

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.778 of 2018

In

Civil Writ Jurisdiction Case No.6504 of 2018

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1. Bihar Staff Selection Commission, P.O.-B.V. College, Patna-14 through its Secretary
 2. The Chairman, Bihar Staff Selection Commission, P.O.- B.V. College, Patna-14 through its Secretary.

... .. Respondents- Appellants

Versus

1. Kundan Kumar, Son of Jitendra Kumar Resident of Chitawan, P.O. Indaur, Dinara, Rohtas, Bihar.

Petitioner-Respondents 1st set

2. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
3. The Principal Secretary, Department of Social Welfare, Govt. of Bihar, Patna.
4. The Director, Directorate of Social Security and Disability, Social Welfare Department, Govt. of Bihar, Patna
5. The Assistant Director, Directorate of Social Security and Disability, Social Welfare Department, Government of Bihar, Patna
6. The Officer-in-Charge, Composite Rehabilitation Centre CRC Red Cross Bhawan Gandhi Maidan, Patna.

... .. Respondents-Respondents 2nd set

Appearance :

For the Appellant/s	:	Mr.Satyabir Bharti, Sr. Advocate Ms. Sushmita Sharma, Advocate Mr. Abhishek Anand, Advocate Ms. Kannu Priya, Advocate
For the Respondent/s	:	Mr.Abhay Kumar Thakur, Advocate Mr. Arvnendra Kumar Thakur, Advocate Ms. Sukriti Kumari, Advocate
For the State	:	Mr. Gyan Prakash Ojah, (GA-7)

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE ARUN KUMAR JHA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 21-02-2023

The present LPA is filed by the Bihar Staff Selection Commission (for short 'BSSC'). BSSC is aggrieved by the order of the learned Single Judge dated 10.04.2018 passed in CWJC No.



6504 of 2018 by which learned Single Judge has directed the BSSC to entertain applications of the respondent Kundan Kumar to be filed by him and other similarly circumstanced teachers working in Deaf and Dumb School as one time measure. If they filed their applications within a fortnight from 10.04.2018, they were permitted to participate in the selection process as one time measure on the score that they were trained persons and they were having experience of teaching in Deaf and Dumb and Blind Institutions.

2. Brief facts of the case are that on 29.05.2014, BSSC invited applications to fill up Class-III posts including 22 Assistant Teachers post in the Deaf and Dumb School. Last date was assigned as 11.10.2014.

3. In respect of challenge to certain description of technical qualification, CWJC No. 12513 of 2014 was filed by some persons and they had the benefit of interim order dated 26.08.2014, relevant paragraph of which reads as under:-

“In view of the non-cooperative attitude of the respondent, till further orders, this Court stays the selection process so far as it related to appointment of teachers in Deaf and Dumb Middle School and Government Blind High Schools”.

4. Thereafter, for other posts, on 16.02.2015 and 20.07.2016 preliminary test and mains examination were held respectively. In



CWJC No. 12513 of 2014 while dismissing the petition, an observation has been made by this Court to complete the process of selection as early as possible and such an order was passed on 20.11.2017.

5. BSSC issued advertisement seeking option from the selected candidates for Class-III post including 22 Assistant Teachers post on 16.03.2018. In this backdrop, respondent Kundan Kumar was not a candidate for the process of selection and appointment to the post of Class-III in particular 22 Assistant Teachers' post pursuant to advertisement dated 29.05.2014 read with the fact that he was one of the contractual appointees to the post of Assistant Teacher in the Deaf and Dumb School whether permitting him to participate in the process of selection to the post of 22 Assistant Teachers pursuant to the advertisement dated 29.05.2014 is correct or not? Learned Single Judge has allowed the CWJC No. 6504 of 2018 filed by Kundan Kumar, hence the present LPA was filed by the BSSC.

6. State of Bihar filed Civil Review No. 514 of 2018, arising out of CWJC No. 6504 of 2018, such a civil review was under the stage of removal of office objections. In this regard, on 28.02.2019, learned Single Judge passed the following order:-

“As a matter of last indulgence, time till 26.03.2019 is granted to the petitioners to remove the defects, failing which the application shall stand dismissed without further reference to a Bench”



7. Thereafter, State of Bihar respondent have not removed the office defects. In the result, Civil Review No. 514 of 2018 stood dismissed and such an order has not been assailed by the BSSC.

