

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.344 of 2023

In

Civil Writ Jurisdiction Case No.2428 of 2018

-
-
1. Birendra Kumar Mishra Son of Shiv Dayal Mishra, Resident of Mohalla-Jagdeo Nagar (Near West Railway Gumti), Anaith, P.S. Nawada, District-Bhojpur (Ara)
 2. Puja Verma Wife of Shashi Bhushan Prasad, Resident of Jagdeo Nagar, P.S. Nawada, District- Bhojpur.

... .. Appellant/s

Versus

1. The State of Bihar Bihar
2. The Principal Secretary, Education Department Government of Bihar, Patna.
3. The Director Primary Education, Education Department, Government of Bihar, Patna.
4. The District Collector, Bhojpur.
5. The District Education Officer, Bhojpur.
6. The District Programme Officer Establishment, Bhojpur.
7. The Block Development Officer, Sadar Ara, Bhojpur.
8. The Block Education Officer, North Ara, Bhojpur.
9. The Panchayat Secretary, Gram Panchayat Karari, P.S. Ara Muffasil, Block Ara Sadar, District- Bhojpur.
10. The Mukhiya, Gram Panchayat Karari, P.S. Ara Muffasil, District- Bhojpur.
11. Rita Kumari Wife of Krishna Kumar, Resident of Village- Gothani, P.O. Dawath, P.S. Suryapura, District- Rohtas.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Sanjay Singh, Sr. Advocate
For the Respondent/s	:	Mr. Parmatma Singh, Advocate
For the State	:	Smt. Shilpa Singh (GA-12)
		Mr. Apurva Kumar, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 04-04-2024

The appeal is directed against the judgment by a
learned Single Judge, which unseated the appellant and allowed



the 11th respondent, the petitioner in the writ petition to be put in his place. The controversy involved is the application of the reservation roster; both the vertical and horizontal reservation. There is also the question whether the petitioner had approached the authorities delayed.

2. We heard learned Senior Counsel Sri Sanjay Singh for the appellant and learned counsel for the 11th respondent Sri Parmatma Singh and the learned Government Advocate Mr. Apurva Kumar.

3. The learned Single Judge on the basis of 5 vacancies found that the first post would be filled up by one Rita Kumari, who is just the name sake of 11th respondent and not a party in the above writ petition, who obtained the maximum marks and stood first in the order of merit. The second post which belongs to un-reserved female would hence be filled up from the next meritorious female who was Pooja Verma, the first respondent, who also is a candidate belonging to the reserved category. It was found that the post offered to Birendra Kumar Mishra, the appellant herein would be erroneous since he would have to give way to Pooja Verma, the un-reserved female in which circumstance the next candidate would have to be an SC candidate and that too a female candidate which would be



conceded to the petitioner, who stood last in accordance with the merit. It was found that the ground of delay could not be held against the writ petitioner.

4. First, we will deal with the question of delay.

The advertisement was of the year 2008 and the petitioner who was not called for counseling is said to have approached the District Teacher Employment Appellate Authority, Bhojpur with Case No.920/2009 which was allowed by order dated 18.05.2010 (Annexure-3). The counseling of the petitioner hence was carried out but later the petitioner was not appointed. The petitioner then challenged the issue before the District Teacher Employment Appellate Authority by a representation dated 02.05.2014 produced as Annexure-6. The petitioner contends that she resides in a far away place in Ara which was also a rural area which was the reason of delay. The District Appellate Authority rejected the case on the ground of delay. A further appeal was filed before the State Appellate Authority, which on facts stood rejected. The District Appellate Authority found that Rita Kumari, though a backward class candidate would be considered to be appointed in the un-reserved female vacancy and hence, the appellant herein would be appointed in the second un-reserved category.



5. We have to first notice the reservation points which is evident from Annexure-2. The tabular form in Annexure-2 shows that the appointment starts from roster point 74 and ends at roster point 78. Roster point 74 is a SC vacancy, 75 an un-reserved vacancy, 76 an EBC vacancy, 77 an un-reserved (female) vacancy and 78 a Scheduled Caste (female) vacancy. The merit list is evident from the writ petition itself which is shown in a tabular form which is extracted herein:-

S No	Name of Candidates	Category	Merit Marks	Post for category
1	Rita Kumari D/o Guljar Rai	BC	99.71%	BC
2	Birendra Mishra S/o Shiv Deyal Mishra	UR	85%	UR
3	Puja Verma W/o Shahi Bhusan Prasad	SC(F)	58.40%	SC(F)
4	Md. Manjoor Alam S/o Md. Suhan	EBC	69.11%	EBC
5	Rabindra Kishore Choudhary S/o Guru Sharan Choudhary	SC	63.01%	SC

6. Admittedly, the petitioner was not counseled along with the 5 candidates but for the purpose of completion,



we will assume that the petitioner is also included in the merit list; with her marks at 54.78%, she will have to be considered as the 6th candidate. The petitioner is a female and a member of the Scheduled Caste community.

7. Going by the merit list, the first reservation point which is also the first vacancy is one reserved for Scheduled Caste candidate. Pooja Verma, the Scheduled Caste candidate will be adjusted in the first vacancy. The second vacancy being un-reserved since Rita Kumari D/o Guljar Rai, who is a Backward Class candidate had 99.71% marks, she has to be adjusted in the un-reserved category. The next vacancy is a reservation point conceded to Extremely Backward Class, which will be filled up with the 4th person in the merit list, who is Md. Manjoor Alam S/o Md. Suhan. The controversy arises with respect to next vacancy and not to the second vacancy, as found by the learned Single Judge. The next vacancy is an un-reserved vacancy in which the appellant will have to be adjusted since he is an un-reserved candidate. The appellant has a higher merit than the writ petitioner who is at the 6th position.

8. Insofar as the horizontal reservation is concerned, it is not referable to a roster point and when there are two female candidates among the five, there is no requirement



to appoint a female candidate by compromising the merit. Further as found by the State Appellate Authority the 2nd vacancy, which is for un-reserved by reason of the superior merit goes to a B.C candidate, who is also a female. This satisfies the horizontal reservation. Hence, the 4th vacancy will have to be conceded to the appellant herein.

9. Now comes the 5th vacancy which again is conceded to the Scheduled Caste and also is a female reserved vacancy. Since there were no females available, the 5th candidate was appointed, who is Rabindra Kishore Choudhary again belonging to the SC category. If at all, the writ petitioner has a claim, it can only be as against Rabindra Kishore Choudhary; who has not been impleaded in the writ petition. The writ petitioner cannot have any claim to the vacancy in which the appellant has been appointed.

10. Now we again come to the delay aspect. Admittedly, the petitioner had approached the District Appellate Authority and obtained an order directing counseling in the year 2010. Despite counseling having been carried out, the petitioner did not approach the District Teacher Employment Appellate Authority for more than 4 years. Even according to the petitioner, the petitioner approached the District Teacher



Employment Appellate Authority on 02.05.2014 after about 4 years from the date on which the counseling was directed. We are of the opinion that the delay would also stand against the writ petitioner.

11. On the ground of delay and also on the ground of necessary party not being impleaded, we cannot but reject the claim raised by the writ petitioner. The judgment of the learned Single Judge is set aside and writ petition would stand dismissed. It is submitted by the learned Senior Counsel that the appellant was removed on the basis of the judgment of the learned Single Judge. In such circumstances, the appellant would be reinstated but with notional continuity of service and no payment during the period he was kept out of employment.

12. The appeal stands allowed with the above directions/observations.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

sharun/-

AFR/NAFR	
CAV DATE	
Uploading Date	08.04.2024
Transmission Date	

