

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2949 of 2018

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Anju Kumari Daughter of Sri Triloki Thakur, Resident of Village- Chanpur
Kala, P.S.- Goraul, District- Vaishali.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Director, Primary Education, Bihar, Patna.
3. The District Magistrate, Vaishali Hajipur.
4. The District Superintendent of Education, Vaishali at Hajipur.
5. The Block Development Officer, Chehra Kala, P.O. Chehra Kala, District-
Vaishali.
6. The Block Education Extension Officer, at and P.O. Chehra Kala, District-
Vaishali, Hajipur.
7. The Mukhiya, Gram Panchayat Raj Mathna Milik, P.O.- Mathna Milik, P.S.-
Goraul, Block- Chedra Kala,
8. The Panchayat Secretary, Gram Panchayat Mathna Milik, Block- Chehra
Kala District- Vaishali.
9. Aplna Kumari, D/o Sri Brahmdeo Sah, Resident of Village- Mathna Milik,
P.O.- Mathna Milik, P.S.- Goraul, District- Vaishali.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Anand Kumar Ojha, Advocate
For the State	:	Mr. Sarvesh Kumar Singh, AAG-13
		Mr. Vinay Kumar Mishra, AC to AAG-13
For the Respondent No.9:		Mr. Siya Ram Sahi,
		Mr. Vasant Vikas,
		Mr. Pranay Kumar, Advocates.

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
CAV ORDER/JUDGMENT

30-05-2023

Heard Mr. Anand Kumar Ojha, learned counsel for the
petitioner, Mr. Sarvesh Kumar Singh, learned AAG-13 for the
State and Mr. Siya Ram Sahi, learned counsel appearing for
Respondent No. 9.

2. The present writ application has been filed for
quashing the order dated 19.01.2018 passed by the State
Appellate Authority, Education Department, Bihar in Appeal



Case No. 158/2017 whereby the Appellate Authority has quashed the order dated 29.01.2011 passed by District Level Authority and cancelled the appointment of the petitioner directing the Panchayat Employment Unit, Mathna Milik to appoint Respondent No.9 in place of petitioner.

3. The factual matrix of the case, in brief, is that an advertisement was published for appointment of Panchayat Teacher in the year 2006 in Mathna Mili Panchayat under Chehra Kala Block, Vaishali. The petitioner as well as Respondent No.9 both applied for the post of Panchayat Teacher under EBC (Female) Category.

4. According to the petitioner, at the time of counselling, Respondent No. 9 did not turn up and only the petitioner turned up and so she was given appointment letter and accordingly, appointed. However, Respondent No.9 contends that she appeared in the counselling held on 16.12.2006 and in the merit panel prepared by the Selection Committee, she secured 56.88% marks in intermediate but she was not given appointment letter and was not employed as Panchayat Teacher. When she verified from Panchayat Office, she was informed that the petitioner having 53.44% marks in intermediate has been employed as Panchayat Teacher under EBC (Female)



Category.

5. Being aggrieved by her non employment and appointment of the petitioner having lesser marks in merit panel, Respondent No.9 filed a complaint before the BDO, Chehra Kala on 24.05.2007 contending therein that her house was situated at a distance of only 50 yards from Panchayat Office and there was no reason that she would not have appeared for counselling and verification of the testimonials/documents and for receipt of the appointment letter on the date fixed. In other words, her contention was that she was not given information about the date of counselling/production/verification of the documents. On the complaint of Respondent No.9, the then BDO, Chehra Kala referred the matter to DDC, Vaishali and in turn, the DDC *vide* his letter dated 10.07.2007 directed the BDO, Chehra Kala to exercise his power conferred upon him under Rule 18 of the Bihar Panchayat Elementary Teachers' (Employment and Service Conditions) Rules, 2006 (hereinafter referred to 'Rules 2006').

