

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3912 of 2019

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Vimal Kumar S/o Braj Bhushan Sharma Vill.- Dadpur, P.O.- Bauri Belwari,
P.s.- Hulasganj, Distt.- Jehanabad

... .. Petitioner/s

Versus

1. The State of Bihar and Ors Bihar
2. The Principal Secretary Human Resources Development Department, Govt. of Bihar, Patna
3. The Director Primary Education, Govt. of Bihar, Patna
4. The District Collector Jehanabad
5. The District Programme Officer (Establishment) Jehanabad, Bihar
6. The District Education Officer Jehanabad, Bihar
7. The Block Education Extension Officer Hulasganj, Jehanabad
8. The Mukhiya Gram Panchayat Khudauri, Prakhand- Hulasganj, Distt.- Jehanabad
9. Randhir Kumar S/o Shyam Deo Thakur Vill.- Sukiyawan, P.O.- Narma, P.s.- Hulasganj, Distt.- Jehanabad
10. Smt. Sangita Kumari W/o Ram Niwas Sharma Vill.- Sherthua, P.O.- Gibing, P.s.- Ghoshi, Distt.- Jehanabad
11. Smt. Baby Kumari W/o Swami Vivekanand Vill.- Golakpur, P.O.- Bhagwanpur, P.s.- Hulasganj, Distt.- Jehanabad
12. Smt. Lalmuni Kumari W/o Bhubneshwar Paswan Vill.- Raghunathpur Tola, P.O. and P.s.- Hulasganj, Distt.- Jehanabad
13. Smt. Mamta Kumari W/o Braj Kumar Vill.- Sultanpur, P.O.-Bhagwanpur, P.s.- Hulasganj, Distt.- Jehanabad
14. Smt. Seema Kumari W/o Deo Prasad Vill.- Narma, P.O.- Narma, P.s.- Hulasganj, Distt.- Jehanabad
15. The Panchayat Secretary Khudauri Gram Panchayat, Hulasganj, Distt.- Jehanabad
16. Sanjeev Kumar S/o Kameshwar Prasad Singh Vill.- Bishunpur, P.s.- Hulasganj, Distt.- Jehanabad

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Dinu Kumar, Advocate
		Mr. Arvind Kumar Sharma, Advocate
For the Respondent/s	:	Mrs. Binita Singh (Sc28)
For the Respondent no. 16:		Mr. Chitranjan Sinha, Sr. Advocate

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CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
CAV JUDGMENT

Date : 30-04-2024



Heard learned counsel for the petitioner, learned counsel for the State and learned counsel for the respondent no. 16.

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

“For quashing the order dated 06.02.2019 passed in the case no. Appeal/416/17 contained in Annexure-12 passed by the Chairman, State Appellate Authority by which the order dated 01.12.2012 passed by the learned District Teachers Employment Authority, Jehanabad, in Case no.547(01)/12 as contained in Annexure-9 has been set aside with direction to reinstate Sanjeev Kumar, private respondent no. 16, to the post of Panchayat Teacher with effect from date of removal and private respondent no. 16 will be deemed to have continued as Panchayat Teacher on the post he was working.”

3. The case of the petitioner, in short, is that 11 vacancies were notified consisting 3 posts of Unreserved Category, 3 for Unreserved Category (Female), 1 for Extremely Backward Class Category, 1 for Extremely Backward Class Category (Female), 1 Scheduled Caste (Female), 1 BC (Female) and 1 Scheduled Tribe (Female) at the District level as per the Panchayat Raj Act, 2006 for the Gram Pachayat-Khudaauri under Block-Hulasganj, District- Jehanabad. The Roster point 35 to 45 were allotted for Khudaauri Gram Panchayat. The Roster point 35, 39, 43 were for Unreserved Category and 37, 41,45 for Unreserved Category (Female). One Rita Kumari was appointed on 19/05/2007 under Unreserved Category (Female) and Rita



Kumari resigned on 11.07.2007 which was accepted on 16.07.2007.

