

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1792 of 2019

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Anita Kumari W/o Sri Sikandar Rai Resident of Village-Pasopur,P.S.
Bhagwanpur,Dist.-Begusarai

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary,Education Department,
Govt. of Bihar
2. The District Magistrate, Begusarai
3. The District Education Officer, Begusarai
4. The Member District Teacher Employment Appellate Authority,Begusarai
5. The Block Development Officer,Bhagwanpur,P.S. Bhagwanpur,Dist.-
Begusarai
6. The Block Education Extension Officer,Bhagwanpur,P.S.Bhagwanpur,Dist.-
Begusarai
7. The Mukhiya, Gram Panchayat Raj Damodarpur,P.S. Bhagwanpur,Dist.-
Begusarai
8. The Panchayat Scretary, Gram Panchayat Raj Damodarpur,P.S.
Bhagwanpur,Dist.-Begusarai
9. The Headmaster, Pandit Ramadhin Rai Govt. Middle
School,Pasopur,P.S.Bhagwanpur,Distt.-Begusarai
10. Smt. Ranju Kumari Wife Sri Bipin Kumar Resident of Village-Basolhi,P.S.
Bhagwanpur,Dist.-Begusarai

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. P. N. Shahi, Sr. Adv. Mr. Pushpendra Kumar Singh
For the State	:	Smt. Binita Singh (SC-28)
For the Respondent-10	:	Mr. S. K. Ranjan Mr. Vasant Vikas
For the Respondent-8	:	Mr. Bipin Bihari Singh

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

JUDGMENT AND ORDER

C.A.V.

Date : 21-03-2024

1. The petitioner has filed the present writ application
being aggrieved by the order, dated 22.09.2017, passed by the



State Appellate Authority, Patna, in Appeal No. 311 of 2017, whereby, the order, dated 12.11.2011, passed by the District Teachers Appellate Authority, Begusarai, in Case No. 33 of 2010, has been affirmed and the State Appellate Authority, Patna, dismissed the appeal of the petitioner. The petitioner has also prayed for her reinstatement on the post of Panchayat Teacher.

2. The case of the petitioner is that against the advertisement published in the year 2005 for appointment on the post of Panchayat Shiksha Mitra (in short "PSM"). The petitioner and respondent no. 10 applied for appointment in Damodarpur Gram Panchayat under Bhagwanpur Block of Begusarai District.

3. The petitioner has passed her intermediate with 62.11% and graduation with 60.1%. The date of birth of the petitioner is 02.02.1973. The respondent no. 10 passed her intermediate with 60.22% and graduation in B.A. (Hons.) with 62.86% and her date of birth is 12.10.1976.

4. Since the petitioner and respondent no. 10 were having equal weightage of marks, the Mukhiya-respondent no. 7 sought guidelines from the District Education Officer, Begusarai, on 15.05.2005. The petitioner submitted her joining on 26.05.2005 in Pandit Ramdhari Rai Govt. Middle School as per the direction of the Mukhiya.



5. On 28.05.2005, the guidelines were received from the District Programme Coordinator, Begusarai, vide his letter no. 693, stating therein, that in case of two candidates having equal weightage of marks, the candidates having higher marks in intermediate shall be given preference inasmuch as the basis for selection of PSM is intermediate.

6. The District Education Officer, Begusarai, vide its letter no. 712, dated 02.06.2005, informed the Mukhiya that due to clerical mistake in letter, dated 28.05.2005, the information was given that candidates having higher marks in intermediate shall be selected. However, the candidates shall be selected in the light of letter no. 605, dated 10.05.2005 (copy of the letter, dated 10.05.2005, is not on record).

7. Further, the District Superintendent of Education vide its letter, dated 21.09.2005, informed the Mukhiya that in case of equal weightage marks of candidates, the candidates having higher qualification with higher marks will be placed higher in the merit list and will be given preference.

8. As per the resolution/regulation of appointment of Panchayat Shiksha Mitra, dated 11.08.2004, annexed at Annexure-3, in case of equal weightage of marks, the candidates having higher qualification with higher marks shall be placed above.



9. The Block Development Officer, Bhagwanpur, vide its letter, dated 13.06.2005 and 28.06.2005, directed the Mukhiya to send the name of respondent no. 10 under unreserved (UR) category in the light of letter no. 712, dated 02.06.2005, for appointment so that she can be sent for training on time. The Mukhiya vide his letter, dated 27.07.2005, informed the Block Development Officer, Bhagwanpur, that out of 09 posts of PSM in the Panchayat, result of 08 candidates have already been sent, but against 01 vacant post of UR category, the petitioner has been appointed and accordingly, her name has been sent.

10. The petitioner, thereafter, filed a representation before the District Magistrate, Begusarai, on 18.11.2005, stating that she has been working continuously on the post of PSM, but the Block Development Officer is pressurizing the Mukhiya to appoint respondent no. 10. The petitioner also filed a representation on 28.03.2006, stating that respondent no. 10 has wrongly been appointed even though she is having higher weightage of marks than the respondent no. 10.

