

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.710 of 2023

In

Civil Writ Jurisdiction Case No.6716 of 2018

Arvind Kumar Singh Son of Sri Sakaldip Singh Resident of Village-
Dhanihari, Block- Durgawati, Police Station, Durgawati, District- Kaimur at
Bhabhua(Bihar).

... .. Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Government of Bihar, Patna.
2. The State Appellate Authority Education Department, Bihar, Patna.
3. The District Magistrate, Kaimur at Bhabua.
4. The District Education Officer, Kaimur at Bhabua.
5. The Block Education Extension Officer, Block- Mohania, District- Kaimur.
6. The Panchayat Sachiv, Gram Panchayat Usari, Block- Mohania, District- Kaimur at Bhabua.
7. The Mukhiya, Gram Panchayat, Usari, Block- Mohania, District- Kaimur at Bhabua.
8. Ashok Kumar Garg, Son of Rama Kant Tiwari, Resident of Village- Usari, Post office- Akorhi, Block and Police station Mohania, District- Kaimur at Bhabua.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Rajendra Narain, Sr. Advocate
Mr. Ramchandra Singh, Advocate
For the Respondent/s : Mr. Sarvesh Kr .Singh, AAG 13
Mr. Rajat Kumar Tiwary, AC to AAG-13

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 25-09-2023

The controversy is as to whether the appellant or
the 8th Respondent is entitled to be appointed as Panchayat
Teacher in Usari Gram Panchayat under the Mohania Block in



Kaimur (Bhabua) District. The appointment was carried out in a selection under the Bihar Panchayat Elementary Teachers (Employment and Service Conditions) Rules, 2006.

2. Admittedly, the appellant's father-in-law was the Mukhiya, who was also a member of the Selection Committee. The 8th respondent approached this Court challenging the appointment of the Mukhiya's son-in-law, upon which he was directed to approach the District Appellate Authority. The District Appellate Authority, at the first instance, rejected the claim of the 8th respondent. The 8th respondent again challenged the order, upon which a remand was made in which he came out successful.

3. We need not refer to the earlier proceedings and we confine ourselves to the proceedings of the State Appellate Authority produced as Annexure-8 in the writ petition and the judgment of the learned Single Judge.

4. The learned Single Judge agreed with the State Appellate Authority and found that the petitioner, appellant herein, was wrongly appointed, he having only lesser marks than the 8th respondent.

5. The learned Senior Counsel for the appellant points out that the appellant was appointed and was continuing



for long and the appellant had higher marks and hence, there is no reason to interfere with his appointment; despite he being the son-in-law of the Mukhiya.

6. The State and the learned counsel for the 8th respondent sought to uphold the judgment of the learned Single Judge. The State Appellate Authority has elaborately considered the facts. The appellant and the 8th respondent were, admittedly, candidates for the selection. In the first rank list, the appellant did not figure, which is admitted by him. His contention is that he was wrongly excluded and on his complaint, he was included. The 8th respondent asserts that the appellant was included only on the influence exerted by the Mukhiya, the father-in-law.

7. We need not go into that controversy, since admittedly the appellant did not have better marks than the 8th respondent. We also notice that the first rank holder so appointed was disqualified. The bone of contention is as to who is the second rank holder, to be appointed in the vacancy created by the disqualification of the first rank holder.

8. Admittedly, the qualification was Intermediate and the marks to be reckoned for the purpose of selection, were those of the compulsory and the optional subjects. The appellant



obtained 558 marks and the 8th respondent 564 marks, both out of 900 marks. Thus, the appellant had only 62% while the 8th respondent had 62.66%. As per the tabulation done by the Selection Committee, the appellant was given 588 marks. The addition of 30 marks was insofar as half of the marks obtained by the appellant for a vocational subject; which was not permissible under the Rules. The State Appellate Authority found that the 30 marks awarded to the appellant, being half of that obtained under the vocational stream, was not correct. The learned Single Judge agreed with that and also found that if the marks for the vocational course are added then the percentage cannot be calculated out of the total 900, since the full marks for the vocational subject is 100.

9. We fully agree with the finding of the State Appellate Authority and the learned Single Judge. We have noticed the marksheet of the appellant, the tabular form of which is extracted by the State Appellate Authority in his order at Annexure-8 produced in the writ petition. He obtained 558 marks out of 900 for the compulsory and optional subjects. He had also taken an additional subject in Political Science for which he had obtained 84 out of 200 marks. In the vocational subject he obtained 60 marks out of 100.



10. As has been found by the State Appellate Authority, there is no provision for adding the marks for the vocational subject. Even if, the marks for the vocational subject is added, there is no reasonable explanation as to why it was halved. Yet again, if the marks obtained in the vocational subject was halved or given in full, then necessarily the total marks should have also been enhanced to either 950 or 1000, respectively, in which event also, the appellant would have obtained only lesser percentage of marks than the 8th respondent. Obviously, the Selection Committee acted illegally and the claim of nepotism stands validated.

11. We find absolutely no reason to entertain the appeal. The appeal stands dismissed confirming the entitlement of the 8th respondent to be appointed to the post.

12. The parties shall suffer their respective costs.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	28.09.2023
Transmission Date	

