

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.88 of 2022

In
Civil Writ Jurisdiction Case No.11656 of 2019

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Mamta Kumari Wife of Praveen Kumar Resident of Village and P.O. -
Jhunathi, Police Station - Parasbigha, District- Jehanabad.

... .. Appellant/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 Teachers 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 Son of Ganesh Ji Pathak Resident of Village - Dhanchua Chauri, P.S. Chauri, District- Bhojpur.
9. Rakesh Kumar Sharma Son of Ramashankar Sharma Resident of Village - Mitanghat, Gurhata, P.S. Khajekalan, District- Patna.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Prakritita Sharma, Advocate
For the Respondent/s	:	Mr. Ajay Kr. Rastogi, AAG-10
		Mr. Ajay Kumar, Advocate
		Mr. Kirthi Mathur, Advocate
		Mr. Yash Mathur, Advocate
		Mr. Nilesh Kumar, Advocate
		Mr. Manoj Kumar, Advocate
		Mr. Raj Narain Mishra, Advocate
		Mr. Vineet Kumar, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJIV ROY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJIV ROY)

Date : 04-10-2023

Heard the parties.



2. The present Memo of Appeal is directed against the order dated 24.12.2021 passed in **CWJC No.-11656 of 2019 (Mamta Kumari Vs. The State of Bihar & Ors.)** by which the Hon'ble Single Judge has declined to interfere with the letter dated 16.01.2019 issued by Deputy Development Commissioner- cum-Chief Executive Officer, Jehanabad whereby and whereunder the case of the appellant-petitioner for appointment on the post of Librarian has been rejected on the ground of non-availability of vacant post.

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

4. In the year 2008, the respondent authorities had initiated the appointment process within the district of Jehanabad for the post of Librarian. The eligibility for the said post was Graduation degree in Library Science with minimum 50% of marks. The Appellant-Petitioner having requisite qualification applied for the said post under open category.

5. However, due to some reason, the appointment process could not be completed and thus in the year 2012, the process was re-initiated. It was however once again abandoned. Finally, in the year 2015, pursuant to the direction of the Director, Secondary Education, Bihar, Patna vide office letter



no.-2046 dated 10.12.2015; the date for counseling was fixed on 21.12.2015. The candidates were asked to be present in the office of Zila Parishad, Jehanabad for the verification of the certificates/marksheets etc.

6. However, in the Merit List so prepared for counseling on 18.12.2015, the name of the appellant -petitioner was missing with remarks as "*Matric Marksheet*" after *Apply Not Match*". Further, the appellant-petitioner was never asked to clarify the same.

7. Feeling aggrieved, the appellant-petitioner challenged her omission before the District Teachers Employment Appellate Authority, Jehanabad (henceforth for short 'the Authority'), in Appeal Case No. 42 of 2016.

8. 'The Authority' heard the matter at length, perused the written statement filed by the Deputy Development Commissioner-cum-Chief Executive Officer, Jehanabad and decided the case in her favour. Accordingly, it quashed the list which had omitted her name vide an order dated 17.07.2017 (communicated vide memo no.-38 dated 26.07.2017).

9. 'The Authority' directed the Opposite Parties to verify her marks sheet and accordingly include the name in the merit list so that further action could be taken in the matter.



10. When no action was taken either on the direction so issued by 'the Authority' or upon the representations filed by the appellant-petitioner, she preferred writ application vide CWJC No.-11426 of 2018, which was heard by the Hon'ble Court and disposed of on 05.09.2018 with the following order:

"...the Deputy Development Commissioner-cum-Chief Executive Officer, Jehanabad is directed to ensure implementation of the order dated 26.07.2017 passed in Appellate Case No. 42 of 2006 by the District Appellate Authority, Jehanabad within a period of four weeks from today, failing which the respondent no. 4 shall be liable for strict penal action. The writ petition is disposed off on the aforesaid terms."

