

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10221 of 2019

Manoj Kumar Yadav Son of Late Bansi Yadav Resident of Village- Taraun,
Post Office- Chouka Pathar, Police Station- Sono, District- Jamui, presently
posted as Prakhanda Teacher in Upgraded Middle School, Dahyari, Murli Tola,
Block- Sono, District- Jamui.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Principal Secretary, Department of Education, Government of Bihar, Patna.
2. The District Magistrate Jamui.
3. The District Education Officer Jamui.
4. The District Programme Officer (Establishment), Jamui.
5. The Block Development Officer -cum- Secretary Block Teachers Employment Unit, Sono, Block- Sono, District- Jamui.
6. The Block Education Officer Sono, District- Jamui.
7. Jitendra Kumar Shaw Son of Mahendra Shaw Resident of Village- Dharba, Police Station- Laxmipur, District- Jamui.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Arun Kumar, Advocate
For the Respondent/s : Ms. Namrata Singh, AC to Ex GA- 12

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

- 4 15-12-2023 1. Heard learned Counsel for the parties concerned.
2. The petitioner and respondent no. 7 applied for appointment as Block Teacher in Hindi in the Sono Block in the year 2015 under Backward Class Category. In the merit panel, the petitioner was placed at serial no. 136, having 51.97 marks; whereas, respondent no. 7 was placed at serial no. 46, having 57.53 marks. It is not



disputed that both, the petitioner and the respondent no. 7 are from Backward Class category.

3. The appointment of this petitioner was made by the Employment Unit on the ground that T.E.T. Certificate of the respondent no. 7 during verification was “not found” by the District Education Officer, Jamui. Since the T.E.T. certificate of the petitioner was verified, he was given appointment over and above the right of the respondent no. 7.
4. The respondent no. 7, aggrieved by the action of the Employment Unit, filed an appeal before the District Appellate Authority, Jamui, and being aggrieved by the action of respondent/D.E.O. giving the remarks that T.E.T. certificate of the petitioner was “not found”. As per case of the respondent no. 7 before the District Appellate Authority, Jamui, is that he had cleared the T.E.T. Examination in the year 2012. The District Appellate Authority directed the concerned authority, vide order dated 17.11.2017 to inquire into and verify the T.E.T. Certificate of the respondent no. 7.
5. When the order, dated 17.11.2017, was not complied, the respondent no. 7 filed execution case, bearing Case No. 1



of 2016, which was dismissed by order dated 07.03.2018 on the basis of the statement made by the respondents-State that there was two vacancies under the Backward Class Category and both have been filled up.

6. Being aggrieved by the dismissal of the Execution Case No. 01 of 2016, the respondent no. 7 filed an appeal before the State Appellate Authority, bearing Appeal No. 356 of 2018 in which respondent no. 7 herein, was appellant.
7. Learned counsel for the petitioner submits that respondent no. 7 did not make the petitioner as party/respondent in the appeal filed by him before District Appellate Authority and also the petitioner was not made as a party in Execution Case no. 1 of 2016. Though, the petitioner was made respondent no. 7 before the State Appellate Authority in Appeal No. 356 of 2018, wherein the contention of the petitioner was that no notice was actually served upon him. The State Appellate Authority has accepted the service of notice upon the petitioner under deeming clause that the notice has not returned unserved. Learned counsel next submits that this presumption is rebuttable. The petitioner is working since



the day of appointment, as such serious prejudice shall be caused to him if he is not given the opportunity of being heard by the State Appellate Authority.

8. On the other hand, learned counsel for the respondent no. 7 submits that petitioner is less meritorious than the respondent no. 7 but respondent no. 7 has been denied employment merely on the basis of the remarks given by the D.E.O. regarding the T.E.T. Certificate of the petitioner as “not found”. The State Appellate Authority has allowed appeal of the respondent no. 7 and has cancelled the appointment of the petitioner and directed for appointment of respondent no. 7.
9. In view of the fact that the appointment of the petitioner has been cancelled by the State Appellate Authority without giving opportunity of hearing to him and it is the case of the petitioner that no notice was served upon him, accordingly I come to the conclusion that the petitioner shall be adversely affected if the opportunity of hearing is not given to him.
10. In the result, the order dated 03.12.2018, passed by the State Appellate Authority, is set aside and the matter is remanded back to the State Appellate Authority for



passing fresh order in accordance with law after giving adequate opportunity of hearing to the petitioner.

11.It is made clear that now the petitioner shall not dispute regarding non-receipt of notice and shall participate in the proceeding before the State Appellate Authority and shall inquire the date of hearing from the office of State Appellate Authority.

12.The State Appellate Authority is directed to conclude and dispose the appeal within a period of three months from the date of receipt/production of a copy of this order.

13.This writ application stands disposed.

(Anil Kumar Sinha, J.)

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