

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1129 of 2020

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Ajay Kumar Son of Sri Shivratan Ram Resident of Village- Auraiya, Tiwari Tola, P.O.- Auraiya, Block- Chanpatia, P.S.- Banu Chhappar O.P., Bettiah, District- West Champaran at Bettiah.

... .. Petitioner/s

Versus

1. The State of Bihar through the Director, Primary Education, Govt. of Bihar, New Secretariat, Patna.
2. The District Magistrate, West Champaran at Bettiah.
3. The District Education Officer, West Champaran at Bettiah.
4. The District Programme Officer (Establishment), West Champaran at Bettiah.
5. The Block Development Officer-cum-Member Secretary, Block Employment Unit, Yogapatti, P.S.- Yogapatti, District- West Champaran at Bettiah.
6. The Block Education Officer, Yogapatti, P.S.- Yogapatti, District- West Champaran at Bettiah.
7. The Panchayat Secretary, Gram Panchayat Raj, Bhawanipur, P.S.- Jogapatti, District- West Champaran at Bettiah.
8. Madhuri Kumari D/o Krishnadeo Ram Resident of Village- Laherwa, P.S. Jogapatti, Distt- West Champaran.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Bipin Bihari Singh, Adv.
For the State	:	Mr. S.K. Ranjan, AC to GP17
For the Respondent no. 8:	:	Mr. Bimlesh Kumar Pandey, Adv.

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CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL JUDGMENT

Date : 05-08-2024

Heard learned counsel for the petitioner, learned
counsel for the State and learned counsel for the respondent No.
8.

2. The present writ petition has been filed seeking
the following reliefs:

*“(i) For setting aside the order of the State
Appellate Authority in Appeal No. 698 of 2018,*



passed on 20.12.2019 by the Chairperson, which allowed the appeal and reversed the order passed by the District Teachers Employment Appellate Authority, West Champaran at Bettiah, in Case No. 12 of 2014, resulting in the cancellation of the petitioner's engagement/appointment.

(ii) Issuing further directions to the Panchayat Teacher Employment Committee, Bhawanipur, to hold fresh counseling for candidates of the Scheduled Caste (Female) category who were present in the counseling held on 28.02.2009, and to select candidates based on merit, without fully considering the detailed facts, including that the petitioner had already attained the status of Block Teacher. It is also important to note that the Employment Committee, which includes block officials such as the Block Development Officer, who were not made parties to the case, may have influenced this decision.

(iii) For issuance of any other relief or reliefs which the petitioner may be found entitled to in the facts and circumstances of the case.”

3. The short fact of the present case is that the engagement of Panchayat Teacher, Block Teacher, and Nagar Teacher was initiated in the year 2008, i.e., the 2nd phase, for which the vacancy was notified through different sources and applications were called upon from eligible persons having the requisite qualification for the aforesaid post. The requisite qualification for the said post was a “trained candidate” against the roster point, and in the absence of a candidate having the training qualification, the candidature of a candidate possessing an intermediate qualification may be considered in order to determine the merit position of the candidate.



4. In response to the said advertisement related to Panchayat Teacher under Gram Panchayat Raj, Bhawanipur, Block-Yogapatti within the District of West Champaran at Bettiah, petitioner along with the others, had filled up an application along with testimonials and other required documents against the respective post on the point of roster mentioned in terms of the advertisement. The authority had prepared the list and ultimately the provisional and final merit list published in order to ensure seniority on the point of roster keeping in mind the light reflected through the Recruitment Rules and guidelines issued by the State Government for the said purposes.

5. The candidature of the petitioner was considered in the light of Government instructions, and the letter of engagement/appointment was issued vide Memo No. 15 dated 30.12.2010 and the petitioner was posted in Primary School, Kohara Harijan Toli, with a clear indication for submission of his joining within 30.12.2010 to 08.01.2011, and a copy of the selection/appointment was communicated to Block Education Extension Officer, Yogapatti, as well as the Headmaster of Primary School, Kohara Harijan Toli.

6. Learned counsel for the petitioner submits that



the private respondent no. 8 had not chosen to appear before the competent authority on the date fixed by the State Government and communicated through government notification and press communiqué on 29.12.2010 or 30.12.2010. Unfortunately she preferred the complaint against the letter of engagement/appointment of the petitioner on 19.10.2011, after the statutory period for raising objections before the District Teacher Employment Appellate Authority had already lapsed, i.e., 30 days.

