

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1429 of 2017

In
Civil Writ Jurisdiction Case No.10267 of 2012

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Manoj Kumar Das, son of Bigan Lal Das, Resident of Village- Jamanganj,
P.S.- Makhdumpur, District- Jehanabad.

... .. Appellant/s

Versus

1. The State of Bihar through the Collector, Jehanabad.
2. The District Teachers Employment Appellate Authority Jehanabad, District- Jehanabad.
3. The District Superintendent of Education, Jehanabad.
4. The Block Education Officer, Makhdumpur Block, District- Jehanabad.
5. The Mukhiya, Grampanchayat, Chhariari, P.S.- Makhdumpur, District- Jehanabad.
6. The Panchayat Secretary, Grampanchayat Chhariari, P.S.- Makhdumpur, District- Jehanabad.
7. Subodh Kumar, son of Kamdeo Paswan, Resident of Village Makhdumpur, P.O.- Makhdumpur, Police Station- Makhdumpur, District- Jehanabad at present working as Constable, Police Line- 5, Bagaha, West Champaran.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Uma Kant Tiwary, Advocate
For the Respondent/s : Mr. A.R.Pandey, AAG-15

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

C.A.V. JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 11-07-2023

The appellant, the petitioner before the learned Single Judge, in the writ petition challenged the order of the District Teachers Employment Appellate Tribunal (for brevity ‘Appellate Tribunal’), Jehanabad in Complaint Case No.521(44)/2011. As a consequence of the order dated



23.11.2011 of the appellate authority, the Panchayat Secretary of the Gram Panchayat by communication dated 16.05.2012 removed the appellant from the post of Panchayat Teacher.

2. Before the learned Single Judge, the State pointed out a statutory appellate remedy before the State Appellate Authority which was brought in by the Bihar State School Teachers and Employees Dispute Redressal Rules, 2015 (for brevity 'Rules of 2015'). The State asserted that when there is an efficacious alternate remedy, the extra ordinary jurisdiction under Article 226 of the Constitution should not be invoked. The appellant, however, pointed out that when the order was issued, there was no such appellate forum. Hence, a writ petition was filed and there was no reason to send back the petitioner to the appellate authority when the matter had engaged the attention of this Court for five years; from 2012 to 2017.

3. The learned Single Judge found that there is a remedy of appeal, though created later by the Rules of 2015, which is more appropriate and broader in scope than that of a judicial review under Article-226. The State Appellate Authority had the powers vested in the Civil Court and could summon witnesses, take evidence, make discoveries and inspection of documents, thus making it a more efficacious remedy. The learned Single Judge also found that the Rule against



retrospectivity applies only to statutes which affect vested rights and does not apply to statutes which alter the forum of procedure or the admissibility of evidence or the effect which the Court gives to evidence. When the enactment is with respect to the matter of procedure, then, *prima facie*, it applies to all actions pending as well as future. The learned Single Judge directed the petitioner to approach the appellate remedy within a period of 60 days, *de hors* any limitation; which would otherwise affect the admissibility of the appeal.

4. The petitioner did not invoke such remedy of appeal and filed an appeal before this Court which has remained in this Court for another 6 years.

5. We were not inclined to interfere with the orders passed by the learned Single Judge, especially when the discretion exercised by the learned Single Judge was reasonable and could not have been interfered with by this Court even if another view was possible. However, the learned counsel for the appellant vigorously argued for consideration of the matter, especially when the matter has been engaging the attention of this Court for so long and also by virtue of the orders passed by another Division Bench.

6. Learned counsel for the State resisted the prayer for consideration on merits and pointed out that, even that was



done by the District Collector in a specific direction issued by the other Division Bench.

7. We have anxiously considered the contentions raised as also the orders passed by another Division Bench.

8. By order dated 23.01.2023, a Division Bench of this Court noticed the presence, in Court, of the District Magistrate and the District Education Officer who were not in a position to assist the Court as to how there were certain changes in the process of selection. It was noticed that there were two select lists in quick succession and in the first of such select lists the name of the appellant was not reflected whereas the 7th Respondent's name figured. The case was with respect to the selection and appointment to the post of Panchayat Teacher relating back to the year 2012. The 7th respondent, who had filed the complaint case, was no more interested since he was appointed as a constable in the Police Department. The District Collector was, hence, directed to hold a detailed enquiry and pass a detailed speaking order. A personal hearing to the appellant and the 7th respondent was also directed. The District Collector has now passed the order. The appellant raised a challenge against the order of the District Collector on the ground that no notice was issued to the 7th respondent, as has been directed by this Court.



9. The order dated 21.03.2023 of the District Collector was placed on record through an affidavit dated 23.03.2023 on behalf of the 2nd Respondent, the District Education Officer. A Division Bench of this Court by order dated 17.04.2023 passed a detailed order. It was noticed that the District Collector, Jehanabad has passed Annexure-1 order, produced along with the affidavit dated 21.03.2023 in compliance of the earlier order, to hold a detailed enquiry and pass a detailed speaking order after giving personal hearing to the appellant and also to the 7th respondent. Looking at the order passed by the District Collector, it was noticed that there were 10 persons selected for counselling under the SC category, of which the person at the top of the rank list was selected. His certificates were later found to be forged and his candidature cancelled and then a second selection was conducted. Counselling was held, wherein none of the persons who figured in the earlier rank list was called for a second counselling. A new list of fresh candidates was prepared for counselling which included the name of the appellant herein.

