

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4217 of 2020

Vandana Kumari @ Bandana Kumari Wife of Arvind Kumar Yadav Resident of Village- Bishanpur, Post Office- Basha, Police Station- Pipra, District- Supaul, presently residing at Guru Bazar, Police Station- Barari, District- Katihar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Education, Government of Bihar, Patna.
2. The District Education Officer, Katihar.
3. The District Programme Officer, (Establishment), Katihar.
4. The Block Development Officer-cum- Executive Officer, Panchayat Samittee, Barari, District- Katihar.
5. The Block Education Officer, Barari, District- Katihar.
6. Md. Taslim Son of Md. Sultan Resident of Village- Dumaria, Post Office- Sukhashan, Police Station and Block- Barari, District- Katihar, presently posted as Prakhand Teacher, Middle School, Lxmipur Kabar, Block- Barari, District- Katihar.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Arun Kumar, Adv.
For the Respondent/s	:	Mr. Madhaw Prasad Yadav, GP23 Mr. Shivendra Prasad, Adv.

CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
CAV JUDGMENT

Date : 07-10-2024

Heard learned counsel for the petitioner, learned
counsel for the State and learned counsel for the respondents.

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

“(i) A writ in the nature of certiorari setting aside the order dated 17.09.2019 passed in Appeal No. 341 of 2017 by learned State Appellate Authority, Bihar, Patna as contained in Annexure-8 whereby and whereunder appeal preferred by petitioner against the order dated 10.08.2011 passed by District Teachers Employment Appellate Authority, Katihar under which appointment of present petitioner as Prakhand Teacher under category of UR (F) reserved for visually impaired candidate has been cancelled and private



Respondent No. 6 has been appointed despite the fact that private Respondent having possessed Maulvi degree is not eligible to be appointed as general subject teacher but State Appellate Authority overlooking Government the Resolution No. 62 dated 05.01.2007 issued by Respondent State has rejected the appeal of the petitioner relying upon earlier executive Respondent instructions issued by State which is not applicable in the present case.

ii) For setting aside the order dated 10.08.2011 passed in Appeal Case No.11 of 2010 by learned District Teachers Employment Appellate Authority, Katihar as contained in Annexure-3 whereby and where under the appointment of petitioner to the post of Block Teacher in Middle School, Bhainsdeera under UR(F) general Teacher has been declared illegal on the appeal preferred by Private Respondent No. 6 and has been directed to appoint him in place of present petitioner without taking in to consideration the roster point fixed for visual impaired UR (F) category candidate for general teacher which is not proper in the eye of law.

iii) To set aside the appointment of Private Respondent No. 6 made in pursuant to order learned passed by Teacher's Employment District Appellate Authority, Katihar and reinstate the petitioner on the post of Prakhanda Teacher from which she has illegally been removed.

iv) Any other order/orders for granting any other relief/reliefs for which the petitioner is found entitled to in the facts and circumstances of the case.”

3. The present case, in brief, is that in the 2nd phase of Panchayat/Prakhanda Teachers Appointment which was to be made on the basis of the Bihar Panchayat Teachers Employment & Service Condition, Rule 2008 (as Amended) under Barari Block of Katihar District, as per roster of Reservation issued by



Respondent State, one post of Prakhand Teacher was earmarked for visually impaired unreserved Female i.e. UR (F) candidates vide roster point No. 6701 (Annexure-1 of the writ application). The petitioner, a visually impaired female, with an Intermediate degree and having got 49.10 marks, submitted her application on 07.11.2008 before the Employment Unit, Panchayat Samittee, Barari under District- Katihar. Several male candidates including Private Respondent No. 6 and altogether female candidates have made their respective applications for appointment against the post reserved for the disabled handicapped category having got handicapped certificate issued by competent authority.

4. A merit list was prepared by the Selection Committee specifically for disabled candidates following a counseling session with all eligible individuals. In this context, one position at roster point 6701 under Barari Block was designated for an UR (F) candidate. Consequently, in the merit list for Female Candidates, the petitioner was placed at Serial No.2, while Ashiaria Khatoon was placed at Serial No.1. However, during the verification of the handicapped certificates submitted by the candidates, it was determined that Ashiaria Khatoon had a disability percentage below 40, rendering her



ineligible for consideration. In light of this, the petitioner, who has a permanent disability of 60%, was duly recognized and appointed to the position of Prakhand Teacher against the UR (F) post allocated for visually impaired candidates, vide Memo No. 23 dated 15.08.2010 issued by Respondent No. 4 (Annexure-2 of the writ application).