7. Learned counsel for the petitioner further submits that the law was made settled on the point of limitation in C.W.J.C. No. 6759 of 2010 on 28.07.2010, in the case of ***Yogendra Kumar vs. The State of Bihar and Ors.***, with findings as follows:

"Under the appointment rules aforesaid in terms of Rule 18 thereof, as originally enacted, the challenge had to be made within thirty days before the Block Development Officer; again, it was not so made. Then again, when the tribunal was constituted by repealing the Block Development Officer, in rule 18 of the rules aforesaid by the government notification constituting the tribunal, it is again provided that the challenge has to be made within thirty days of the selection, which was not again made. Thus, the challenge being belated could not be entertained by the tribunal at all. That being so, the tribunal acted wholly without jurisdiction in entertaining the matter itself."

8. Learned counsel for the petitioner further



submits that despite the statutory provisions, the Private Respondent No. 8 filed Complaint Case No. 143 of 2011 before the District Teacher Employment Appellate Authority, West Champaran at Bettiah. This complaint was filed belatedly on 19.10.2011, yet it was still entertained and heard in detail by the learned member. After, reviewing the facts and relevant documents, the complaint was dismissed on the grounds that the respondent no. 8 was not present during the counseling and that the objection was both belated and time-barred. The dismissal order was subsequently communicated to all concerned parties through Memo No. 157 dated 12.04.2012.

9. Learned counsel for the petitioner further submits that being dissatisfied with the said order dated 10.04.2012, which was communicated on 12.04.2012, the respondent no. 8 preferred the writ petition bearing C.W.J.C. No. 20445 of 2012, ***Madhuri Kumari vs. The State of Bihar & Ors***, which was finally heard by a bench of the Hon'ble High Court on 25.06.2013, and consequently, it was held that:

"It is however clear that even if the appointment of respondent no. 5 is held to be bad, the same will not lead to automatic direction for the appointment of the petitioner in view of the fact that the Tribunal in the impugned order recorded that there were more meritorious candidates in the merit list than the petitioner. In such event, on cancellation of the appointment of respondent no. 5, the Tribunal will only direct for a fresh process of counselling by issuance of a



notice under registered post to all the candidates, including the petitioner and respondent no. 5, by the Panchayat Secretary of the Panchayat in question.

In order to expedite the matter, this Court, with the consent of the counsel for the petitioner and the respondent no.5, would fix the date 19th August 2013 for their appearance before the Tribunal and the Tribunal, thereafter, will issue notice to the Panchayat Secretary as also to other official respondents for production of the records relating to selection and appointment on the post of Panchayat Teacher in question. The Tribunal, thereafter, on perusal of the records as also after hearing the parties including the petitioner and the respondent no. 5 must dispose of the complaint of the petitioner, Case No. 143 of 2011 on merit expeditiously preferably by 31.12.2013.

With the aforementioned observations and direction, this application is disposed of."

10. Learned counsel for the petitioner further submits that in its response, private Respondent No. 8 had filed Complaint Case No. 12 of 2014 in response to an order passed in C.W.J.C No. 20445 of 2012. This case was heard in detail by the member of the Appellate Authority, and the complaint case was rejected vide order dated 18.08.2014, holding that she was absent on the date of counseling and that objections were preferred belatedly, additionally, several individuals who were more meritorious than private respondent no. 8 had not raised objections against the selection or appointment. It is pertained to mention that the issue was examined in detail from every perspective, and, for these reasons, the aforesaid complaint was rejected/dismissed and communicated to all concerned parties



via Memo No. 84 dated 18.08.2014.

11. Learned counsel for the petitioner further submits that thereafter, the private respondent no. 8 preferred C.W.J.C. No. 18483 of 2014, which was heard and disposed of on 25.09.2018, by granting liberty to file an appeal before the State Appellate Authority within a period of one month from today, along with a copy of the order and the State Appellate Authority is required to decide the appeal on its own merit after condoning the delay in filing the appeal in view of the fact that the petitioner (respondent no. 8 herein) was pursuing the writ petition for the same relief before this Court.

