

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5364 of 2019

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S. M. Arif Hussain Son of Khalid Hussain Resident of Village- Chandanpatti,
P.S. Baheri, District- Darbhanga.

... .. Petitioner/s

Versus

1. The State of Bihar and Ors through the Principal Secretary, Education Department, Government of Bihar, Patna.
2. The Director, Primary Education, Education Department, Government of Bihar, Patna.
3. The District Magistrate, Darbhanga.
4. The District Education Officer, Darbhanga.
5. The District Programme Officer(Establishment), Darbhanga.
6. The State Appellate Authority, Education Department, Govt. of Bihar, 5 C-D, Niyojan Bhawan, Bailey Road, Patna.
7. The District Teacher Appointment Appellate Authority, Darbhanga.
8. The Block Development Officer(BDO), Baheri, District- Darbhanga.
9. The Block Education Officer(BEO), Baheri, District- Darbhanga.
10. The Panchayat Secretary, Gram Panchayat Raj, Paghari, Block- Baheri, District- Darbhanga.
11. The Mukhiya, Gram Panchayat Raj, Paghari, Block- Baheri, District- Darbhanga.
12. Mahjabeen @ Mahajabee D/o Md. Ali Ansari Resident of Village- Sankhera, P.O. Aheri, P.S. Baheri, District- Darbhanga.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Md. Najmul Hodda Mr. Abdul Mannan Khan Mr. A.A. Quadir Jamal Faridi Mr. Hafiz Shanbaz Arif
For the Respondent/s	:	Mr. Madhaw Prasad Yadaw (Gp 23)

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CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
CAV JUDGMENT

Date : 04-03-2024

Heard Mr. Najmul Hodda, learned counsel for the
petitioner and Mr. Mahadaw Prasad Yadaw, learned counsel for
the State.

2. The petitioner has prayed for following reliefs:



“A. For issuance of an appropriate writ/writs in the nature of certiorari for quashing the order dated 04-04-2018 passed by the State Appellate Authority, Education Department, Govt. of Bihar, Patna in Token No.Appeal 455/2017, whereby and where-under learned State Appellate Authority mechanically without applying judicial mind upheld the order dated 19-10-2011 vide Case No. 443/2009 passed by the District Teacher Appellate Authority Darbhanga.

B. For direction to the concern respondent authorities to reinstate the petitioner service on the post of Panchayat Teacher (Urdu) after removal of private respondent who was appointed in most arbitrary manner, and further direction for payment of all consequential benefit attached to the said post.

C. And for any other reliefs/reliefs for which the petitioner are found to be entitled under the provision of law involved in the present case.”

3. Learned counsel for the petitioner submits that an advertisement was published by the respondent for selection and appointment of Panchayat Teacher in Teacher Niyozan-2007. The petitioner, having requisite qualification and eligibility, fill-up the application form for the post of Panchayat Teacher (Urdu) under Gram Panchayat Raj, Paghari, Block-Baheri, District- Darbhanga. The Authority conducted



counselling of three candidates for the purposes of preparation of merit-cum-seniority list for the post of Panchayat Teacher (Urdu) and finally published the panel of merit list in which one Irshad Khan found 1st position in the merit list, the petitioner came on 2nd position and Md. Rehan Raza came on 3rd position, subsequently the said Irshad Khan, who came on 1st position denied his appointment and choose to join on another place as Panchayat Teacher. Thereafter, due to non- joining of said Irshad Khan, the petitioner who was on 2nd position in the merit list was considered and after observing all the formalities, he was selected by the duly constituted Niyozan Unit and the Panchayat Secretary, Gram Panchayat Raj, Paghari, Block- Baheri, District- Darbhanga issued an appointment letter vide Letter No. 06 dated 27-04-2007 in favour of petitioner on the post of Panchayat Teacher (Urdu) and made posting at Primary School, Sankherha.

4. Learned counsel for the petitioner submits that the respondent authorities illegally made appointment of Md. Rehan Raza on the post of Panchayat Teacher (Urdu) under the same Panchayat, the said Md. Rehan was on 3rd position in counselling merit list where petitioner was on 2nd position, without considering this fact that there was only one post of



Panchayat Teacher (Urdu) under the said panchayat for which petitioner was selected and appointed under due process of law. A complaint was made before the District Magistrate and after enquiry the District Magistrate directed to cancel all the appointments in the said panchayat and Mukhiya and Panchayat Secretary of Gram Panchayat Raj, Paghari, Block-Baheri, District-Darbhanga issued a Circular No. 03 dated 18.08.2007 whereby and whereunder service of the petitioner on the post of Panchayat Teacher (Urdu) was terminated by the said respondent authorities.