10. This Court at this stage did not interfere with the order of the District Magistrate. However, this Court was of the opinion that there should be more details placed as to how the persons figuring in the first list were not called for, at the second



counselling. It was hence, there was a direction to the respondents to apprise this Court as to how the different counselling had occurred without calling for the persons who were in the initial merit list.

11. The learned counsel appearing for the appellant was also directed to take recourse to the Right to Information Act to obtain any document; which it was asserted as suppressed by the respondents. There are no further documents produced by the appellant nor any affidavit placed on record about having filed an application under the Right to Information Act and the same having not been properly processed by the respondents. Insofar as the defect noticed by the earlier Division Bench in the interim order, we find a proper explanation in the order of the District Collector itself.

12. We obtained a translated copy of the order, which is made part of the record of this case, as Annexure-C-1. It is seen from the order of the District Collector that there were three vacancies notified, of which one was in the category of Unreserved (UR) and one each in the category of Scheduled Caste (SC) and Scheduled Tribe (ST). The appellant is admitted to be a Scheduled Caste candidate, who did not figure in the first list of counselling. There were 10 persons in the first list for counselling, wherein the 7th respondent was having the 10th place



and one Bhagwan Das at the 1st place. Bhagwan Das was appointed, but later, his appointment was cancelled finding the certificate to be forged. In that circumstance, the next in the rank list ought to have been called or the respondent authorities should have gone down the list if any person having higher rank did not offer himself for appointment. Strangely, a second counselling was done with a list of another 10 names. It is seen from the merit list, in tabulated form extracted in the order of the District Collector, that there were 10 different persons, of which the appellant was the 9th rank holder. When counselling was done, only the 9th rank holder and the 10th rank holder participated and the appellant was given appointment. It was hence, the 7th respondent filed a complaint against the appellant.

13. The 7th respondent, who figured in the 1st merit list at the 10th place, had 67 % marks and the appellant, who figured in the second merit list, had only 62.11 % of marks. The District Collector also noticed the order of the District Appellate Authority, wherein it was stated that the counselling of the complainant, the 7th respondent, was conducted on 27.01.2019 and the counselling of Bhagwan Das, who later was appointed, was also conducted on the same day. When the appointed candidate was terminated, there was a vacancy in the post reserved for the Scheduled Caste to which the appellant was



appointed by way of a new merit list, without appointing persons from the earlier merit list. It was found by the District Appellate Authority that the appointment of the appellant was illegal as per the Department Rule. The appellant has not chosen to file an appeal before the State Appellate Authority and as of now, the District Collector, on the orders of this Court, had conducted a detailed fact finding enquiry and we are not inclined to interfere with the same or permit the appellant to file an appeal before the State Appellate Authority; being convinced of the illegality in granting appointment to the appellant.

14. Insofar as the contention regarding the complainant, the 7th respondent having not appeared before the District Collector, we do not think that it matters in the *lis*, especially when the appellant's appointment has been found to be illegal. It is also to be noticed that when the appointment of the first rank holder in the original merit list was cancelled, there were 08 persons below him who had ranks higher to the complainant, the 7th respondent. The 7th respondent brought the illegality to the notice of the appellate forum and even if the appellate forum directed appointment from the earlier merit list, it would have only resulted in a person with a higher rank being appointed.

15. Now, we should not be ignoring the fact that



the Division Bench had, in the interim order dated 17.04.2023, directed the District Collector to explain as to how a second merit list came into vogue, wherein none of the persons who figured in the earlier merit list, were included. We see that the District Collector, after finding no justification for the appointment of the appellant, has directed the District Panchayati Raj Officer, Jehanabad to ensure that the action is taken as per rule and in accordance with law against the Mukhiya of the Gram Panchayat Chhariyari and the then Panchayat Secretary, who were instrumental in making the illegal appointment. The illegality has been brought to the notice of the State and it is for the State now to take appropriate action against the erring official(s).

16. Insofar as appellant's case is concerned, there is no scope for either interfering with the orders of the Appellate Authority or that of the District Collector, which were passed in compliance with the directions of this Court. We reiterate that the 7th respondent's absence before the District Collector or before this Court at the time of hearing or even he having been appointed in another post in the Government, does not enable the appellant's appointment to be restored. There were many others in the original merit list who had better rank than the appellant and the subsequent merit list was found to be an illegality. We



would not permit any illegality to be perpetuated by discretionary orders under Article 226 of the Constitution of India; especially when there is no scope for any equitable consideration; looking at the position of the appellant in the merit list as compared with the others who were in the earlier merit list. Going by the percentage of marks the appellant obtained, compared with the others in the original merit list, we find no merit in the appeal. We dismiss the appeal without any order on cost.

(K. Vinod Chandran, CJ)

Partha Sarthy, J: I agree.

(Partha Sarthy, J)

K.C.Jha/Sujit

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