6. The BDO, Chehra Kala, accordingly, inquired into the matter from Gram Panchayat Supervisor who submitted his report on 14.06.2007 wherein he has stated that house of Respondent No.9 is 200 yards away from the house of Mukhiya



and 50 yards away from Panchayat Bhawan. Many applicants were handed over appointment/counselling notice by hand but the Panchayat Secretary sent notice to Respondent No. 9 under postal certificate (U.P.C.) for which he travelled to another district at Baghi (Muzaffarpur) at the distance of four kilometres. The notice has not been delivered to Respondent No.9.

7. The enquiry report raised a doubt in the conduct of Panchayat Secretary. Another report was called for and submitted by the then Block Education Extension Officer, (BEEO), Chehra Kala and Gram Panchayat Supervisor, Chehra Kala jointly on 08.08.2007 before BDO, Chehra Kala. The BDO, Chehra Kala directed the Panchayat Secretary, Mathna Milik to appear on 17.08.2007 before him and to show-cause as to why the petitioner having less merit marks than Respondent No.9 was employed and why the intimation was sent to Respondent No.9 under U.P.C from post-office situated in another district though there is a post-office in the Panchayat itself. Some of the candidates received intimation which was served through the messenger by hand which shows prejudice and partiality on part of the Panchayat Secretary. The petitioner was also asked to submit her show-cause on 17.08.2007 with



supporting documents.

8. It also transpired from the fact that the then Mukhiya of Panchayat on 08.08.2007 informed the BDO, Chehra Kala that the Panchayat Secretary had informed him that he would intimate/inform Respondent No.9 about the date of counselling for delivery of the appointment letter and other formalities but without his knowledge, the intimation was sent to the Respondent No. 9 by the Panchayat Secretary through post-office, Baghi situated in Muzaffarpur District, even though there was post-office in the Panchayat itself.

9. The BDO, Chehra Kala, after considering the joint enquiry report of BEEO and Gram Panchayat Supervisor and the explanation of Mukhiya and reply of the petitioner, passed a reasoned order *vide* Memo No. 665 dated 23.08.2007 directing the Panchayat Employment Committee to cancel the appointment of the petitioner and employ/appoint Respondent No.9 in her place as Panchayat Teacher in Mathna Milik Gram Panchayat.

10. Pursuant to the order of BDO, Chehara Kala the Panchayat Secretary issued employment letter to the Respondent No.9 on 24.10.2007, in pursuance thereof, she joined as Primary Teacher and started working.



11. The petitioner challenged the order of BDO, Chehara Kala before this Court in a writ petition bearing CWJC No. 1178/2008 and from perusal of Annexure-3 which is the order dated 02.02.2010, it appears that the counsel for the petitioner sought permission to withdraw the writ application for filing an appeal before the District Teachers Employment Appellate Tribunal, Vaishali at Hajipur. Accordingly, a Bench of this Court permitted the petitioner to withdraw the petition giving liberty to the petitioner to file the appeal before District Teachers Employment Appellate Tribunal, Vaishali at Hajipur with an observation that if the appeal is filed, the same will be considered and disposed of on merit in accordance with law within the statutory period.

12. The petitioner filed an appeal before District Teachers Employment Appellate Tribunal, Vaishali at Hajipur *vide* HC-93/2010 which was disposed by District Teachers Employment Appellate Tribunal, Vaishali at Hajipur on 29.01.2011 by which the order dated 23.08.2007 passed by BDO, Chehara Kala was set aside with a direction to the Appointment Committee to appoint the petitioner as Panchayat Teacher.

13. The Respondent No. 9 being aggrieved by the



order passed by District Teachers Employment Appellate Tribunal, Vaishali at Hajipur filed a writ petition bearing CWJC No . 4185/2011 which was withdrawn with liberty to move before the State Appellate Authority and accordingly, Respondent No.9 filed an appeal bearing Case No.-Appeal/ 158/2017 before the State Appellate Authority, Education Department, Bihar which by its order dated 19.01.2018 allowed the appeal filed by Respondent No.9 set aside the appointment of the petitioner with a direction to re-appoint Respondent No.9.