12. Learned counsel for the petitioner further submits that the private Respondent No. 8 had not preferred the appeal within the time prescribed and incorporated in the order dated 25.09.2018, which disposed of the writ petition bearing C.W.J.C No. 18483 of 2014. The time granted to file an appeal before the State Appellate Authority was 30 days from the date of the said order. However, the appeal was filed much after the expiry of this period. Despite this delay, it was entertained and registered as Appeal No. 698 of 2018 with condonation of the delay in filing the appeal. It is further submitted that the order was passed on 25.09.2018 but the appeal was not filed within



one month due to illness. The private respondent no. 8 obtained the medical certificate dated 02.11.2018 and instructed her counsel on 03.11.2018 to obtain the certified copy of the aforesaid order for filing the appeal, which was subsequently filed.

13. Learned counsel for the petitioner further submits that from a close analysis of the materials available on record, as well as a perusal of the order dated 25.09.2018 in C.W.J.C No. 18483 of 2014, reveals that the Presiding Officer of the State Appellate Authority, while entertaining the appeal and passing the order, exceeded his Judicial authority by substituting his own decision for the judicial order dated 25.09.2018. This court had clearly restrained that if the appeal is preferred within a month, the delay in filing would be condoned, and the appeal would be decided accordingly. However, it is an undisputed fact that the appeal was neither filed within the time fixed by this court, nor was a petition for condonation of delay filed for the earlier period covering from 18.08.2014 to 24.09.2018.

14. Learned counsel for the petitioner further submits that the Secretary and Commissioner of the Human Resources Development Department, Govt. of Bihar, had issued



Memo No. 1223 dated 08.08.2006, regarding the clarification in selection, incorporating that if the female candidates on the roster of Schedule Caste are not available, the said post will be filled up by male candidates, and the necessary information was provided to all the District Magistrates and Deputy Development Commissioners.

15. Learned counsel for the petitioner further submits that the Human Resource Development (HRD) Department had issued a direction to hold counselling to fill up the remaining vacant post of panchayat teacher on 29.12.2010 and 30.12.2010. A circular was also published in the newspaper for the information of all candidates. But the private respondent no. 8 did not appear in the counselling. Since no candidate belonging to the SC (F) category appeared in the counselling held on 29.12.2010, so according to Memo No. 1223 dated 08.08.2006 issued by the Secretary and Commissioner, Human Resource Development (HRD), Department, if a candidate with secondary qualification in the SC (F) category is not available, the post shall be filled up by a male candidate of the same category. Since no female candidate in the SC category was available on 29.12.2010 and 30.12.2010, the Panchayat Employment Committee decided to employ the private



respondent who belongs to the SC category.

16. He lastly submits that the school in question was upgraded as Middle School in year 2011, and consequently, the petitioner had acquired the status of Block Teacher from Panchayat Teacher on 20.11.2011 and on that score Panchayat Secretary has no role to pay in the service and service status of the petitioner.

17. Learned counsel for the private respondent no. 8 submits that the matter relates to the second phase of Panchayat Teacher's Employment in Bhawanipur Gram Panchayat, under Yogapatti Block in West Champaran District, under the Bihar Panchayat Elementary Teachers (Employment and Service Conditions) Rules, 2006 (for short, Employment Rules 2006), as amended in the year 2008. The private respondent no. 8 applied for employment in the scheduled caste (SC) and female (F) categories. The petitioner, Ajay Kumar, was also an applicant for employment in the SC category. Six posts of panchayat teacher were allotted to Bhawanipur Gram Panchayat; two posts for the UR(F) category and one post each for the unreserved (UR), BC, EBC (F), and SC (F) categories. Only three candidates were selected by the Panchayat Employment Committee in its meeting held on 12.08.2010. The



post reserved for the SC (F) category could not be filled up on 12.08.2010. Subsequently, the petitioner, Ajay Kumar, was employed on the basis of counselling held on 29.12.2010, in which the private respondent no. 8 was not present. Aggrieved by her non-employment and employment of the petitioner in the SC category, the private respondent filed Case No. 143/2011 before the District Authority, and the District Authority rejected the claim of the private respondent and disallowed the appeal by its order dated 10.04.2012, issued by Memo No. 157 dated 12.04.2012. The private respondent no. 8 challenged, the order dated 12.04.2012 passed by the learned District Authority, before this Court in C.W.J.C. No.20445 of 2013, which was allowed by order dated 25.06.2013, setting aside the order dated 12.04.2012 passed by the learned District Authority and remitting it back to the District Authority to decide the issue in an objective manner after examining the entire records of selection. In pursuance of the order passed by this Court, the respondent no. 8 filed an appeal Case No. 12/2014 before the District Authority, which was also dismissed by the order dated 18.08.2014 passed by the learned District Authority, which is under challenge in the present appeal.