4. From the order dated 01.12.2012 as contained in Annexure-9, Sanjeev Kumar, private respondent no. 16, who belongs to Backward Class Category was appointed in the 7th phase (suchi) on the basis of oral order of the Block Education Officer, Hulasganj, against the vacancy roster point 45 which became vacant after resignation of Rita Kumari on 11.07.2007 which was accepted on 16.07.2007. The petitioner who had secured 70.58 marks was not appointed on the reason respondent no. 16 had secured 72.55 marks who was appointed in the 7th phase (suchi). Sanjeev Kumar, private respondent no. 16, was appointed on 10.09.2007 as contained in Annexure-1. The joining of the private respondent no. 16 was accepted on 13.09.2007 by the Block Education Extension Officer, Hulasganj, as contained in Annexure- 2 and as such process of selection of Sanjeev Kumar came to an end after appointment on 10.09.2007 and the joining was accepted on 13.09.2007 against roster point 45 meant for Unreserved Category (Female).

5. The private respondent no. 16, Sanjeev Kumar, made application to Mukhiya Khudauri Gram Panchayat



mentioning therein that Sanjeev Kumar has been continuing as sole teacher in school and 1 post of teacher is vacant and as such 1 post of teacher be filled up. After advertisement the petitioner was served appointment letter on 30.11.2007 and the petitioner gave joining on 05.12.2007 as contained in Annexure-5, against the vacancy arose on 25.10.2007 on which date the service of Krishna Kumari was dispensed against the roster point 39 meant for Unreserved Category. Krishna Kumari was appointed on 11.03.2007 against the roster point 39 meant for Unreserved Category. On the date of appointment of Sanjeev Kumar, private respondent no.16, there was no vacancy to the post of teacher, further the vacancy of teacher arose on 25.10.2007 after dispensing the services of Krishna Kumari against roster point 39 for Unreserved Category. The petitioner was appointed in 8th phase (suchi) after counselling in which the private respondent no.16 had neither made application for participation in the counselling nor was party to the selection process against roster point 39.

6. Mamta Kumari filed Complaint Case no.347/09 before District Teachers Employment Appellate Authority, Jehanabad, challenging the appointment of Krishna Kumari and the petitioner, which was disposed of on 08.10.2009 as



contained in Annexure-6 by the District Teachers Employment Appellate Authority, Jehanabad, after holding that Krishna Kumari was appointed against the Unreserved Category who was dispensed from service against which the petitioner was appointed in the 8th phase (suchi) roster point 39 and the service of Krishna Kumari was dispensed on 25.10.2007 and as such the appointment of the petitioner is just and proper. On 10.11.2009, the Block Education Officer, Hulasganj issued order about appointment of Sanjeev Kumar, respondent no. 16 is held invalid.

7. The private respondent no. 16, Sanjeev Kumar, approached the Hon'ble High Court, Patna in C.W.J.C No.217 of 2010 against the order dated 08.10.2009 as contained in Annexure-6 and the matter was remanded back to District Teachers Employment Appellate Authority, Jehanabad as per the order dated 12.12.2011 passed in C.W.J.C No.217 of 2010. Sanjeev Kumar filed complaint case no.547(01)/12 before District Teachers Employment Appellate Authority, Jehanabad which was decided on 01.12.2012 indicating therein that Krishna Kumari was appointed on 11.03.2007 against roster point 39 and the service of Krishna Kumari was dispensed on 25.10.2007. Later on, advertisement was issued against which



the petitioner was appointed on 30.11.2007. Sanjeev Kumar was appointed against roster point 45 after resignation of Rita Kumari under Unreserved Category (Female) and as such the appointment of petitioner is valid and appointment of Sanjeev Kumar against roster point 45 is illegal. Thereafter, Sanjeev Kumar, private respondent no.16, approached the Hon'ble High Court, Patna in C.W.J.C No.4777 of 2013 challenging the order dated 01/12/12 passed in case no.547(01)/12 and the said writ application was disposed of on 29.08.2017 giving liberty to the private respondent no. 16 to approach before the State Appellate Authority, for redressal of grievances. Sanjeev Kumar, private respondent no.16, filed case no. Appeal/416/17 before State Appellate Authority challenging the order dated 01.12.2012 passed by District Teachers Employment Appellate Authority, Jehanabad in case no.547(01)/12 which was allowed after observing that Sanjeev Kumar has higher marks, who is entitled to be employed/adjusted against post at roster 39.

