

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2504 of 2018

Sanjay Kumar Mandal son of Shive Narain Mandal Resident of Village -
Mhuyar, Post Office - Mhuyar, Police Station - Manihari, District Katihar.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The District Magistrate Collector, Katihar.
3. The District Superintendent of Education D.E.O., Katihar.
4. The District Program Officer Nya., Katihar.
5. The District Appellate Authority District Appellate Tribunal Katihar.
6. The Block Education Officer B.E.O., Manihari, Katihar.
7. The Employment Unit, Panchayat Sachiv, Panchayat Raj, Fateh Nagar,
Manihari, Katihar.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Sandeep Patil, Adv.
For the Respondent/s : Mr.Jitendra Kumar Roy No-1 -Sc13

**CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH
SHARMA**

ORAL ORDER

6 02-01-2023

1. Heard the parties.

2. The petitioner assails the order passed by the District Appellate Authority dated 29.03.2017 as well as the order passed by the State Appellate Authority dated 11.08.2017, whereby his appeal was disallowed.

3. Learned counsel for the petitioner submits that the petitioner was working as a Shiksha Mitra and had applied for the post of Assistant Teacher in the Panchayat Unit. However, he was not appointed and another person namely Subhash Chandra Mandal was employed as Panchayat Teacher.



Although, the petitioner was possessing higher percentage than Subhash Chandra Mandal. After a vigilance enquiry was initiated, Subhash Chandra Mandal vacated the post in June, 2009 and the post was filled by him. He had joined on the post, whereafter services were dispensed with. He challenged the said order before the District Appellate Authority. But the District Appellate Authority disallowed his appeal, whereafter he preferred an appeal before the State Appellate Authority, who has also dismissed the appeal vide order dated 11.08.2017.

4. Learned counsel submits that the State Appellate Authority has failed to take into consideration fact that the petitioner had been appointed in place of Subhash Chandra Mandal as he was from E.B.C. category and the same category person was required to be appointed. The petitioner's name was already there in the panel and no new exercise was required to be conducted. Learned counsel for the petitioner submits that the selection process was of the year 2008 and the same was to be continued and ended only in the year December, 2010 and since the petitioner was already appointed in 2009, there was no occasion to terminate his services nor there was any occasion to withhold the salary of the petitioner.

5. Per contra, learned counsel for the State supports



the order passed by the District Appellate Authority as well as State Appellate Authority and submits that the process of employment of second phase of Teachers stood concluded after Subhash Chandra Mandal was appointed and therefore, there was no occasion to fill up the post again from the panel prepared in the year 2008 and the post ought to have been left free to be considered under the new selections.

6. Learned counsel submits that the petitioner was at the serial no. 23 in the merit list prepared and he could not have been offered appointment by the Panchayat Unit.

7. I have carefully considered the submissions and perused the merit list placed on record as Annexure-1. From perusal of the merit list, it appears that the candidates name were mentioned in the list in terms of the applications received and it is not at seriatum. Under E.B.C. category Subhash Chandra Mandal offered appointment earlier to the petitioner. While petitioner had 58% in Matric and 56% in Intermediate, Subhash Chandra Madal had 53% marks in Matric.

8. An enquiry seems to have been conducted in this regard and thereafter the concerned Subhash Chandra Mandal has left the job and the post was offered to the petitioner, who was in the panel. The petitioner continued to work. He



preferred an appeal to the District Appellate Authority pointing out that he had submitted a complaint against the appointment of Subhash Chandra Mandal, whereafter vigilance enquiry was conducted and the concerned candidate left the post and thereafter the petitioner was appointed, but the petitioner was not being given salary and he continued from 14.08.2010 to 16.09.2011, whereafter his services were dispensed with wrongfully.

9. He had earlier preferred a writ petition before this Court bearing C.W.J.C. No. 5037 of 2013 and as per observations of the Court the appeal had been filed.

10. The District Appellate Authority held that the Panchayat Unit, on vacation of the post, ought to have re-published the vacancies and filled the post by preparing a panel afresh. The similar view has been taken by the State Appellate Authority and the termination of the petitioner has been upheld.

11. This Court finds that the petitioner services were dispensed with by order of the Block Education Officer, who directed the Headmaster to stop the appellant from working. Once a selection processes conducted and a person is appointed on the post, question arises, whether others who were there in the panel will have a right to be appointed if the said



appointment is found to have been wrongfully made.

12. In the opinion of this Court, such candidates do have a right of consideration. This Court finds that the petitioner was more meritorious than the candidate who was wrongfully appointed. It is not a case of resignation simplicitor, where a person has worked and vacate the post subsequently but is a case where a person who was wrongly appointed on the post having lesser merit and at the instance of a person whose claim was deprived left the job. In such circumstances, the petitioner cannot be denied his rightful claim.

13. In view of above, the findings arrived at by both the District Appellate Authority and the State Appellate Authority are found to be perverse and deserve to be set aside. The petitioner is entitled to claim appointment on the post for which he had applied originally and rightfully he was appointed on the said post. The subsequent order of the Block Education Officer is found to be unjustified and without jurisdiction also as he is not the appointing authority or disciplinary authority of the petitioner.

14. In view thereof, the order dated 06.09.2011 passed by the B.E.O. is set aside and the petitioner is directed to be allowed to continue on the post on which he was appointed and



would also be entitled to salary for the said post. The order passed by the District Appellate Authority and State Appellate Authority are accordingly quashed and set aside.

15. The writ petition is accordingly allowed. No costs.

(Sanjeev Prakash Sharma, J)

Pravinkumar/-

Item No. 71

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