

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4933 of 2019

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Sunita Kumari, Daughter of Bhuneshwar Dubey, Resident of Village-
Dudhghat, P.S.- Shahpur, District- Bhojpur, Ara

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Education Department, Government of Bihar, Patna
3. The Director, Education Department, Government of Bihar, Patna
4. The District Magistrate, Bhojpur at Ara
5. The District Education Officer, Bhojpura, Ara
6. The District Programme Officer (est.), Bhojpur at Ara
7. The Block Development Officer, Shahpur, District Bhojpur at Ara
8. The Block Education Extension Officer, Shahpur, Ara
9. The Bihar Intermediate Council, Patna. The Panchayat Secretary, Gram Panchayat Raj, Dumariya, Shahpur, District Bhojpur at Ara
10. The Mukhiya, Gram Panchayat Raj Dumariya, Shahpur, District Bhojpura at Ara
11. Punam Kumari Daughter of Ram Nath Rai Resident of Village- Rajmahaldih, P.S.- Sikrahta, District- Bhojpur

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Sanjay Prakash Verma
For the State	:	Mr. S. K. Ranjan, AC to GP 17
For Respondent No. 11	:	Mr. S. Ehteshamuddin
		Md. Abu Haider

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

JUDGMENT AND ORDER

C.A.V.

Date : 12-01-2024

The present writ application has been preferred by the petitioner for quashing the order, dated 10.12.2018, passed by the State Appellate Authority, in Case No. Appeal/530/2018 and further for quashing the order, dated 13.06.2018, passed by the



District Appellate Authority, Bhojpur, Ara, in Appeal (Case) No. 37 of 2017.

2. The petitioner has further prayed for quashing the letter of appointment, dated 14.08.2010, as contained in Annexure 3 to the writ application, by which the respondent no. 11, namely, Punam Kumari, was appointed on the post of Panchayat Teacher in Gram Panchayati Raj Dumariya, under Shahpur block, in the district of Bhojpur, and to further direct the respondent authorities to appoint the petitioner on the post of Panchayat Teacher in place of respondent no. 11 or to hold selection process for the above said post as the petitioner had higher marks than that of respondent no. 11.

3. The factual matrix of the case, in brief, is that the petitioner, along with respondent no. 11, Punam Kumari, and others, submitted applications for appointment on the post of Panchayat Teacher in the Gram Panchayati Raj Dumariya, under Shahpur block, in the district of Bhojpur, under unreserved category of physically handicapped (women), during the second phase of teachers employment.

4. A merit list was approved and published on 06.01.2009, in which the name of seven candidates were mentioned and the petitioner was shown at serial no. 3 with 49.22



per cent marks; whereas the name of respondent no. 11 figured at serial no. 7 with 72.77 per cent marks. Since, the marks obtained by the respondent no. 11 was higher amongst the seven candidates, appointment letter, vide memo no. 26, dated 14.08.2010, was issued in her favour.

5. After the appointment of respondent no. 11 on the post of Panchayat Teacher, the petitioner obtained the mark sheet of respondent no. 11 from the Bihar intermediate Education Council, from which it transpired that the respondent no. 11 has secured only 384 marks out of 900, i.e. 42.66 per cent marks.

6. The petitioner, after coming to know about the forgery being done by the respondent no. 11, moved before this Court, by filing CWJC No. 23049 of 2012, which was disposed by a co-ordinate Bench of this Court, vide order, dated 04.09.2017, with a direction to the petitioner to prefer an appeal before the District Appellate Authority, Bhojpur, Ara., within a period of thirty days from the date of the order.

7. During the pendency of the writ application, pursuant to the order, passed by the Division Bench of this Court, in CWJC No. 15459 of 2014, the petitioner made a complaint, on 03.06.2015, before the A.D.G., Vigilance Investigation Bureau, Patna, regarding the irregularity committed in the appointment of



respondent no. 11 on the basis of forged certificate, but no action was taken on the complaint of the petitioner.