8. Learned counsel for the petitioner submits that Sanjeev Kumar, private respondent no. 16, has no cause of action against the appointment of the petitioner considering after joining of Sanjeev Kumar the process of selection of the 7th phase (suchi) came to an end and this fact was considered by



District Teachers Employment Appellate Authority, Jehanabad at the time of passing the order dated 01.12.2012. At no point of time, Sanjeev Kumar raised any objection against the appointment of petitioner against roster point 39 and even not made application against the advertisement to fill up the roster point 39 and as such Sanjeev Kumar has no case against the petitioner. The State Appellate Authority holds authority, only to allow or dismiss the case and has no authority in holding Sanjeev Kumar (respondent no. 16) should have been adjusted against roster point 39 after shifting from roster point 45 meant for Unreserved Category (Female) considering higher marks of Sanjeev Kumar then the petitioner against Unreserved Category especially when Sanjeev Kumar was appointed against roster point 45 and only after application made by Sanjeev Kumar on 02.11.2007 advertisement was issued against which the petitioner was appointed and as such the State Appellate Authority order dated 06.02.2019 passed in the case no. Appeal/416/17 is not sustainable and the order dated 01.12.2012 passed by learned District Teachers Employment Authority, Jehanabad in case no.547(01)/12 as contained in Annexure-9 is just and proper in the eyes of law.

9. The detailed chart of 11 vacancy are as follows:-



Sl. No.	Category	Reservation	Roaster Point	Name	School	Marks	Date of Appointment
1.	Unreserved	General	35	Kumari Manjari Sinha	Primary School, Raghunathpur (Trained)	63.65	15.02.2007
2.	Extremely Backward Class (F)	Extremely Backward Class (F)	36	Seema Kumari	Primary School, Mokimpur	56.88	19.02.2007
3.	Unreserved (F)	Unreserved (F)	37	Sangeeta Kumari	Newly Upgraded School, Jagua Bigha (Trained)	58.60	18.05.2007
4.	Backward (F)	Backward (F)	38	Baby Kumari	Newly Upgraded School, Chatua Bigha	50.74	17.03.2007
5.	Unreserved	Unreserved	39	Krishna Kumari	Nav Srijit Primary School, Rampur (Trained)	57.86	11.03.2007
6.	Scheduled (F)	Scheduled (F)	40	Lalmati Kumari	Nav Srijit School, Chatua Bigha	53.11	17.03.2007
7.	Unreserved (F)	Unreserved (F)	41	Uma Kumari	Nav Srijit Primary School, Visunpur (Trained)	55.37	05.04.2007
8.	Extremely Backward Class	Extremely Backward Class	42	Randhir Kumar	Nav Srijit Primary School, Jagua, Bigha	66.66	22.02.2007
9.	Unreserved	Unreserved	43	Rameshwar Yadav	Nav Srijit Primary School, Visunpur (Trained)	57.28	30.03.2007
10.	Scheduled	-----	44	Represe	-----	-----	-----



	Tribe (F)			ntation receive d		-	
11.	Unreserved (F)	Unreserved (F)	45	Rita Kumari	Primary School, Raghunat hpur, (Trained)	53.91	19.05.2 007