14. Learned counsel for the petitioner argued that the State Appellate Authority has no jurisdiction to declare that the order under challenge is without jurisdiction and finding of the State Appellate Authority in this regard is perverse and de hors the law. It has further been submitted that a Bench of this Court by its order dated 02.02.2010 passed in CWJC No.1178/2008 (Annexure-3) granted liberty to the petitioner to approach the District Teachers Employment Appellate Tribunal, Vaishali at Hajipur to decide the appeal on merit. As such, it cannot be said that the order passed by the District Appellate Authority is without jurisdiction. He also contended that the new facts were taken into account by the State Appellate Authority and the private respondent had appeared and participated in the



proceeding before the District Appellate Authority. Hence, the jurisdiction of the District Appellate Authority cannot be challenged by them. The order passed in CWJC No. 1178/2008 was never challenged before the Superior Court. As such, the District Appellate Authority rightly, decided the dispute on merit.

15. Learned counsel for the petitioner, in support of his argument, has relied upon the following judgments:-

- 1. (1998) 1 SCC 687 (Associated Cement Co. Ltd v. Keshwanand.***
- 2. (1986) 1 SCC 100 (Forward Construction Co v. Prabhat Mandal (Regd.)***
- 3. AIR 1963 Pat 79 (Kishun Sah v. Harinandan Prasad Sah)***
- 4. (2006) 1 SCC 368 (Union of India & Anr. v. Major Bahadur Singh)***

16. On the other hand, learned counsel for the Respondent No. 9 argued that UPC (under postal certificate) cannot be considered as valid means of notice and this was the core issue which needs consideration that whether sending the information through UPC can be said to be a valid mode of notice or not. Respondent No. 9 applied for appointment as Panchayat Teacher on 18.08.2006 under EBC (Female) Category and took part in the counselling held on 16.12.2006. She secured 56.88% marks and was placed at Serial No.64 in



the merit panel whereas the petitioner was placed at Serial No. 168 in the merit panel having secured 53.44% marks (Annexure-R/9-A of the counter affidavit filed by Respondent No.9).

17. Learned counsel for the Respondent No.9 relies upon the following judgments:-

- 1. 2010(4)PLJR 183 [Chitranjan Kumar Singh v. The State of Bihar],***
- 2. 2016(2) PLJR 45 [Pramod Prasad Pandey v. The State of Bihar]***

18. I have heard learned counsel for the parties and have perused the impugned order passed by the State Appellate Authority.

19. The facts are not in dispute that pursuant to the advertisement for appointment of Panchayat Teacher, both petitioner and Respondent No.9 applied under EBC (Female) Category. It is also not in dispute that the petitioner secured lesser marks than Respondent No.9 at the very outset of first counselling and preparation of merit panel. The Respondent No. 9 has been placed in the merit panel at Serial No.64 having secured 56.88% marks whereas petitioner secured 53.44% marks and was placed at Serial No. 168 of merit panel. Respondent No.9, after coming to know about the appointment



of the petitioner, approached the then BDO who was appellate authority under Rule 18 of Employment Rules 2006, who upon proper enquiry came to the conclusion that the notice under UPC mode was deliberately sent to Respondent No.9/appellant for the second counselling/verification of the documents/testimonials to be held on 07.05.2007 from the post-office located in the different district whereas a post-office is situated in the same Panchayat itself. The BDO also came to the conclusion based upon the facts that the Panchayat Secretary without knowledge of the then Mukhiya dispatched the letter/notice to the Respondent No.9 through UPC from a post-office located in different District i.e., Muzaffarpur. Accordingly, the BDO considered the reports of Gram Panchayat Supervisor, BEEO, statement of Mukhiya, show-cause filed by Respondent No.9 and taking into consideration a complaint filed by Respondent No.9 and after hearing the parties passed the order dated 23.08.2007 by which appointment of the petitioner was cancelled with a direction to appoint Respondent No.9 in her place.