5. Learned counsel for the petitioner submits that the private Respondent No. 6, who was Maulvi degree holder and not eligible to be considered against the post of UR (F) earmarked for visually impaired candidate against the roster point 6701, filed an appeal before the District Appellate Authority bearing Appeal Case No. 11 of 2010 impleading present petition as party Respondent claiming that he is also visually impaired candidates having high merit marks than that of the petitioner. It is pertinent to mention here that the respondent no. 6 is Maulvi degree holder and in view of Rule 2008 he is only entitled to be considered against post of Urdu Teacher. Despite that, the learned District Appellate Authority overlooking all those aspects as well as even without considering that the disability certificate produced by the respondent no. 6 does not reflect the disability of respondent no. 6 is of permanent nature, as no time period is mentioned in his



certificate and in view of Government Resolution No. 62 dated 05.01.2007 issued from the level of Personnel & Administrative Department of Respondent State specially for appointment and reservation of handicapped candidates issued in view of persons with Disabilities (Equal opportunity) Protection of Right and Full Participation) Act 1995 rather relied upon some subsequent communications made by Respondent District Programme Officer (Establishment), Katihar which was received after the appointment of the petitioner declared the appointment of petitioner illegal and the employment Unit has been directed to make an appointment to the private Respondent vide Memo No. 205 dated 10.08.2011 (Annexure-3 of the writ application).

6. Learned counsel for the petitioner further submits that the petitioner being aggrieved by the order dated 10.08.2011 passed by learned District Appellate Authority contained in Annexure-3, filed writ application bearing C.W.J.C. No. 15121 of 2011 before this Court but during the pendency of the same before this Court, Employment Unit in compliance to order passed by learned District Appellate Authority vide Memo No. 01 dated 16.09.2011 cancelled the appointment of the petitioner and, simultaneously, issued appointment letter to the Respondent No. 6 vide Memo No. 02 dated 16.09.2011



(Annexure-5 and 5/1 of the writ application).

7. Learned counsel for the petitioner further submits that the C.W.J.C. No.15121 of 2011 was disposed of by this Court with a liberty to the petitioner to file an appeal before the learned State Appellate Authority. In view of the aforesaid liberty, the petitioner preferred Appeal Case No. 341 of 2017 before the learned State Appellate Authority impleading private respondent as well as the officials as party respondents which has also been dismissed vide order dated 17.09.2019 (Annexure-8 of the writ application).

8. Learned counsel for the petitioner further submits that the learned District Appellate Authority as well as learned State Appellate Authority has completely overlooked Rule 8 (Ka) (2) of Teachers Appointment Rule, 2008 (as Amended) in which it is prescribed that Maulvi degree holder can only be appointed against the post of Urdu Teacher not against the general teacher and since roster point 6701 as contained in Annexure-1 clearly provides UR (F) candidates and private Respondent has been appointed against Prakhanda Teacher (Untrained) and, subsequently, he has been posted in School where one post of Urdu Teacher is also available and as such it cannot be said that private Respondent has been



appointed against the post of Urdu Teacher.

9. Learned counsel for the petitioner lastly submits that there are two key points for this Court's consideration. The first point is that roster point 6701 is earmarked as a reserved position for the UR(F) category, specifically allocated for candidates with visual impairments. The second point is that respondent no. 6 holds a Maulvi degree, and according to Rule 2008, he is only eligible for consideration for the position of Urdu Teacher.

10. A counter affidavit has been filed on behalf of the private respondent no. 6 in which it is stated that the petitioner has challenged the order passed by the learned State Appellate Authority as well as the order passed by the learned District Appellate Authority on three grounds. i.e. (I) The respondent no. 06 being Maulvi Degree holder was not eligible for appointment against General Post, (II) The respondent no. 06 could not have been appointed as the post on which he was appointed was reserved for an unreserved female category candidate and (III) the Certificate of Disability produced by the respondent no. 06 does not reflect that the disability of respondent no. 06 was of a permanent nature.

11. Learned counsel for the private respondent no. 6



further submits that in the order passed by State Appellate Authority as well as the District Appellate Authority it has been discussed in detail in order under challenge. It is stated that from the orders under challenge, it would appear that the respondent no. 06 was not appointed against the general post rather he was appointed against the Urdu post. It is not in dispute that a separate list of disabled candidates was prepared and the respondent no. 06 having more than 76% marks at Maulvi Examination was placed at serial no. 01 in the list of disabled candidates.