10. Learned counsel for the petitioner further submits that the order passed by the State Appellate Tribunal on 08.02.2019 as contained in Annexure-12, the State Appellate Tribunal has acted as appointing/selection authority. The order passed by the State Appellate Tribunal is beyond their jurisdiction to hold that Sanjeev Kumar Private, respondent no. 16, is entitled to be adjusted against roster point 39 in place of Roster point 45, ignoring the fact that at the time of appointment of Sanjeev Kumar on 10.09.2007, there was no vacancy of teacher on her reason that the vacancy of teacher arose on 25.10.2007 after dispensing the service of Krishna Kumari who was appointed against the roster point 39 on 11.03.2007. Such power is not vested in State Appellate Tribunal at the time of considering the order dated 01.12.2012 passed by learned District Teachers Employment Authority, Jehanabad, in case no.547(01)/12 as contained in Annexure-9 and as such order passed by the State Appellate Authority is perverse, illegal and not sustainable in the eyes of law. There is no illegality and



irregularity in the order dated 01.12.2012 passed by learned District Teachers Employment Authority, Jehanabad.

11. A detailed counter affidavit is being filed on behalf of the respondent no. 16 in which it is stated that this case is related to the employment of Panchayat Teacher in the 1st phase of Teachers' Employment in the year, 2006 under Bihar Panchayat Elementary Teachers' (Employment and Service Condition) Rules, 2006, in which 11 posts were allotted to Khudauri Gram Panchayat under Hulasganj Block in the District of Jehanabad. In this case several private respondents (Sl.No.9 to 16) have been made party but the respondents at Sl. No.9 to 15 have no concern at all and the case only relates to in between the petitioner and the respondent No.16 (Sanjeev Kumar). The respondent No.16 appointed to the post of Panchayat Teacher vide letter No.14 dated 10.09.2007 and pursuant to the said letter he gave his joining on 13.09.2007 in Nav Srijit Prathmik Vidyalaya, Rampur. The Petitioner was appointed as Panchayat Teacher vide letter No.15 dated 30.11.2007 and joined on 05.12.2007 in the same school where the respondent no.16 was posted. One Mamta Kumari challenged the appointment of the petitioner (Vimal Kumar) before District Teachers Employment Appellate Authority vide Complaint Case No.347/2009 in which



the Respondent No.16 was not party. Thereafter, the complaint case No.347/2009 was finally decided by the Member District Teachers Employment Authority, Jehanabad vide order dated 08.10.2009 (Annexure-6 to the writ petition) by which the appointment of respondent no.16 has been cancelled though he was not made party. From bare perusal of Annexure-6 to the writ petition it is evident that Sri Anand Shankar (the representative of District Education Officer, Jehanabad), Smt. Anjana Sinha, Block Education Extension Officer, Hulasganj, Sri Baijnath Paswan, Teacher Representative and Smt. Bhibha Kumari, Mukhiya, Gram Panchayat Khudauri appeared before the Teachers Appellate Authority and all of them have categorically stated that the appointment of Vimal Kumar (petitioner) is illegal and an order has already been passed for his removal but the Authority cancelled the appointment of Sanjeev Kumar (respondent No.16) though he was not party and no opportunity of hearing was given and behind the back of respondent No.16. Thereafter, vide letter No.314 dated 10.11.2009 issued under the signature of Block Education Extension Officer, Hulasganj (Annexure-7 to the writ petition) the respondent no.16 has been removed and directed to hand over the charge. Thereafter, being shocked and surprised by the



order of the Appellate Authority, Sanjeev Kumar (respondent no.16) challenged the order before this Hon'ble Court in C.W.J.C. No.217 of 2010 which was allowed with certain directions and observation on 12.12.2011 (Annexure-8 of the writ petition).