18. Learned counsel for the respondent no. 8 further



submits that the post was reserved for the SC (F) category, in which there were several applicants, including the respondent no. 8. But the petitioner, a male candidate, was wrongly employed by the Panchayat Employment Committee, Bhawanipur. The name of the respondent no. 8 appeared on Serial No.58 of the merit list with 56.77% marks in the intermediate examination. Therefore, she was waiting for an employment letter, which was never issued to her. Later, she came to know that the petitioner was employed on the post reserved for the SC (F) category. Then, she filed an appeal before the District Authority. The respondent no. 8 was not given any notice for the counselling alleged to have been held on 29.12.2010 and 30.12.2010. The learned counsel for the respondent no. 8 relied on the decision of this Court in the case of *Mohd. Izhar vs. State of Bihar* reported in **2018(3) PLJR 775**.

19. Learned counsel for the respondent no. 8 further submits that the State Appellate Authority in its order, on the point of limitation, stated that the question whether limitation in a case is to be condoned or not depends upon the facts of each case, and no hard and fast rule can be laid down as to the circumstances that are sufficient for condonation of delay. But



one fact is certain that no party must be benefitted by lodging a case after the expiry of the period of limitation. He further submits that the respondent no. 8 has filed appeal before the State Appellate Authority and also filed the limitation petition, which was condoned by the State Appellate Authority and after condoning the limitation petition the appeal was heard and subsequently, order was passed mentioning that the learned District Authority has not examined the issues raised by this Court. The District Authority has not examined whether notice for counselling was issued to the respondent no. 8, and if the last date for counselling was fixed on 30.12.2010, then how selection of the petitioner had already been made on 29.12.2010. The District Authority failed to appreciate that candidates of the SC (F) category should have been given the opportunity to appear in counselling until 30.12.2010, and if no candidate of the SC (F) category appeared until 30.12.2010, then only the opportunity should have been given to other candidates of the SC category. In the present case, the Panchayat Teacher Employment Committee appears to be pre-determined to employ the petitioner and deny the employment opportunity to respondent no. 8, the opportunity of employment. In all fairness, notices by registered post should have been issued to the



candidates in the SC (F) category, including the respondent no. 8, to appear in the counselling on 29.12.2010 and 30.12.2010. He lastly submits that initially the petitioner was appointed as Panchayat Teacher and his employment as Panchayat Teacher was cancelled by the State Appellate Authority, therefore, there is no question to challenge the status of Block Teacher of the petitioner.

20. A counter affidavit has been filed on behalf of the respondent no. 5 and 7 in which it is stated that the petitioner and the respondent no. 8 applied in the SC(F) and the same is evident from cursory glance at the application register maintained where respondent no. 8, namely, Madhuri Kumari, is mentioned at Serial No. 1130 while the petitioner is named at Serial No.1186. In the light of application submitted a merit list was prepared collectively by contemporaneous Panchayat Teacher Employment Committee of Gram Panchayat Raj Bhwanipur, Block Yogapatti where respondent no. 8 was placed at Serial No. 553 with 56.77 % marks while petitioner was having 45.77% marks in intermediate in untrained category.

21. Having heard the arguments of the parties and perusal of the records, it is clear that the date of counselling was fixed by the Authorities on 29.12.2010 and 30.12.2010, but the



Panchayat Teacher Employment Committee appointed the petitioner on 29.12.2010 itself and not conducted counselling on 30.12.2010.

22. Considering the facts and circumstances of the case, the State Appellate Authority has rightly allowed the appeal filed by the private respondent no. 8 and set aside the impugned order dated 18.08.2014 passed by learned District Teachers Employment Appellate Authority, West Champaran in Case No. 12 of 2014. Further, the State Appellate Authority has rightly cancelled the employment of the petitioner as Panchayat Teacher and directed the Panchayat Teacher Employment Committee, Bhawanipur to hold a fresh counselling of the candidates of SC(F) category in accordance with the law; accordingly, the present writ application stands dismissed.

(Anjani Kumar Sharan, J)

anand/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.08.2024
Transmission Date	NA