12. Learned counsel for the respondent no. 6 further submits that the respondent no. 06 had applied for an appointment on the post of Block Teacher against Urdu Post Teacher being a physically disabled candidate under the BC category, and the respondent no. 06 was placed at serial no. 01 in the list of disabled candidates but before issuing the appointment letter the name of the respondent no. 06 was deleted by fixing whitener over the name of respondent no. 06 and the petitioner who was at serial no. 03 in the merit list was given an appointment.

13. Learned counsel for the respondent no. 6 further submits that the respondent no. 06 had made a complaint against



the selection of the petitioner, in pursuance of which the BEO, Barari had written a letter to DSE, Katihar upon which the DSE, Katihar had issued instructions and suggested that the petitioner had wrongly been given an appointment (Annexure-PR/1 series of the counter affidavit filed on behalf of respondent no. 6). The Block Pramukh who was a member of the selection committee had also written a letter to the DSE, katihar that the petitioner was given an appointment on the basis of making an interpolation in the approved merit list (Annexure-PR/2 of the counter affidavit filed on behalf of respondent no. 6). The District Appellate Authority had got the disability certificate of the respondent no. 06 verified and the same had been confirmed by the Chief Medical Officer under his letter no. 1575 dated 18.06.2011 (Annexure-PR/3 series of the counter affidavit filed on behalf of respondent no. 6).

14. Learned counsel for the respondent no. 6 further submits that the Department of Personnel and Administrative Reforms Government of Bihar has issued letter no. 502 dated 02.11.2002 which explains the situation in which the disabled candidate is selected (Annexure-PR/4 series of the counter affidavit filed on behalf of respondent no. 6). The DSE, Katihar had written letter no. 716 dated 19.11.2010 in which it has been



stated that interpolation was made in the approved list of disabled candidates and the petitioner had been given appointment on the basis of said interpolation (Annexure-PR/5 series of the counter affidavit filed on behalf of respondent no. 6). He further submits that 16 post of Urdu teachers were allotted to the Block for appointment under the second phase of appointment out of which 1 post of Urdu Teacher was allotted to Middle School Laxmipur Kawar (Annexure-PR/6 series of the counter affidavit filed on behalf of respondent no. 6). The respondent no. 06 was appointed in pursuance of the order passed by the District Appellate Authority and he has been working against the Urdu Teacher post since 2011. It is further stated that the petitioner has now completed the training course and has qualified the TET Examination also.

15. A counter affidavit has been filed on behalf of the respondent no. 3 (D.P.O, Establishment, Katihar) in which it is stated that the petitioner and several candidates including the Respondent No. 6 were applicants for employment of Block Teacher in the Phase of Employment- 2008. Both the petitioner and the respondent no. 6 claim themselves as visually impaired candidates. One post was reserved for the visually impaired candidate i.e. roster point 6701 under the employment unit



Barari. The employment unit prepared a separate merit list of the disabled candidates in which the name of Respondent No. 6 was placed above the petitioner. The Respondent No. 6 has 76.8% marks whereas the petitioner had only 45.55% marks. But the employment unit employed the petitioner as a Block Teacher in the disabled category and issued an employment letter vide Memo No. 23 dated 15.08.2010.

16. Learned counsel for the respondent no. 3 submits that being aggrieved by the employment of the petitioner, an appeal was preferred by the respondent no.6 before the District Appellate Authority, Katihar vide Appeal Case No. 11 of 2010. After hearing the parties, the learned Presiding Officer, cancelled the employment of the petitioner and the employment unit has been directed to make an appointment to the Respondent No. 6, and the order has been communicated vide Memo No. 205 dated 10.08.2011.

17. Having heard learned counsel for the parties and perused the record, it is not disputed that the reservation for the candidate belonging to the disabled category is required to be applied horizontally. In other words, whoever is found fit/most suitable in the said category shall be employed and the category of the candidate found most suitable will be the



deemed category in which the post in the said category is reserved. The Government's instruction referred to above clarifies the aforesaid legal position. The respondent no. 6 was an applicant for Urdu Block Teacher. There were 16 vacancies available in the said category. Once the respondent no. 6 was found most suitable in the physically disabled category to be employed, he was entitled to get the employment and the post reserved for Urdu Teacher will be deemed in law to include the roster point meant for physically disabled candidate and the respondent no. 6 was not appointed against general post rather he was appointed against Urdu post.

18. Considering the whole conspectus of the case and the materials available on record, this Court finds no illegality or infirmity in the orders passed by the State Appellate Authority and the District Appellate Authority.

19. Accordingly, this writ application is dismissed.

(Anjani Kumar Sharan, J)

anand/-

AFR/NAFR	NAFR
CAV DATE	30.09.2024
Uploading Date	07.10.2024
Transmission Date	NA