20. The District Teachers Employment Appellate Tribunal, Vaishali at Hajipur *vide* its order 29.01.2011 came to the conclusion that Respondent No. 9 along with three other



candidates were sent notice through UPC mode on 27.04.2007 informing them about the date of counselling on 07.05.2007 and pursuant thereto, only the petitioner appeared for the counselling and other candidates failed to appear and accordingly, the petitioner was appointed as Panchayat Teacher as she was the only candidate who participated in the second counselling and accordingly, her appointment was as per prescribed provisions. Since Respondent No.9 did not appear, her claim of appointment is not tenable and accordingly, set aside the order passed by BDO dated 23.08.2007 with a direction to appoint the petitioner as Panchayat Teacher.

21. In the backdrop of the aforesaid factual position, the appeal was filed by Respondent No.9 before the State Appellate Authority. The State Appellate Authority has taken note of the entire background facts and recorded its findings in paragraph-7 of the impugned order that Respondent No.9 has higher merit marks than the petitioner. The applicants were called for submitting original documents and for giving their consent and receiving their appointment letters on 07.05.2007. Notice to the Respondent No.9 and other candidates were sent through UPC mode which the petitioner received but Respondent No.9 did not receive. The notice was sent to



Respondent No.9 by UPC mode from the post-office situated in Muzaffarpur district and the same was not delivered to the Respondent No.9 and accordingly, the State Appellate Authority in the impugned order arrived at a finding that the notice to Respondent No.9/appellant was deliberately dispatched from a post-office situated in other district (Muzaffarpur) by UPC mode whereas Respondent No.9/appellant resided near the Panchayat Office in which there is a post-office also.

22. In view of the above finding, the State Appellate Authority has held that the District Appellate Authority has erred in holding that the claim of Respondent No.9/appellant for employment was not justified under the Rules since she did not participate in the counselling.

23. Admittedly, the Respondent No.9/appellant came up with specific plea that she did not receive any notice of second counselling/distribution of appointment letter and verification of document to be held on 07.05.2007 and upon learning about appointment of petitioner, she approached the BDO who after proper enquiry came to the conclusion that notice under UPC mode was deliberately sent to Respondent No.9/appellant in order to keep her away from the process of appointment despite having secured higher marks in the merit



panel. Respondent No.9 was not appointed due to prejudicial and partial conduct on the part of Panchayat Secretary for which the Panchayat Secretary was issued a show-cause notice. The petitioner has not brought on record any document or evidence to show that the notice sent through UPC mode was served upon Respondent No.9. The stand of the Respondent is contrary to the real fact that she had actually knowledge about the date of second counselling but failed to appear in the said counselling held on 07.05.2007.

24. A Bench of this Court in the case of ***Chitranjan Kumar Singh v. The State of Bihar & Ors*** reported in ***2010 (4) PLJR 183*** has held as follows:-

“5. Now, I may come to the plea that was taken before the Panchayat Secretary that notices were sent by U.P.C. to all the candidates as most of them did not appear for counseling pursuant to the notice, petitioners who were below in the merit list were appeared and selected. In relation to this, this Court would first observe, as to why when advertisements are issued calling for applications, date, time and place for scrutiny of application, counseling and preparation of merit list and date of issuance of appointment letters are not fixed at hand and made known to public. This Court has found that in some cases in some districts this is a practice that is followed. That



makes the system of selection transparent. Here, why was this not followed is not known. Here, the merit list was prepared in January, for two months there was no activity, then suddenly on 08th March activities start and between 8th to 10th of March postal notices (did as U.P.C.) are issued, counseling held and appointment letters issued. Appointment is, admittedly, denied to much more meritorious candidates. If this is not fraud, I wonder what it is. In connection of U.P.C., all I can say is that a similar plea was taken in the case of **Gadakh Yashwantrao Kankarrao Vs. E.V. alias Balasaheb Vikhe Patil and Ors.** since reported in AIR 1994 Supreme Court 678. In paragraph 59, this is what the Apex Court has held:-

"....It is also of significance that Gadakh alleges having sent a letter dated 16th May, 1991 under certificate of posting to the Maharashtra Times Office disputing correctness of the news-item (Exh.90). The receipt of that letter by the addressee is denied and the likelihood of its dispatch by Gadakh is extremely doubtful since it was not sent by registered post and a certificate of posting being easy to obtain is not reliable. Expense being immaterial in that election for both sides, it is extremely unlikely that Gadakh would send such a letter under certificate of posting and not by registered post...."