11. As the respondents still sat over the matter, MJC No. 4623 of 2018 was preferred. Thereafter, the respondent no. 4 passed an order on 16.01.2019 negating the claim of the appellant-petitioner on the ground of non-availability of the post.

12. The case of the appellant-petitioner is that during the pendency of her case before 'the Authority', some of the successful candidates had moved in CWJC No. 2048 of 2017 (respondent nos. 8 & 9) alleging that though they were in



the merit list, they have not been appointed on the ground that the post do not exist.

13. The aforementioned writ application was heard and vide an order dated 25.04.2017, the writ court disposed of the matter with the liberty to the writ petitioners to file a representation before the Principal Secretary, Education Department, Government of Bihar, Patna without expressing any opinion on the merit of the case.

14. Pursuant thereto and upon their representation(s), the Principal Secretary passed an order dated 30.06.2017 directing the Deputy Development Commissioner-cum-Chief Executing Officer, Jehanabad to appoint the two writ petitioners on the vacant post of Librarian after following due process of law.

15. The claim of the appellant-petitioner is that the Deputy Development Commissioner-cum-Chief Executing Officer, Jehanabad swiftly acted in the matter by convening the meeting of appointment committee in the light of order dated 30.06.2017 passed by Principal Secretary, considered the cases of the Respondent nos- 8 and 9 (without discussing the case of the appellant-petitioner) and took the decision for their appointment.



16. Pursuant thereto, the Respondent Nos. 8 & 9 submitted their joining on 29.07.2017 and 04.08.2017 at *Uchaya Vidyalaya Bauri* and *Uchaya Vidyalaya, Nihampur*, respectively.

17. The contention put forward by the appellant-petitioner is that the Deputy Development Commissioner-cum-Chief Executing Officer, Jehanabad only to frustrate her case and further to defy the order of 'the Authority', took the decision for appointment of the Respondent no-8 and 9, which could be well appreciated from the facts stated below:-

(i) the appellant-petitioner was agitating the matter for inclusion of her name in the merit list since 2016 before 'the Authority' in Appeal Case No-42 of 2016;

(ii) in the first appointment process, she had to procure some documents but when the matter was finally taken up in the year 2015, all her certificates/documents were there;

(iii) her position in the merit list was over and above the Respondent Nos. 8 and 9, but the same was ignored;

(iv) the Deputy Development



Commissioner filed his response and also produced the relevant records before 'the Authority' in Appeal Case No-42 of 2016;

(v) 'the Authority' passed the order on 17.07.2017 (as contained in Memo No.-38 dated 26.07.2017) directing inclusion of name of the appellant-petitioner in merit list and to appoint her on the post of Librarian subject to availability of the post;

(vi) the said order was never challenged by the respondents;

(vii) the writ court in CWJC No. 11426 of 2018 directed implementation of the order of the Appellate Authority;

(viii) it was deliberately ignored forcing her to file contempt petition;

(ix) thereafter the respondent swiftly rejected her claim.

18. Aggrieved by the decision of the Deputy Development Commissioner -cum- Chief Executive Officer, Zila Parishad, Jehanabad passed vide memo no. 17 dated 16.01.2019, CWJC No. 11656 of 2019 was preferred by the



appellant-petitioner.

19. The matter was considered by the writ court and paragraphs-8 to 11 read as follows:-

“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 counseling, 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 other follow up action.

9. It appears that during the interregnum period, a writ petition bearing CWIC 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.c. 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.

20. The writ court further after summoning the records of the case from ‘the Authority’, Jehanabad (Appeal Case No. 42 of 2016) recorded that the hand written order is there which though was directed to be typed on 17.07.2017, the same was typed only on 26.07.2017 whereafter it was sent to the Deputy Development Commissioner cum Chief Executive Officer, Jehanabad as also the other functionaries.

21. It thus held that in view of the fact that during the said period, the vacant post stood filled, she could not be offered the appointment on the post of Librarian and in the said circumstances, dismissed the writ petition.

