

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2035 of 2019

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Abnit Kumar, s/o Sharawan Prasad Gupta resident Of Village-Sikandarpur,
Hafij Hussain Lane, P.S- Mozahidpur, District- Bhagalpur

... .. Petitioner/s

Versus

1. The State Of Bihar through the principal Secretary human Resources Development Department, Govt. of Bihar, Patna
2. The Principal Secretary Human Resources Development Department, Govt. of Bihar, Patna Bihar
3. The Director Primary Education, Govt. of Bihar, Patna Bihar
4. The District Education officer, Bhagalpur Bihar
5. The District Teachers Employment Appellate Authority, Bhagalpur Bihar
6. The Block Education Officer, Bhargama, District- Bhagalpur Bihar
7. The Mukhiya, Gram Panchayat Raj Khiirbandh (Jagdishpur), Ps-District- Bhagalpur Bihar
8. The Panchayat Secretary, Gram Panchayat Raj khiirbandh (Jagdishpur) P.S- District- Bhagalpur

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Navjot Yesu, Advocate
For the Respondent/s	:	Mr.Ashutosh Ranjan Pandey (AAG 13)
	:	Mr. Shashi Shekhar Tiwary, AC to AAG 13

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL JUDGMENT

Date : 08-02-2024

1. Heard learned counsel for the parties concerned.
2. The petitioner has filed the present writ application for quashing the order dated 20.02.2018, passed by learned State Appellate Authority, Patna in Appeal Case No. 844 of 2017, whereby the claim of the petitioner for appointment as Panchayat Teacher on the basis of application submitted in the year 2006, has been rejected and order passed by the District



Appellate Authority, Bhagalpur has been upheld.

The petitioner has further prayed for a direction to the respondent- authority to appoint him on the post of Panchayat Teacher, pursuant to the advertisement published in the year 2006 in Gram Panchayat-Khirbandh, District- Bhagalpur.

3. The factual matrix of the case, in narrow compass, is that pursuant to the advertisement for appointment on the post of Panchayat Teacher in the first phase of teachers appointment in the year, 2006, 11 seats were allocated to the Gram Panchayat-Khirbandh in the district of Bhagalpur. Breakup of seats are :- “UR-03, UR(F)-02, EBC-02, EBC (F)-01, SC-01, SC (F)-01, BC (F)-01 ”.

4. The present dispute relates to the post of EBC category. According to the petitioner, he applied for the post under EBC category. Counselling was held on 16.02.2007 and a merit list was prepared, in which the petitioner was placed at serial no. 29 under EBC category. Two applicants namely Ajay Kumar and Vibhash Mandal, who were above in the merit list than the petitioner, were appointed as Panchayat Teacher against EBC post. Subsequently, Panchayat Secretary, Khirbandh issued letter, cancelling the appointment of 03 candidates including the



aforesaid 02 candidates of EBC category on the ground that they had obtained appointment on the basis of Intermediate certificate, issued from Central Board of Higher Education, which was not a recognized institution.

5. The petitioner preferred an appeal before District Appellate Authority in Appeal case no. 07 of 2012 seeking his appointment on the post, which fell vacant due to removal of two candidates namely Ajay Kumar and Vibhash Mandal. The appeal of the petitioner was dismissed on 24.04.2012, by District Appellate Authority, whereby the claim of the petitioner was rejected on the ground that there is no provision in the rules for appointment against the post, which fell vacant due to removal of the incumbent.

6. Aggrieved by the order of District Appellate Authority, the petitioner preferred writ application before this Court bearing C.W.J.C. no. 15998 of 2012, which was disposed vide order dated 07.08.2017 with liberty to the petitioner to prefer an appeal before the State Appellate Authority, Patna. Pursuant to the direction of this Court, petitioner preferred an appeal before the State Appellate Authority in Appeal Case No. 844 of 2017, which was dismissed vide order dated 20.02.2018, after coming to the conclusion that matter relates to



the first phase of Teachers employment, held in the year 2006, which has been completed in the year 2007. Thereafter, second phase of employment was also started in the year 2008 and completed in the year 2010. Employment Rules, 2006 was subsequently replaced by the Employment Rules, 2012, in which the procedure as well as criteria for employment have been modified. Subsequent phases of employment under the Employment Rules, 2012 have also been completed. Remaining vacancies of first and second phase of employment were carried forward and clubbed with the vacancy of 2012 and included in the roaster for employment under the Employment Rules, 2012. Accordingly, the State Appellate Authority held that the claim of the petitioner for employment/ appointment on the basis of his application, submitted in the year, 2006, is not worth consideration and is fit to be rejected.

7. Learned counsel for the petitioner submits that the order passed by the District Appellate Authority is cryptic and non speaking. He further submits that the two posts fell vacant and the petitioner was at serial no. 3, the petitioner has the right to be appointed on the vacant post.

8. Learned counsel for the State submits that there is no illegality in the order passed by the District Appellate



Authority as well as State Appellate Authority. He further submits that the petitioner has no vested right to be appointed on the post turned vacant due to resignation or removal of the incumbent. He next submits that the moment, the employment was made and process completed, any vacant post due to non-joining or removal cannot create the right for consideration for appointment from the panel in absence of any rules. He relies upon the judgment of Hon'ble Single Judge in C.W.J.C. no. 5305 of 2014.

9. I have heard learned counsel for the parties and perused materials on record. In this case, the short issue which requires consideration is as to whether after the completion of selection process, if any vacancy arises due to non-joining/ resignation and/ or removal can be offered to the next candidate in the merit list? In the present case, the claim of the petitioner is that two candidates, who were having higher marks than the petitioner were appointed but subsequently removed after having found that the certificate produced by them was not from recognized institution, hence he may be adjusted against the vacant posts. But the petitioner has failed to produce any provision in the rules for appointment that against the post, which turned vacant due to suspension/ removal/ resignation of



the Panchayat Teacher, the next candidate in the merit list shall be considered for appointment.

10. The Hon'ble Single Judge in C.W.J.C. no. 5305 of 2014 has held that it is a well settled law that the moment, the appointments are made and process completed, any vacancy caused due to non-joining or resignation cannot create a right for consideration for appointment from the panel because the moment, such appointments are made, the panel lapses. In fact, it has already been held by Courts that vacancy arising from such non-joining or resignation would be required to be carried over for future appointments and the authorities lose their right to fill up such post, caused due to such vacancy.

11. In **(2023) 10 SCC 54 (Sudesh Kumar Goyal v. State of Haryana)**, the Hon'ble Supreme Court has held that one of the selected candidates joins and then resigns, it gives rise to a fresh vacancy which could not have been filled up without issuing a proper advertisement and following the fresh selection process.

12. In the present case, the process of appointment completed in the year 2006. The seats advertised, were filled up, upon removal of the incumbent of the post due to some reason, the same cannot be offered to the petitioner *per se* on the ground



that he was placed at third position in the merit penal. The removal of the incumbents gives rise to a fresh vacancy and as per the finding arrived at by the State Appellate Authority, all the remaining vacancies were carried forward and were filled up in the second and third phase of appointment of Teachers, held in 2008-2012.

13. Upon consideration of the aforesaid facts and law, I find that there is no infirmity in the order passed by the District Appellate Authority as well as State Appellate Authority. Accordingly, the present writ application is dismissed.

(Anil Kumar Sinha, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.03.2024
Transmission Date	NA