8. Prior to the above complaint, the petitioner had also made complaint regarding the forged certificated being produced by respondent no. 11 for obtaining employment on the post of Panchayat Teacher, to the District Magistrate, Bhojpur, on 06.05.2012, with copies to District Education Officer, Bhojpur and block Education Officer, Shahpur, but of no avail.

9. The petitioner filed Appeal (Case) No. 37 of 2017 before the District Appellate Authority, Bhojpur, Ara, in which respondent no. 11 appeared and filed her reply, stating therein that in the Intermediate of Arts Examination, 1994, she obtained 384 marks out of 900, meaning thereby that she had accepted the case of the petitioner that respondent no. 11 had secured only 42.66 per cent marks in the Intermediate of Arts Examination and not 72.77 per cent marks.

10. The appeal of the petitioner was dismissed by the District Appellate Authority, Bhojpur, Ara, on the ground that the petitioner has approached the Authority after inordinate delay. The appeal preferred by the petitioner against the order passed by the District Appellate Authority, Bhojpur, Ara, before the State Appellate Authority, bearing Case No. Appeal/530/2018, also got



dismissed, vide order, dated 10.12.2018, upholding the order passed by the District Appellate Authority, Bhojpur, Ara, on the ground of delay.

11. Learned Counsel for the petitioner argues that the merit list prepared contains the names of seven candidates, but the name of the petitioner appeared at serial no. 4, having secured 49.22 per cent marks and the name of the respondent no. 11 finds place at serial no. 7, having secured 72.77 per cent marks. One of the candidates, namely, Manimala, who was visually disable candidate, was not eligible for consideration for appointment to the post of Panchayat Teacher and one candidate, namely, Neelam Kumari, filed an affidavit, duly sworn before the Executive Magistrate, Bhojpur, stating that she was not interested in the appointment on the said post. Since the petitioner was having higher marks than the respondent no. 11, who was appointed on the basis of forged certificate, the petitioner would be placed at serial number 1 in the merit list, having higher marks than all other willing candidates, i.e. 49.22 per cent.

12. The respondent no. 11 secured the appointment on the basis of forged certificate of Intermediate of Arts, showing to have obtained 72.77 per cent marks and after procuring the correct mark sheet of respondent no. 11 from the Bihar Intermediate



Education Council, it was detected that the respondent no. 11 had obtained only 42.66 per cent marks (384 out of 900), i.e. less than the marks of the petitioner.

13. Learned Counsel for the State argued that neither in the memo of appeal nor in the statement made by the petitioner in this writ application, it is mentioned that whether the petitioner had participated in the counselling or not.

14. No counter affidavit has been filed on behalf of respondent no. 11, though learned Counsel for the respondent no. 11 appeared before this Court. He was not in a position to demonstrate the correct marks obtained by respondent no. 11 and was also not in a position to meet the submissions of the petitioner.

15. I have heard learned Counsel for the parties concerned and have gone through the impugned orders passed by the District Appellate Authority, Bhojpur, Ara, and the State Appellate Authority.

16. The District Appellate Authority, Bhojpur, Ara, has dismissed the case of the petitioner and refused to interfere with the appointment of respondent no. 11 merely on the ground that the petitioner approached the District Appellate Authority, Bhojpur, Ara, after inordinate delay, without appreciating the fact that the petitioner approached this Court in the year 2012 itself by



filing CWJC No. 23049 of 2012 and this Court, vide order, dated 04.09.2017, directed the petitioner to prefer an appeal before the District Appellate Authority, Bhojpur, Ara, within a period of thirty days from the date of the order and in pursuance thereof, Appeal (Case) No. 37 of 2017 was filed by the petitioner before the District Appellate Authority, Bhojpur, Ara.

17. In the reply filed by the respondent before the District Appellate Authority, Bhojpur, Ara, she has admitted that she got only 384 marks out of 900 in the Intermediate of Arts Examination, 1994, which comes to 42.66 per cent marks and not 72.77 per cent marks, on the basis of which respondent no. 11 was appointed, being the candidate having highest marks amongst the candidates whose names figured in the merit list.