5. Learned counsel for the petitioner submits that the order was passed exparte and the enquiry notice was not given to the petitioner, which is violation of nature justice. Being aggrieved by the termination, the petitioner filed C.W.J.C. No. 52/2009 before this Court and this Court has disposed the aforesaid writ application on 23.09.2010 by direction to file appeal before the District Appellate Authority, Darbhanga. In pursuance of the this Court's order, the petitioner filed a case before the District Appellate Authority, Darbhanga which was registered as Case No 443/2009. The respondent authority appeared in the case and stated that selection and appointment of petitioner was cancelled and in that place one Mahjabeen @



Mahajabee (private respondent no. 12.) was appointed on the post of Panchayat Teacher (Urdu). The District Appellate Authority has not considered document available on record which *prima facie* shows that there was no any EBC (F) for Panchayat Teacher (Urdu) under the said panchayat and also not verified the document which showed that said Mahjabeen @ Mahajabee was never applied any application for the post of Urdu teacher and also not participated in counselling of Urdu teacher rather she applied for general teacher for which her selection was already made on general post of teacher. The Authority without considering above mentioned fact dismissed the case vide Memo No. 1117 dated 20-10- 2011. Thereafter, the petitioner filed C.W.J.C. No. 4908/2012 against the order contained in Memo No. 1117 dated 20-10-2011 passed in Case No. 443/2009. This Court disposed the case on 31.07.2017, with a direction to the petitioner to file the case before the State Appellate Authority, Patna. Pursuant to the said order the petitioner filed the appeal before the State Appellate Authority, Patna. The said appeal was dismissed by the State Appellate Authority.

6. Learned counsel for the petitioner further submits that the State Authority while passing order under



challenge has not considered the enquiry report of Block Education Officer, Baheri, Darbhanga vide Letter No. 329 dated 22.05.2007, which *prima facie* shows that private respondent no. 12, namely, Mahjabeen @ Mahajabee neither fill up application form and applied for the post of Panchayat Teacher Urdu nor participated for counselling for said post in concern Panchayat rather she actually applied for general teacher for which her selection was already made, but due to malafide intention of education officer her selection was shifted to the reserve seat of Urdu Teacher on which petitioner duly selected.

7. Learned counsel for the petitioner further submits that that from perusal of order dated 20.10.2011 passed by the District Appellate Authority, Darbhanga in Case No 443/2009, it appears that State respondent had not made perusal of any documentary evidence rather on speculation and imagination, it is stated that illegality has been committed in selection and appointment of petitioner on the concern post.

8. Learned counsel for the State as well as learned counsel for the respondent no. 12 submits that the District Appellate Authority and the State Appellate Authority, after perusal of the records, have passed a reasoned and speaking order. Therefore, there is no illegality or infirmity in the orders



passed by both the Authorities.

9. Learned counsel for the private respondent no. 12 further submits that respondent no. 12 have higher percentage of marks (i.e. 85%) than the petitioner, which was not considered by Mukhiya and Panchayat Secretary, but on the complaint of some persons the appointment of the petitioner was cancelled after due inquiry. He further submits that a megha list was prepared by the selection committee of the entire candidate, from the perusal of the same, it manifest that the name of the respondent no. 12 figured on the top of the list at serial no-1 under E.B.C. category.

10. A counter affidavit has also been filed on behalf of respondent no. 10 in which it is stated that pursuant to an advertisement the process of Panchayat Teacher in Primary School Gram Panchayat Paghari, Block-Baheri, District Darbhanga, was started in the year 2007 according to Teachers Appointment Rule 2006. The respondent no- 12 also applied for the post of Urdu teacher having Maulvi (Urdu) Qualification. The respondent No- 12 passed Maulvi (Urdu) examination from Bihar State Madarsa Education Board, Patna in year 2000 having secured 85% marks and Merit list of the entire candidate was prepared. From perusal of the same, it manifest that the



name of the respondent no- 12 figures on the top of the list at serial no-1 under EBC category and the petitioner's names figures in the merit list at serial no- 6 having secured 60.36 % marks. The petitioner was wrongly appointed on the post of Urdu Teacher as has been found by the Enquiry Committee and he was terminated on the basis of enquiry committee report and the writ petitioner has approached before the District Appellate Authority as well as State Appellate Authority and after examining the fact, both the Authorities have dismissed the case of the petitioner.

11. Considering the facts and circumstances of the case, arguments of the parties and from perusal of the records, it is clear that private respondent no. 12 has secured more marks than the petitioner and both the Authorities has also found that private respondent no. 12 has secured more marks than the petitioner, in my opinion, there is no merit in the present writ application, accordingly, this writ application stands dismissed.

(Anjani Kumar Sharan, J)

anand/-

AFR/NAFR	NAFR
CAV DATE	13.02.2024
Uploading Date	06.03.2024
Transmission Date	NA

