- Kalyanpur, District- East Champaran.
12. Anshu Kumari Wife of Sri Manish Kumar Singh, Resident of Village- Madhubani Ghat, P.S.- Motihari Mufassil, District- East Champaran.
13. Bindeshwari Singh the then Panchayat Secretary, Gram Panchayat Barwa Bakhari, Block- Kalyanpur, District- East Champaran.
14. Rambachan Paswan, Member of Education Committee, Gram Panchayat Barwa Bakhari, Block- Kalyanpur, District- East Champaran.
15. Ramchandra Sah, Member of Panchayat Committee, Gram Panchayat Barwa Bakhari, Block- Kalyanpur, District- East Champaran.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr.Arun Kumar, Advocate
For the State	:	Mr.Madan Jeet Kumar (GP- 20) Mr.Mrigendra Kumar, AC to GP-20
For the Respondent No. 12:		Mr. Santosh Kumar Singh, Advocate Mr. Divyam Verma, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 01-08-2023 Let the supplementary affidavit be taken on the
record.



2. Heard learned counsel for the petitioner, learned counsel for the State and learned counsel for Respondent No. 12.

3. Petitioner in this case is aggrieved by and dissatisfied with the order dated 20.12.2022 passed by the State Appellate Authority, Education Department, Bihar (hereinafter referred to as the 'Appellate Authority') in Appeal Case No. 20 of 2022 by which the Appellate Authority has interfered with the order of the District Appellate Authority, East Champaran and in effect set aside the order of the Appellate Authority. The Appellate Authority has, by the impugned order directed that the appellant- Respondent No. 12 Anshu Kumari will be appointed in un-reserved (female) category and the respondent- Madhuri Kumari (petitioner in the present case) will be removed from service within a fortnight of the receipt of the order.

4. Learned counsel for the petitioner has assailed the impugned order on various grounds. It is submitted that the District Appellate Authority had rightly held that the selection process in this case had come to an end on 29.12.2010 and 30.12.2010, therefore, the application against the selection of the present petitioner having been filed after a period of 30 days was barred by limitation.



5. Learned counsel for the petitioner submits that this petitioner had applied for appointment under EBC (F) category and she was appointed accordingly under the said category. It is submitted that Respondent No. 12 had applied under the trained category as an un-reserved (female) candidate. Therefore, so far as this petitioner is concerned, she had no contest with the candidature of the Respondent No. 12 in un-reserved (female) category.

6. Learned counsel submits that the Appellate Authority is not justified in recording a finding of malafide in the matter of shifting of one Bindu Kumari from EBC (F) category to UR (F) category. According to him, the Appellate Authority has wrongly reached to a conclusion that the Employment Unit did all these action with a malafide intention to appoint this petitioner in EBC (F) category.

7. Learned counsel further submits that this petitioner was selected without the weightage points but the Appellate Authority has wrongly concluded that she had been given 20 weightage points in the matter of selection.

8. Learned counsel for the State as well as learned counsel for Respondent No. 12 have jointly opposed this writ application. It is submitted that the Appellate Authority has dealt



with all aspects of the matter in the impugned order, therefore, the reasoning and rationale provided in the impugned order alone would be sufficient to defend the impugned order.

9. Having heard learned counsel for the petitioner, the State and Respondent No. 12 as also on perusal of the records and the impugned order, this Court finds that on the issue of limitation, the Appellate Authority has taken a view that where there is a clash between substantial justice and technical considerations, the substantial justice has to be given preference. Reliance in this regard has been placed on the judgment of the Supreme Court in the case of **Collector Land Acquisition, Ananatnag and Another versus Mst. Katiji and Others** reported in **AIR 1987 SC 1353**.

10. This Court is of the considered opinion that no interference is required on this issue and the views expressed by the Appellate Authority on the point of limitation having been supported with a judgment of the Hon'ble Supreme Court of India needs no interference by this Court sitting under Article 226 of the Constitution of India.

11. In this case the admitted position is that this petitioner had applied for her appointment under EBC (F) category whereas Respondent No. 12 had applied under UR (F)



category. There is also no dispute on the point that in UR (F) category, the petitioner was called for counselling and she was included in the merit list of un-reserved category. The Appellate Authority has found that there is no reason as to why a decision was taken to exclude her. An argument was advanced before the Appellate Authority that Respondent No. 12 had not enclosed any certificate relating to her training and her date of birth was not certified because original copy of matriculation certificate had not been probated. The Authority has found that these objections cannot be said to be justified and proper at this stage, on the face of the facts that other candidates have been considered for appointment despite being untrained. In fact it has been found that this petitioner was also in the category of un-trained and another candidate Bindu Kumari was also un-trained.

12. Having taken note of this fact that the other un-trained candidates were considered, in the opinion of this Court, the Appellate Authority rightly came to a conclusion that the reasons provided at this stage for exclusion of the name of Respondent No. 12 from the merit list of un-reserved category cannot be accepted.

13. At this stage, an argument has been advanced



before this Court that Bindu Kumari who was another candidate in EBC (F) category was not a party before the Appellate Authority. This Court finds that it would not make any difference for the reason that no adverse order has been passed against Bindu Kumari. Her appointment as Teacher has not been disturbed by the Appellate Authority. The judgment of the Appellate Authority has only and only effect on the present petitioner inasmuch as the petitioner gets ousted by virtue of the judgment of the Appellate Authority. Admittedly, she was below Bindu Kumari in the merit list, if Bindu Kumari occupies the seat of EBC (F), the petitioner automatically gets ousted.

14. Learned counsel for the petitioner has advanced one more submission at this stage. It is submitted that after the cut off date, i.e., 31st March, 2019 no person can remain on the post of a Teacher who is untrained and has not submitted his Teacher's Training Certificate from National Institute of Open Schooling (N.I.O.S.). This Court would not interfere with the judgment of the Appellate Authority on this ground for the obvious reason that the Respondent No. 12 has been victim of an illegal and unfair action by the employment unit. She cannot be ousted on this ground when she has been able to demonstrate that the employment unit had acted arbitrarily and with malafide



intention. How this issue will be dealt with would be a matter to be considered by the respondent authorities and not by this Court at this stage. The State has not come out with any plea against the order of the Appellate Authority.

15. This Court finds no reason to interfere with the direction issued by the Appellate Authority. The order shall be given effect to forthwith, let it be placed before the District Magistrate, East Champaran (Respondent No. 4) who will ensure that the competent authority/ employment unit comes out with the consequential order of appointment of Respondent No. 12 and removal of the petitioner within one week from today.

16. This writ application has no merit, it is dismissed accordingly.

(Rajeev Ranjan Prasad, J)

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