

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9969 of 2019

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Smt. Mina Kumari @ Mina Kumari D/o Ramchandra Rai and W/o Ajay Kumar Terminated Panchayat Teacher, Rajkiya Prathmik Vidyalay, Mahisautha Jonki, Block- Aurai, District- Muzaffarpur At present resident of Village- Maheswara, P.O.- Barhad, P.S. and Block- Aurai, District- Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Education Department, Government of Bihar, Patna.
2. The Director, Primary Education, Education Department, Government of Bihar, Patna.
3. The District Magistrate, Muzaffarpur.
4. The District Programme Officer (Establishment), Muzaffarpur.
5. The District Education Officer, Muzaffarpur.
6. The Mukhiya, Gram Panchayat Raj Maheshwari, Block- Aurai, District- Muzaffarpur.
7. The Panchayat Secretary, Gram Panchayat Raj Maheshwari, Block- Aurai, District- Muzaffarpur.
8. Smt. Vasundhara Kumari W/o Rakesh Kumar Resident of Village and P.O.- Berai, Via- Narma, P.S.- Hathauri, Block- Katra, District- Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Sanjay Kumar @ S.K.
For the Respondent/s : Mr.Smt. Shilpa Singh (Ga12)

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL JUDGMENT

Date : 18-12-2023

1. Heard the parties.
2. The petitioner being aggrieved by the order dated 17.12.2018 passed by the State Appellate Authority, Bihar, Patna in Appeal Case No. 266 of 2018 has filed the present writ application for setting aside the order dated 17.12.2018 by which appeal has been dismissed and the order dated



10.04.2015 passed by learned District Appellate Authority, Muzaffarpur in Objection Case No. 356 of 2010 has been upheld. Both the Appellate Authorities upheld the termination of the petitioner with further direction to conduct a fresh counselling and complete the selection process within sixty days. If the respondent no. 8 appears for counselling and submits her consent, appointment letter shall be issued to her. However, if she does not appear in spite of notice, then petitioner shall be deemed to have continued in service as Panchayat Teacher on which she was working when the order dated 10.04.2015 was passed. The petitioner has also prayed for quashing of the order dated 13.06.2015 passed by the respondent nos. 6 & 7 by which appointment of the petitioner was cancelled in pursuance of the order passed by District Appellate Authority.

3. The factual matrix of the case is in narrow compass inasmuch as in the year 2008 an advertisement was published in Gram Panchayat Raj, Maheswara Aurai Block in the district of Muzaffarpur for appointment of Panchayat Teacher in the second phase of appointment process. In pursuance of the said advertisement the petitioner having the qualification of Intermediate applied for the post of untrained Panchayat Teacher. On 28.02.2009 counselling was held in which



petitioner along with respondent no. 8 and others appeared but as per the case of the petitioner the respondent no. 8 did not produce her original certificates on the said date. In the meanwhile the State Government stayed all the appointment of second phase Panchayat Teacher. In August 2010 a notice was published in almost all the newspapers of the State of Bihar whereby the dates for counselling / issuance of appointment letters to the Panchayat Teachers were fixed for 13.08.2010 and 14.08.2010. It is the case of the petitioner as well as employment unit that respondent no. 8 did not appear in the counselling either on 13.08.2010 or 14.08.2010. The candidates namely, Mohan Thakur, Babita Kumari and Chanda Bharti were selected. Again thereafter vide memo no. 3562 date for issuance of appointment letter of Panchayat Teacher was fixed on 29.12.2010 & 30.12.2010 and on 30.12.2010 the petitioner, respondent no. 8, Mohan Thakur, Babita Kumari and Chanda Bharti were issued appointment letter against the 5 vacancies of Panchayat Teacher in different schools with a direction to join within stipulated time period.

4. The respondent no. 8 was selected as a Trained Teacher against the vacancy no. 1027 in Rajkiya Prathamik Vidyalay, Daura Dharampur (Naya) , Aurai and the petitioner



was selected against vacancy no. 1029 as an untrained Panchayat Teacher in Rajkiya Prathamik Vidyalaya, Mahisautha Jonki, Aurai. It is the case of the petitioner that respondent no. 8 did not join her post rather she filed an objection case on 31.12.2010 bearing Objection Case No. 356 / 2010 before the District Appellate Authority, Muzaffarpur against the appointment of Mina Kumari. In the said case the other appointees namely, Mohan Thakur, Babita Kumari, Chanda Bharti and Mina Kumari (i.e. petitioner) were also made parties. The petitioner before the District Appellate Authority, Muzaffarpur contended that Vashundhara Kumari was employed / appointed against the vacancy no. 1027 as a trained Teacher whereas the petitioner was appointed as an untrained Panchayat Teacher against vacancy no. 1029. The Panchayat Secretary also appeared before the District Appellate Authority, Muzaffarpur and filed his reply on 08.09.2014 wherein he has categorically taken a stand that Vashundhara Kumari was appointed as Panchayat Teacher but she did not join on the aforesaid post. On 10.04.2015 the District Appellate Authority, Muzaffarpur passed the impugned order by which the entire appointment made on 30.12.2010 by the employment unit of Maheshwara Panchayat was set aside with further direction to conduct fresh process of



appointment. In compliance of the said order, service of the petitioner along with other aforesaid Teachers were terminated on 13.06.2015 by the Panchayat Employment Unit. The petitioner being aggrieved by the order dated 10.04.2015 passed by the District Appellate Authority preferred an appeal before the State Appellate Authority in Appeal Case No. 266 of 2018 which was heard along with Appeal Case No. 265 of 2018 (filed by the other 3 selected candidates whose appointment was cancelled by the same impugned order dated 10.04.2015). The respondent no. 8 did not appear before the State Appellate Authority though notice was validly served. By order dated 17.12.2018 the Appeal Case No. 266 / 2018 of the petitioner was dismissed whereas the Appeal Case No. 265 of 2018 was allowed.

