

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1229 of 2019

In

Civil Writ Jurisdiction Case No.10542 of 2017

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Bhagirath Prasad S/o Sri Basudeo Choudhary, R/o Village-Tarwan, P.S.-
Wazirganj, District-Gaya.

... .. Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department,
Government of Bihar, Patna.
2. The Director, Primary Education Department, Government of Bihar, Patna.
3. The District Magistrate, Nawada.
4. The District Education Officer, Nawada.
5. The District Programme Officer (Establishment), Nawada.
6. The Block Development Officer, Warisaliganj, District-Nawada.
7. The Block Education Officer, Warisaliganj, Nawada.
8. The Mukhiya Gram Panchayat Dosut, P.S.-Warisaliganj, Nawada.
9. The Panchayat Secretary, Gram Panchayat Dosut, P.S.-Warisaliganj,
Nawada.
10. Sanjay Kumar Das, S/o Arjun Ravidas, R/o Village-Bagibandiha, P.S.-
Warisaliganj, District-Nawada.
11. The State Appellate Authority, Patna through its Chairperson.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Subodh Kumar, Advocate

For the Respondent/s : Mr. Deepak Kumar, AC to AAG 15

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE PARTHA SARTHY)



Date : 10-08-2023

1. Heard learned counsel for the appellant and learned counsel for the respondents.

2. The instant appeal has been preferred against the order dated 6.8.2019 passed in CWJC no. 10542 of 2017.

3. The case of the writ petitioner – appellant is that pursuant to the State Government coming out with an advertisement for appointment of Panchayat teacher, the appellant as also the respondent no. 10 applied. As per the merit list while the respondent no. 10 was shown to have secured 64.55 % marks, the appellant had 59.33 %. One Arvind Chaudhary had 57.66 %. In spite of the respondent no. 10 having the highest marks, on the ground that the respondent no. 10 did not appear for counselling nor did he submit his consent letter for appointment, the appellant and Arvind Kumar Chaudhary were selected under the SC category. The respondent no. 10 filed Case no. 310 of 2010 before the District Authority wherein order dated 20.8.2010 was passed to the effect that the appointment having been stayed by the Patna High Court, the proceedings of the case were being stayed till passing of the final order by the High Court. The respondent no. 10, thereafter preferred CWJC no. 8825 of 2011 in this Court which was



allowed by order dated 17.12.2013. The order dated 20.8.2010 passed by the Tribunal was set aside and the Tribunal was directed to consider the case on merits.

4. The District Teachers Employment Appellate Authority, Nawada considered the appeal filed by the respondent no. 10 and by its order dated 3.10.2016 allowed the same. The appellant preferred an appeal (Appeal Case no. 1 of 2017) before the State Appellate Authority, wherein the order of the District Authority was affirmed by order dated 8.5.2017.

5. Against the order passed by the State Appellate Authority the appellant preferred the writ application (CWJC no. 1947 of 2017) which was disposed of by order dated 6.8.2019. It is against this order disposing of the writ application that the instant appeal has been preferred.

6. It may be noted here that the case of the respondent no. 10 was to the effect that he has higher marks than the appellant Bhagirath Prasad but was wrongly denied employment on the ground that he did not appear before the selection committee nor gave his consent letter. The District Authority in his order dated 3.10.2016 passed in Appeal Case no. 4 of 2014 took note of the fact that Sanjay Kumar Das (respondent no. 10 herein) was not selected on account of not



having given his consent letter on 30.4.2007. From the contents of the report of the Panchayat Secretary it transpired that counselling also took place on 26.11.2007. In spite of the District Authority's direction the counselling register was not produced before him. As such he allowed the appeal, set aside the appointment of teachers under the SC category and directed for taking steps for appointment as per the merit list and consent letter in accordance with the government's 2006 guidelines.

7. The State Appellate Authority in its order dated 8.5.2017 in Appeal no. 01/2017 preferred by the appellant herein observed that it was not in dispute that while Bhagirath Prasad had got 59.33 % marks, Sanjay Kumar Das had obtained 64.55 %. On one hand the Panchayat Secretary in his counter affidavit did not deny the claim of Sanjay Kumar Das (respondent no. 10 herein) that he had no information about the counselling on 25.4.2007 but once again in spite of direction, the Panchayat Secretary did not produce the counselling register even before the State Appellate Authority. In the circumstances, the State Appellate Authority rejected the appeal and affirmed the order passed by the District Authority.

8. It may be noted here that in view of the counselling register not having been produced either before the



District Authority or the State Appellate Authority, on the basis of the material / affidavit available on record, the authorities concerned rightly drew adverse inference and decided the cases against the appellant herein. Further there remained a number of disputed questions of facts including with respect to intimation and holding of counselling and preparation of final select list.

9. In the writ application (CWJC no. 1947 of 2017) preferred by the appellant, the learned Single Judge taking into consideration the serious disputed questions of fact arising in the writ application, was of the opinion that the dispute raised can only be adjudicated appropriately in a properly constituted civil suit, and disposed of the writ application.

10. This Court finds no error in the order of the learned Single Judge and the appeal is dismissed.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

Spd/-

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