11. The petitioner filed a writ before this Court, bearing CWJC No. 17159 of 2008, for payment of salary w.e.f. 26.05.2005. The writ application was dismissed having been



infructuous vide order, dated 02.02.2012, on account of subsequent events.

12. In the meanwhile, the Mukhiya, vide his letter no. 94, dated 06.07.2009, informed the Headmaster that the petitioner is still working despite the order of the higher authorities. On the basis of the said order, the Headmaster removed the petitioner from the post of Panchayat Teacher on 09.07.2009.

13. The petitioner moved before the District Appellate Authority against her removal contending that she was stopped from working without any order. The District Appellate Authority, Begusarai, vide order, dated 12.11.2011, dismissed the case of the petitioner on the ground that there is no vacant post in the Panchayat and employment of the respondent no. 10 is valid and cannot be challenged/cancelled as bar of limitation in the light of **2009 (2) PLJR 929 (Alok Kumar and Ors. v. State of Bihar and Ors.)**.

14. Being aggrieved by the order passed by the District Appellate Authority, the petitioner filed CWJC No. 16781 of 2012, which was withdrawn on 14.07.2017, with liberty to move before the State Appellate Authority. The State Appellate Authority vide its order, dated 22.09.2017, dismissed the case of the petitioner and affirmed the order passed by the District Appellate Authority.



15. A counter affidavit has been filed by the respondent no. 8-Panchayat Secretary, stating therein, that the petitioner was appointed in terms of guidelines received from the District Programme Coordinator, Begusarai, vide his letter no. 693, dated 28.05.2005, that in the case where two candidates have equal weightage marks, the preference is given to the person with more percentage/higher marks in intermediate.

16. Total 09 posts were advertised for the post of Panchayat Shiksha Mitra. The respondent no. 10 is of BC (Backward Class) category, whereas, the petitioner is of UR (Unreserved) category. The respondent no. 10 was appointed as directed by the Block Development Officer.

17. Learned counsel for the petitioner argues that the petitioner has been working since 26.05.2005, which would be evident from the certificate issued on 03.05.2008, annexed at Annexure-15. He next submits that she was converted as Panchayat Shikshak w.e.f. 01.07.2006.

18. Learned counsel for the State contends that 01 post for Female under UR category is vacant and no candidate has better merit than the petitioner and the law is settled that in absence of more merit the person of other roaster cannot be considered or accommodated in general roaster.



19. Learned counsel for the respondent no. 10 argues that the respondent no. 10 passed the intermediate with 60.22% marks and has higher qualification i.e. B.A. (Hons.) with 62.86% and has also successfully obtained B.P.E. Training Course from IGNOU w.e.f. 19.01.2014. The respondent no. 10 is having higher marks in higher qualification than the petitioner.

20. The engagement letter issued to the respondent no. 10 on 23.09.2005, which would further be substantiated from letter of Panchayat Secretary, Damodarpur, dated 14.05.2007, stating that against 01 vacant post, the respondent no. 10 was appointed in the light of letter, dated 13.06.2005 and 28.06.2005 and the list of selected Panchayat Shiksha Mitra, annexed at Annexure-R/G of the counter affidavit of respondent no. 10, the name of the respondent no. 10 appears at serial no. 09.

21. I have heard learned counsel for the parties and have perused the materials available on record, including the order passed by the State Appellate Authority, Patna.

22. The State Appellate Authority, Patna, dismissed the appeal of the petitioner on the ground that the petitioner was appointed by the Mukhiya at his own, under his own signature without signature of the Panchayat Secretary and without any approval of the Sukh Suvidha Samiti. Since the petitioner was



illegally appointed as Panchayat Shiksha Mitra, no salary was been given to her. Further, the petitioner was not converted as Panchayat Shikshak as her employment was illegal *void ab initio*.

23. From the prayer made in the writ application filed by the petitioner, bearing CWJC No. 17159 of 2008, it appears that the petitioner has prayed for salary w.e.f. 26.05.2005 for the post of Panchayat Shiksha Mitra. The petitioner was never sent for training and she did not receive salary as PSM. In the list of appointee of PSM, the name of respondent no. 10 appears at serial no. 9.

24. Since there is no cogent material to show that the petitioner was duly appointed as PSM and/or received salary as Panchayat Shiksha Mitra as well as Panchayat Shikshak, after conversion of the post on 01.07.2006, as such, I do not find any reason to differ with the finding arrived at by the State Appellate Authority.

25. This writ application is, accordingly, dismissed.

26. There shall be no order as to costs.

(Anil Kumar Sinha, J.)

ashwani/-

AFR/NAFR	AFR
CAV DATE	12.01.2024
Uploading Date	21.03.2024
Transmission Date	N/A