5. Learned counsel for the petitioner submits that there were altogether five vacancies for different schools under Maheshwara Panchayat and accordingly five appointment letters were issued in favour of five candidates including the petitioner and the respondent no. 8 on 30.12.2010. All other candidates including the petitioner duly accepted their appointment letter and joined their respective schools and started discharging duties but the respondent no. 8 neither appeared before the



employment unit to give her consent nor she joined on the said post. The said fact is evident from the averment made by Panchayat Secretary before the District Appellate Authority, Muzaffarpur as well as before the State Appellate Authority, Bihar, Patna. The impugned order dated 10.04.2015 passed by the District Appellate Authority, Muzaffarpur is based upon irrelevant material and further the District Appellate Authority exceeded its jurisdiction by setting aside the entire selection process. He further submits that the impugned order passed by the State Appellate Authority is based upon presumption and surmises and also based upon irrelevant material.

6. Upon having heard the parties and perusal of the materials available on record it appears that the private respondent initially challenged the appointment of the petitioner but subsequently she challenged the entire process of selection. The grievance of the private respondent is that she was the only available trained candidate who appeared in the counselling held by Panchayat Employment Unit, Maheshwari on 30.12.2010 but in absence of Panchayat Secretary no counselling was held on that date and later on ante dated appointment letters were issued to the petitioner and others.

7. Learned District Teachers Appellate Authority came to



the conclusion upon perusal of the register of the selection process that counselling was held on 28.02.2009 but in both the registers the signatories are different persons, which raises a serious doubt in the entire selection process and appointment made pursuant thereto. The claim of the Panchayat Secretary that respondent no. 8 did not produce her original certificate on 28.02.2009 and later on she was appointed as Panchayat Teacher on 30.12.2010 but she did not join appears to be wrong as all the relevant documents have been annexed by the respondent no. 8 in the appeal filed by her. No process for distribution of appointment letter was held on 30.12.2010 in Maheshwara Panchayat. The Mukhiya and Panchayat Secretary for their personal gain appointed the candidates by illegal means. As per Clause 2 of the notification of the Human Resource Development Department dated 25.08.2008 the panel for trained and untrained teacher was to be prepared separately. At first, trained teachers were to be selected and only then the untrained teachers were to be appointed. In the meeting dated 02.03.2009 a list was prepared on the basis of the marks in which 16 teachers were in the category of trained teachers and 10 teachers were there in the category of untrained teachers. The private respondent, who was in the list of trained teachers with 57.6 %



marks was not selected or given appointment letter whereas the petitioner along with other candidates were selected as untrained teachers which was challenged by the private respondent alleging that entire selection process was illegal. Since appointment was made contrary to the relevant provisions and notification issued by the Human Resource Development Department the same was cancelled by the District Appellate Authority with further direction to make fresh appointment.

8. The State Appellate Authority arrived at the conclusion that the claim of the respondent- Panchayat Secretary that appointment letter was issued to the private respondent but she did not join does not appear to be convincing. If the private respondent had received appointment letter on 30.12.2010 then why would she have filed complaint / appeal before the District Appellate Authority on 31.12.2010 itself. Thus, the claim of the private respondent for her appointment in place of the petitioner is fully justified. The claim of the private respondent is against the appointment of Mina Kumari i.e. petitioner and she is not concerned with others who were appointed in EBC and SC category but the learned District Appellate Authority has erred in cancelling entire process of appointment. The District Appellate Authority has



conducted roving enquiry into the entire process of appointment which is not within its jurisdiction as has been held in the case of Puja vs The State of Bihar and Others reported in 2016(1) PLJR 836. The appeal filed by three candidates were allowed and the impugned order dated 10.04.2015 passed by the District Appellate Authority, Muzaffarpur in Objection Case No. 356 of 2010 filed by respondent no. 8 was set aside. The Appeal No. 266 of 2018 filed by the petitioner / Mina Kumari was rejected and the impugned order dated 10.04.2015 cancelling the appointment of Mina Kumari i.e. petitioner was upheld. The District Appellate Authority disposed the appeal in terms that the Panchayat Teacher Employment Committee Maheshwari will hold fresh counselling as directed by the District Appellate Authority, Muzaffarpur in its order dated 10.04.2015 and if the private respondent no. 8 / Vasundhra Kumari appears for counselling and submits her consent, the appointment letter shall be issued to her however, if she does not appear in spite of notice sent by registered post and published on the notice board of the Gram Panchayat and the Block Office, the petitioner – Mina Kumari shall be deemed to have continued in service as Panchayat Teacher on the post on which she was working at the time of passing of impugned order dated 10.04.2015. The



process of fresh counselling and appointment was to be completed within sixty days from the date of passing order by the State Appellate Authority.

9. In view of the aforesaid factual matrix and the findings arrived at by the two different appellate authorities and the materials available on record, I do not find any infirmity in the order dated 17.12.2018 in Appeal Case No. 266 of 2018 passed by the State Appellate Authority. Accordingly, this writ application is devoid of merit and is dismissed.

(Anil Kumar Sinha, J)

praful/-AFR

AFR/NAFR	AFR
CAV DATE	NA
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