12. Learned counsel for the private respondent no. 16 submits that as per direction of the Hon'ble Court the respondent no.16 filed complaint case No.547(01)/2012 before the District Teachers Employment Appellate Authority, Jehanabad who finally dismissed vide order dated 01.12.2012 (Annexure-9 to the writ petition). The respondent No.16 challenged the order dated 01.12.2012 before this Hon'ble Court in C.W.J.C. No.4777 of 2013 which was disposed of vide order dated 29.08.2017 with a liberty to prefer an appeal before the State Appellate Authority (Annexure-10 to the writ petition). Thereafter, the respondent no.16 filed Case No. Appeal/416/2017 before the State Appellate Authority and the State Appellate Authority vide order dated 06.02.2019 (Annexure-12 to the writ petition) allowed the appeal with a direction to reinstate the respondent no.16 with effect from he was removed and shall be deemed to have continued as Panchayat Teacher. He further submits that it is an admitted



position that the Petitioner belongs to General category and the respondent no.16 belongs to B.C.II category. The respondent no.16 was appointed much earlier to the Petitioner. The respondent no.16 has higher merit marks i.e. 72.59 percent and the Petitioner has 70.58 percent only. The appointment of respondent no.16 was never challenged rather the appointment of Petitioner was challenged and all the officials and the Mukhiya have stated that the appointment of Petitioner is illegal and order for cancellation of his appointment has been passed. There is nothing on record that the appointment of respondent no.16 has been made against roster point 45 ear-marked for UR (F) rather the Petitioner who has been appointed after respondent no.16 and has lesser merit marks and belongs to General category has been wrongly appointed on roster point 45. As the respondent no. 16 has higher merit marks and belongs to B.C. II category has been appointed against Roster point 39 earmarked for UR category. It is an established law that a person of General category having lesser marks than a person of reserved category cannot be appointed under General category rather the person having higher marks be appointed and as such the appointment of the Petitioner was/is quite illegal and not sustainable in the eyes of law.



13. Having heard the submissions advanced on behalf of the parties and from perusal of the records, it appears that the State Appellate Authority rightly held that the private respondent no. 16/appellant, Sanjeev Kumar, has higher merit marks than the petitioner. The learned District Authority has cancelled the employment of the Sanjeev Kumar (respondent no. 16) on the ground that he was employed against the Roster no. 45 earmarked for UR (Female) category and upheld the employment of the petitioner, Vimal Kumar, on the ground that he was employed against roster point 39 earmarked for the UR category, but learned District Appellate Authority has failed to appreciate that when the private respondent no. 16 applied, Krishna Kumari was illegally holding the post as Roster point 39 which was earmarked for UR category, the private respondent no. 16 should have been employed against Roster point 39, because Krishna Kumari had remained absent from the school. Even if, her employment was not cancelled she should have been shifted to the Roster point 45, which was already vacant and earmarked for UR(F) category and the private respondent no. 16/ appellant should have been employed against Roster point 39 earmarked for the UR category. The employment of the Krishna Kumari was cancelled and the post



against Roster point 39 became vacant and the private respondent no. 16/appellant who was initially appointed against Roster point 45 was, thereafter, appointed against roster point 39 earmarked for the UR category and resultantly vacancy at roster point 45 should have been filled up by a candidate belongs to UR (F) category. If the respondent no. 16/appellant was employed against roster point 45 it was fault of the Panchayat Employment Unit and appellant/respondent no. 16 should not be blamed. The Employment letter of the appellant/respondent no. 16 does not indicate that he was employed at roster point 45 earmarked for UR(F) category. The respondent no. 16 should be entitled to be employed against roster point 39 on which Krishna Kumari was wrongly employed, who was not entitled to be considered against roster point 39. Therefore, the learned District Appellate Authority has erred in holding the employment of respondent no. 16 as illegal and invalid and holding the employment of petitioner, Vimal Kumar, valid.

14. Considering the facts and circumstances of the case and submissions advanced on behalf of the parties, this Court is of the view that there is no illegality in the order passed by the State Appellate Authority. The State Appellate Authority has rightly passed the order in accordance with law, accordingly,



the present writ application is dismissed. The Authority is directed to comply the order of the State Appellate Authority.

(Anjani Kumar Sharan, J)

anand/-

AFR/NAFR	NAFR
CAV DATE	15.04.2024
Uploading Date	30.04.2024
Transmission Date	NA