18. From the materials available on record, it transpired that the appointment of respondent no. 11 was made on the basis of forged certificate, showing 72.77 per cent marks obtained by her in the Intermediate of Arts Examination, 1994; whereas, from the certificate produced by the petitioner of respondent no. 11, the respondent no. 11 has obtained only 384 marks out of 900 marks (Annexure 6), which comes to 42.66 per cent. The respondent no. 11 was appointed on the basis of forged mark sheet of Intermediate of Arts Examination, 1994 produced by her, which



would be evident from Annexure 7 to the writ application, in which she has been shown to have secured 72.77 per cent marks. The respondent no. 11 has admitted before the District Appellate Authority, Bhojpur, Ara, in writing, that she has secured 384 marks out of total marks of 900 and not 655 marks out of total marks of 900.

19. Considering the aforesaid, this Court is satisfied that the respondent no. 11 has obtained the appointment on the post of Panchayat Teacher in the year 2009 on the basis of forged and fabricated mark sheet of Intermediate of Arts Examination, 1994, and as such appointment of respondent no. 11 is *void ab initio* inasmuch as fraud unravels everything and goes to the root and vitiate the appointment.

20. Both the Appellate Authorities failed to appreciate the fact regarding respondent no. 11 having obtained the appointment on the post of Panchayat Teacher on the basis of forged document and rejected the appeals of the petitioner merely on the ground of delay. Both the Appellate Authorities also failed to appreciate that after appointment of respondent no. 11, the petitioner immediately approached this Court by filing CJWC No. 23049 of 2012 and upon direction being given by this Court, vide order, dated 04.09.2017, the petitioner immediately filed an appeal



before the District Appellate Authority, Bhojpur, Ara, in the year 2017 itself and after order of the District Appellate Authority, Bhojpur, Ara, in Appeal (Case) No. 37 of 2017, on 13.06.2018, the petitioner immediately in the year 2018 challenged the same before the State Appellate Authority.

21. The petitioner has been deprived of her legitimate right for appointment over and above respondent no. 11, having secured higher marks than respondent no. 11, i.e. 49.22 per cent.

22. Accordingly, in my opinion, the orders passed by the District Appellate Authority, Bhojpur, Ara, and the State Appellate Authority, cannot sustain in the eyes of law.

23. As such, both the orders, i.e. order, dated 10.12.2018, passed by the State Appellate Authority, in Case No. Appeal/530/2018 and the order, dated 13.06.2018, passed by the District Appellate Authority, Bhojpur, Ara, in Appeal (Case) No. 37 of 2017, are hereby set aside.

24. The appointment of respondent no. 11, on the post of Panchayat Teacher in Gram Panchayati Raj Dumariya, under Shahpur block, in the district of Bhojpur, will also not sustain. As such, the same is also set aside, including the appointment letter of the respondent no. 11, issued under the signature of the Panchayat Secretary, on 14.08.2010, under Memo No. 26, dated 14.08.2010.



25. From perusal of the statements made in the writ application, it does not appear that the petitioner has acquired teachers training during the pendency of this writ application. Accordingly, as per notification, dated 09.08.2017, issued by the Union of India, under Section 23 (2) of the Right of Children to Free and Compulsory Education Act, 2009 (in short, ‘the 2009 Act’), by which four years’ further time was granted from 31.03.2015 to complete the training and a general order having been passed by the Director, Elementary Education, dated 22.10.2019, in terms of the direction issued by the union of India, under Section 23 (2) of the 2009 Act, to remove those teachers, who have not acquired training by the end of the cut off date, i.e. 31.03.2019, as such, no direction can be issued by this Court for appointment of the petitioner upon the post vacated by respondent no. 11.

26. In the result, this writ application is allowed to the extent indicated above.

27. There shall be no order as to costs.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

AFR/NAFR	AFR
CAV DATE	12-12-2023
Uploading Date	12-01-2024
Transmission Date	N/A