22. The writ court however held that as per the supplementary affidavit of the petitioner, the vacant post of the Librarian is/are still there and in that event, the respondent no. 4, Deputy Development Commissioner cum Chief Executive



Officer, Jehanabad shall take a decision and pass a reasoned order.

23. Aggrieved by the said order, the present appeal.

24. We have heard the learned counsel for the parties.

25. The case presented by the appellant-petitioner before us through her learned counsel is/are that:

(i) she was having minimum 50 percent qualifying marks in graduation degree in Library Science and thus was eligible for the post of Librarian in the general quota pursuant to the initiation of appointment process in the district of Jehanabad;

(ii) since the High School's certificate was not submitted in time, score of mark sheet supplied by the Principal on the basis of cross list was attached with the application form and she applied for providing mark sheet. Once received, it was submitted before the respondent;

(iii) this happened in 2009 and at that time the appointment process was not completed



which was once again initiated in 2012 when the Education Department directed the Zila Parishad, Jehanabad to undertake the said process;

(iv) accordingly, all the certificates and mark sheets were already submitted but once again the process stopped;

(v) the process was re-initiated only in the year 2015, when all her documents were available. However, in the merit list for counseling that was prepared, deliberately her name was omitted with a remark that 'the matric marksheet after apply not match'.

26. This was immediately challenged before 'the Authority' in Appeal No. 42 of 2016 whereafter:

(i) the appeal was allowed on 17.07.2017/26.07.2017 with a direction to consider her case on the post of Librarian;

(ii) she made a representation before the respondent no. 4;

(iii) as no step was taken, she preferred CWJC No. 11426 of 2018 which was disposed of on 05.09.2018 with a direction to the



respondent no. 4 to ensure the implementation of the order dated 17.07.2017 passed by 'the Authority;

27. As the respondent no. 4 further failed to act:

- (i) MJC 4623 of 2018 was preferred
- (ii) it was only then that the respondents vide letter dated 16.01.2019 rejected her claim stating that the post not vacant;
- (iii) the writ court without appreciating all these facts, dismissed the petition.

28. Learned counsels appearing for the respondent nos. 8 & 9 submitted that they have nothing to do with the case of the appellant-petitioner. As they were eligible candidates, following the directions of 'the department', they have been appointed in the year 2017 and are working since then.

29. Learned counsel for the Zila Parishad, Jehanabad supported the decision stating that as no seat is vacant, her case could not be considered. However, upon enquiry whether in view of direction of the Appellate Authority which remained unchallenged, she can be denied



appointment, there was no answer.

30. The aforesaid facts clearly show that there was the direction of the Appellate Authority to the respondents to consider the claim of the appellant-petitioner has not been carried out. It is also not the case of the respondent no.4 that the order was even challenged.

31. Thus, the appellant-petitioner has a case and her candidature should have been considered for the post of Librarian as she had higher marks to that of the respondent nos. 8 & 9 as claimed by her.

32. As the learned counsel appearing for the Zila Parishad, Jehanabad has informed that there is no vacancy in the unreserved category for the post of Librarian, the less meritorious amongst them, i.e. the respondent no. 9, Rakesh Kumar Sharma will have to give way to the appellant-petitioner herein.

33. It is however, clarified that in case there is a vacancy, the respondent no. 9, Rakesh Kumar Sharma need not be disturbed but so far as the appellant-petitioner is concerned, she has to be appointed.

34. The present appeal is allowed. The order dated 24.12.2021 passed by the Hon'ble Single Judge in CWJC



No. 11656 of 2019 is set aside.

35. The respondent no. 4 shall pass an order for her appointment on the post of Librarian on the unreserved post preferably within a period of four weeks from the date of receipt of the order. On appointment she will have continuity of employment from the date of appointment of respondent nos. 8 & 9 but only notional, till her appointment. There shall be no recovery made from the 9th respondent even if he is failed to be accommodated for reason of dearth of vacancy.

36. With the aforesaid observations, the appeal stands disposed of.

(K. Vinod Chandran, CJ)

(Rajiv Roy, J)

Jagdish/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	12.10.2023
Transmission Date	