8. Learned counsel for the appellant BSSC vehemently contended that the learned Single Judge has committed glaring error in permitting respondent Kundan Kumar to participate in the process of selection to the post of Assistant Teacher with reference to advertisement dated 29.05.2014 on the score that he was not one of the candidates who had nor submitted application so as to consider his case. It is further submitted that the process of selection was almost at the final stage as on the date of filing of writ petition on behalf of Kundan Kumar. Moreover, he was not subjected to preliminary test and main examination and such stages were already completed. In fact final results were announced while seeking option from the selected candidates for a particular post including 22 Assistant Teachers post. It is also submitted that merely working on contract basis to the post of Assistant Teacher would not make one entitled to participate in the process of selection and appointment to the post of Assistant Teachers pursuant to the advertisement dated 29.05.2014, in the absence of submission of application or participation in process of selection in the manner known to the law.



9. Learned counsel for the respondent Kundan Kumar vehemently contended that Kundan Kumar was appointed as Assistant Teacher on contract basis and in the light of *Secretary, State of Karnataka and Others vs. Uma Devi* reported in (2006) 4 SCC 1, he has statutory right to claim against the post. It is further submitted that as long as order passed in Civil Review No. 514 of 2018 is not challenged by the BSSC and restricting challenge to the order dated 10.04.2018 passed in CWJC No. 6504 of 2018, the present petition is not maintainable. In support of such contention he relied on two decisions reported in AIR 1988 Allahabad 309 and 2000(4) PLJR 210 (SC).

10. Heard learned counsels for the respective parties.

11. It is undisputed fact that respondent-Kundan Kumar was appointed on contract basis to the post of Assistant Teacher in the Deaf and Dumb School. In the guise of the fact that he was a contract teacher, is he entitled to participate in the process of regular recruitment to the post of Assistant Teachers in the Deaf And Dumb School pursuant to the Advertisement dated 29.05.2014 without submission of application and without participating in the process of selection including preliminary test and main examination and further exercising option to a particular post pursuant to the advertisement dated 16.03.2018? He being Assistant Teacher on contract basis has no statutory vested right



against permanent post. If he intent to participate in the process of selection and appointment to the post of Assistant Teachers on regular basis he is required to participate in the process of selection in the manner known to the law. In other words, he has to make an application pursuant to the advertisement and he himself could be subjected to other process of selection including preliminary test, main examination and etc. He being contractual Assistant Teacher is entitled to only age relaxation or any marks for gaining experience that too if any policy in the light of Apex Court decision in the case of Uma Devi (supra). In this backdrop, he has no locus to file a writ petition and seeking his participation in the process of selection and appointment to the post of Assistant Teacher, if he was not an applicant to the post pursuant to the advertisement dated 29.05.2014. Therefore, the learned Single Judge has committed glaring error in not noticing the service jurisprudence insofar as selection and appointment to the public post, like adhering to Articles 14 and 16 of Constitution.

12. Learned counsel for the respondent Kundan Kumar submitted that appellant BSSC has not assailed the order passed in Civil Review No. 514 of 2018. In this regard, we have to take note of the fact that Civil Review No. 514 of 2018 was filed by the State of Bihar and not by BSSC. The State of Bihar or State Government would step in at the stage of the process of



appointment. In other words, till finalization of select list by BSSC, the State has no role. They have only role in respect of issuance of order of appointment to the respective selected candidates. Dismissal of Civil Review No. 514 of 2018 filed by the State of Bihar would not be a hurdle for BSSC insofar as challenging the order dated 10.04.2018 passed in CWJC No. 6504 of 2018. In the present case, we have to take note of each individual role like BSSC is only a selecting authority and State Government or the concerned departmental head is the appointing authority. The respondent-Kundan Kumar case is only in respect of selection and it has not reached the stage of issuance of appointment. Therefore, dismissal of Civil Review No. 514 of 2018 on technicality that State have failed to remove office defects and it was dismissed. It is to be noted that dismissal of Civil Review No. 514 of 2018 is not on merit.

13. At this stage, it is necessary to take note of principle laid down by the Apex Court in the event of dismissal of SLP in limine. In such matters parties were permitted to file review petition before the respective High Court. The same principle is attracted in the case in hand. In other words, BSSC not questioning the order passed in Civil Review No. 514 of 2018 would not be a hurdle, moreover, BSSC cannot rectify the office defects in Civil Review No. 514 of 2018 filed on behalf of the State of Bihar.



Therefore, respondent counsel Kundan Kumar's contention that BSSC in not challenging the order passed in Civil Review No. 514 of 2018 would be too technical. In this regard, the cited decision on behalf of the respondent do not assist him for the simple reason that each case depends on factual case of the respective matter, accordingly, the cited decisions are distinguished as they are not applicable to the case in hand.

14. In the light of these facts and circumstances, BSSC have made out a, *prima facie*, case so as to interfere with the learned Single Judge order dated 10.04.2018 passed in CWJC No. 6504 of 2018 is set aside.

15. Accordingly, LPA stands allowed.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

DKS/-
Balmukund/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	28.02.2023
Transmission Date	NA