6. Obviously, the plea of U.P.C. was fraudulent. No letters can be delivered within 24



hours, it was only applied to deny legitimate candidates their appointment and give unfair advantage to the petitioners.

25. In view of the attending facts involved in the present case and the law laid down by this Court (*Supra*), in my considered opinion, sending notice under UPC mode to the Respondent No.9 cannot be considered as valid mode of notice, when there is finding by the State Appellate Authority and other authority that a notice under UPC mode was deliberately dispatched from a post office located in Muzaffarpur district which is far away from the Panchayat Office and situated in a different district. There is no presumption in law in favour of service of notice by UPC mode. The notice under UPC mode was deliberately sent in order to deny the claim of Respondent No.9 for the appointment as Panchayat Teacher and give unfair advantage to the petitioner. It does not stand to reason that Respondent No.9 who participated in the selection process, secured higher marks would fail to appear on the date of second counselling for verification of documents/testimonials and for receipt of appointment letter. Certainly, the action of concerned Panchayat Secretary and other members of the employment unit sending notice to Respondent No.9 by UPC mode is a fraudulent action with ulterior motive to favour the petitioner



who is less meritorious than Respondent No.9.

26. The Hon'ble Apex Court in the case of ***Malluru Mallappa v Kuruvathappa & Ors*** reported in ***(2020) 4 SCC 313*** has held as follows:-

“it is a settled position of law that an appeal is a continuation of the proceedings of the original court. Ordinarily, the appellate jurisdiction involves a re-hearing on law as well as on fact and is invoked by an aggrieved person. The first appeal is a valuable right of the appellant and therein all questions of fact and law decided by the trial court are open for reconsideration. Therefore, the first appellate court is required to address itself to all issues and decide the case by giving reasons. The court of first appeal must record its finding only after dealing with all issues of law as well as fact and with the evidence, oral as well as documentary, led by the parties. The judgment of the first appellate court must display conscious application of mind and record findings supported by reasons on all issues and contentions.”

27. Thus, the State Appellate Authority has recorded its finding based upon merit after taking into consideration the fact and law involved in the matter and held that the District



Appellate Authority has erred in holding that the claim of Respondent No.9/appellant for employment was not justified under Rules since she did not participate in the counselling. The State Appellate Authority on the point of law also has come to the conclusion that the order quashing Memo No.665 dated 23.08.2007 passed by BDO cancelling the appointment of Respondent No.11/petitioner directing the employment of Respondent No.9/appellant is without jurisdiction in view of law laid down by the Hon'ble High Court passed in the case of ***Pramod Prasad Pandey v. The State of Bihar*** as reported in ***2016(2) PLJR 45***.

28. The judgments relied upon by the learned counsel for the petitioner are not applicable in the facts and circumstances of the present case.

29. On consideration of entire facts and circumstances as discussed hereinabove, I am of the view that the learned State Appellate Authority addressed itself to all the issues and decided the appeal by giving reasons. It recorded its findings after dealing with the issues on law as well as on facts. Accordingly, I come to the conclusion that the order impugned dated 19.01.2018 passed by the State Appellate Authority, Education Department, Bihar, does not require any interference



by this Court. In the result, the present writ application stands dismissed.

30. There shall be no order as to costs.

(Anil Kumar Sinha, J)

Md. Perwez Alam

AFR/NAFR	AFR
CAV DATE	02.05.2023
Uploading Date	30.05.2023
Transmission Date	

