

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5527 of 2019

Priya Kumari D/O Satyadeo Jha, W/O Subhash Kumar Jha Resident Of
Village- Jamua, P.S. Sikti, District- Araria.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors through the Principal Secretary Education Department, Govt. of Bihar, Patna.
2. The Secretary, Primary Education Govt. of Bihar, Patna.
3. The Director Primary Education Govt. of Bihar, Patna.
4. The Chairperson(A) the State Appellate Authority Niyojan Bhawan, Patna
5. District Appellate Authority, Araria, District- Araria.
6. The District Education Officer, Araria, District- Araria.
7. District Programme Officer, Sikti, District- Araria.
8. The Block Education Officer, Sikti, District- Araria.
9. The Panchayat Sewak Cum Secretary Gram Panchayat Teacher's Employment Unit Benga, P.S. Sikti, District- Araria.
10. Mukhiya Cum Chairman Gram Panchayat Teacher's Employment Unit Benga, P.S. Sikti, District- Araria.
11. Rina Kumari D/o Bhumneshwar Mandal Resident of Village- Benga, P.S. Sikti, District- Araria.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Md. Ziaul Quamar, Adv.
For the State	:	Mr. Priyadarshi Matri Sharan, AC to AAG-15
For Respdent no. 11		Mr. Shambhu Sharan Kumar, Adv.
		Mr. Ajay Kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL JUDGMENT

Date : 29-04-2024

Heard learned counsel for the petitioner, learned
counsel for the private respondent and learned counsel for the
State.

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

I. For issuance of a writ in the nature of



certiorari or any others appropriate writ/order/direction to quash the order dated 04.02.2019 passed in Appeal No. 106/2018 (Anx-13) by the learned chairperson(A) State Appellate Authority Education Department Bihar, Patna whereby and whereunder, State Appellate Authority dismissed the appeal of the petitioner supporting the order of District Appellate Authority, Araria in favour of Respondent no. 11.

II. Further for issuance of a writ in the nature of certiorari to quash the order dated 15.11.2017 passed by learned District Appellate Authority, Araria in appeal No. 34/2008 whereby District Appellate Authority allowed the complain of respondent no. 11 Rina Kumari and directed to cancel the appointment of the petitioner.

III. Further for issuance of appropriate writ/order/direction to the respondent do not disturb the petitioner from discharging her duty and stayed the operation of order dated 04.02.2019 and 15.11.2017 till final disposal of the case.

IV. For any other relief/reliefs for which the petitioner entitle in the eye of law.

2. Claim of the petitioner is that she along with respondent no. 11 Rina Kumari (hereinafter referred to as “the private respondent”) and others applied for employment as Panchayat Teacher in Gram Panchayat Benga under the Bihar Panchayat Elementary Teachers' (Employment and Service Conditions) Rules, 2006, as amended by notification no. 3148



dated 25.08.2008, (Rules, 2008, for short). The petitioner applied in unreserved female (UR F) category with 65.88 merit marks. She appeared in the counselling held on 28.02.2009 and her name appeared at Sl. No. 02 of the merit list. The private respondent appeared at Sl. No. 18 of the counselling register showing 70% merit marks. The private respondent has got two marks-sheet, one marks-sheet showing 625 and other 630 marks. The Block Education Extension Officer (BEEO), Sikti cancelled the candidature of the private respondent on the ground that her marks-sheet was not genuine. Therefore, the petitioner was issued employment letter on 04.08.2010 and again on 14.08.2010, in schedule (III) to the Rules, 2008, in pursuance of which, she joined in Primary School, Kalisthan on 24.08.2010. The private respondent did not object to cancellation of her candidature by the BEEO, Sikti. She filed a belated appeal before the District Authority vide Appeal Case No. 34/08 in which one Babita Kumari and Ranju Kumari were made party respondents. But, the petitioner was not impleaded as a party respondent. Private respondent had submitted application in Extremely Backward Classes (EBC) female (F) category. She obtained 70% marks against her name in the counselling register. But, learned District Authority has wrongly directed to



remove the petitioner who was not even made a party by the private respondent. Learned District Authority issued notice in the year 2017 to Babita Kumari and Ranju Kumari as well as to the petitioner. The petitioner filed reply before the District Authority on 09.11.2017 stating that the private respondent had filed the appeal belatedly. The petitioner has also worked as Panchayat Teacher since 2010 and obtained training from SCERT. The respondent Mukhiya, Gram Panchayat, Benga also filed a reply before the District Authority on 17.11.2017, stating that the petitioner was employed in UR(F) category whereas the private respondent belongs to EBC (F) category.

3. Learned Counsel for the petitioner argued that the appeal before the District Authority was filed on 26.12.2011 i.e. 16 months after the employment of the petitioner. In Appeal Case No. 34/08 and the private respondent had not made the petitioner as a party respondent.

4. A counter affidavit has been filed on behalf of the private respondent denying the allegations made by the petitioner. Learned counsel for the private respondent submits that the petitioner has not impleaded Babita Kumar and Ranju Kumari as party respondent in the appeal filed before the State Appellate Authority though they were parties before the District



Authority, therefore, the appeal is not maintainable on the ground of non-joinder of parties. He submits that private respondent has the higher merit marks (69.3%), followed by Babita Kumar (68.4%), petitioner Priya Kumari (65.88%) and Ranju Kumari (61.77%). According to Sub-Section (3) of Section 4 of the Bihar Reservation of Vacancies in Posts and Services (for Scheduled Castes, Scheduled Tribes and other Backward Classes) Act, 1991, (Act, 1991, in short), as amended time to time, “a reserved category candidate who is selected on the basis of his merit, shall be counted against 50% vacancies of open merit category and not against reserved category vacancies”. He also relied upon a judgment in the case of *Anamika Kumari Vs. The State of Bihar & Ors*, reported in **2015 (4) PLJR 837 (D.B)** holding as follows:-

“11. We however, in the context of the facts of the present case, make it clear that the selection for appointment, on contract basis, to the post of Mahila Parvavekshikha were required to be made on the basis of scheme of reservation embodied in 1991 Ordinance and, therefore, Section 4(3) of 1991 Ordinance was applicable to the present case, which makes it clear that a reserved category candidate, who is selected on the basis of his/her merit, shall be counted against 50 percent of vacancies of open merit



category and not against the reserved category vacancies.”

5. Considering the facts and circumstances of the case and the materials available on record, I am of the opinion that the District Appellate Authority as well as State Appellate Authority have rightly accepted the claim of the private respondent for her employment in UR (F) category in place of the petitioner.

6. In the result, this writ application is dismissed.

(Anjani Kumar Sharan, J)

devendra/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	03.05.2024
Transmission Date	NA

