

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6878 of 2019

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Anil Kumar Choudhary, son of Bhim Nath Choudhary resident of Village and Police Station- Mahishi, District- Saharsa.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary to the Government, Human Resources Development Department, Govt. of Bihar, Patna.
2. The Director, Primary Education Government of Bihar, Patna.
3. The District Magistrate Saharsa.
4. The District Teachers Appointment Appellate Tribunal Saharsa.
5. The District Education Programme Officer (Establishment) Saharsa.
6. The Block Development Officer, Mahishi Saharsa.
7. The Block Education Extension Officer, Mahishi Saharsa.
8. The Mukhia, Gram Panchayat, Kundah Police Station- Mahishi, District- Saharsa.
9. The Panchayat Secretary, Gram Panchayat Kundah Police Station- Mahishi, District Saharsa.
10. Binod Kumar Bimal, son of Ganesh Prasad Sah, resident of Gram Panchayat Kundah, Police Station- Mahishi, District- Saharsa, presently Panchayat Teach, Navsrijit Primary School, Pranpur, Musahari Tola, Gram Panchayat Kundah, Police Station- Mahishi, District- Saharsa.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Akash Keshav Ms. Akansha Malviya Ms. (Dr.) Shuchi Bharti
For the State	:	Mr. Jitendra Kumar Roy 1, SC 13
For respondent no. 10	:	Mr. Dinesh

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

JUDGMENT AND ORDER

C.A.V.

Date : 16-02-2024

The petitioner has filed the present writ application for quashing the order, dated 21.06.2018, passed, by the State Appellate Authority, in Appeal No. 286 of 2018, whereby the State Appellate Authority has affirmed the order, dated 22.06.2015,



passed by the District Appellate Authority, Saharsa, in Appeal Case No. 05 of 2014 (Misc.). By the impugned order, dated 21.06.2018, the State Appellate Authority has dismissed the appeal preferred by the petitioner on the ground that the claim of the petitioner for his employment as Panchayat Teacher in place of respondent no. 10 is hopelessly time barred and not justified.

2. The brief facts, giving rise to the present case, is that for two posts of Panchayat Teachers (one for general category and one for Extremely Backward Class Category, in Gram Panchayat Raj Kundah, under Mahishi block, in the district of Saharsa, the petitioner, along with 1123 other candidates applied. No merit list was published and the date of counselling was fixed on 28.02.2009. Only 27 candidates in the general category took part in the counselling held on 28.02.2009.

3. The respondent no. 10, namely, Binod Kumar Bimal, who is the son of the Mukhiya, has been selected in general category having highest marks amongst the 27 candidates, who participated in the counselling.

4. It is the further case of the petitioner that the Members of the Employment Unit, Kundah Gram Panchayat, in connivance with each other, appointed the son of the Mukhiya, i.e.



respondent no. 10, namely, Binod Kumar Bimal, on the post of Panchayat Teacher.

5. The petitioner approached the District Appellate Authority, Saharsa, in Appeal Case No. 04 of 2013, which was dismissed for default on 20.05.2014 due to non-appearance of the petitioner. Thereafter, the petitioner filed an application for restoration of his appeal. Subsequently, the District Appellate Authority, vide order, dated 22.06.2015, dismissed the appeal filed by the petitioner, holding that the appointment of the respondent no. 10 was challenged earlier by another person, namely, Pankaj Kumar, in Appeal No. 17 of 2011 before the District Appellate Authority and the order passed by the District Appellate Authority in Appeal No. 17 of 2011 has attained finality up to this Court.

6. Thereafter, the petitioner preferred an appeal before the State Appellate Authority, in Appeal Case no. 286 of 2018, which was dismissed by the impugned order. Though, the State Appellate Authority come to the finding that the Mukhiya of the Panchayat, who presided over the meeting of the Selection Committee, happens to be the father of the respondent no. 10, normally he should have recused himself from the meeting, but he presided over the meeting of the Selection Committee, in which his son, namely, Binod Kumar Bimal (respondent no. 10) was



selected, but since there was a delay of more than two years in approaching the District Appellate Authority, the State Appellate Authority has rejected the claim of the petitioner on that score only.

7. Learned Counsel for the petitioner submits that proof of foul play and manipulation is evident from the Proceeding book and from perusal of the proceeding book of the Employment Unit, held on 13.08.2010, it is evident that altogether 1124 applications were received, but only 27 candidates, of general category, appeared in the counselling and all of them have lesser marks than the respondent no. 10, who happened to be the son of the Mukhiya.

8. Learned Counsel further submits that the manipulation is also evident from the fact that one ward member, namely, Meena Devi, whose thumb impression is appearing in the proceeding book of 13.08.2010, has sworn an affidavit that she has not participated in the meeting of the Employment Unit, held on 13.08.2010.

9. So far as the appeal filed by one Pankaj Kumar is concerned, learned Counsel submits that since the petitioner was not a party in those proceedings, as such the same is not binding upon him. He further submits that the cases filed by said Pankaj



Kumar is entirely on different footing inasmuch as said Pankaj Kumar has got lesser marks than the respondent no. 10, whereas in the present case, the petitioner has admittedly got higher marks than the respondent no. 10.

10. On the other hand, learned Counsel for the respondent no. 10 raised a preliminary objection with regard to the maintainability of the present case on the ground that said Pankaj Kumar has already challenged the appointment of the respondent no. 10 in CWJC No. 14128 of 2013, and a Bench of this Court had heard the case on merits and dismissed the same and as such, the matter of appointment of respondent no. 10 on the post of Panchayat Teacher cannot be reopened again..

11. Learned Counsel further submits that only 27 candidates, including the respondent no. 10, appeared in the counselling held on 28.02.2009, and since he has got highest marks among the 27 candidates, he was selected by the Employment Unit.

12. Learned Counsel lastly argued that the petitioner has not appeared in the counselling held on 28.02.2009, therefore, his name was not considered for the appointment and being the son of Mukhiya is not *per se* a ground for disqualification from being appointed on the post of Panchayat Teacher.



13. Learned Counsel for the State submits that the meeting of the Employment Unit was presided over by the Mukhiya, in which son of the Mukhiya (respondent no. 10) was selected for appointment on the post of Panchayat teacher. Altogether 1124 applications were received, but on the date of counselling, only 27 candidates, for one post of general category, appeared and amongst them, respondent no. 10 having highest marks was selected for appointment.

14. I have heard learned Counsel for the parties concerned and have gone through the materials available on record.

15. The specific plea of the petitioner that the son of the Mukhiya, namely, Binod Kumar Bimal (respondent no. 10), was appointed pursuant to the counselling held on 28.02.2009, in which the Mukhiya was the Chairman of the Employment Unit/Selection Committee, has not been denied or controverted by respondent no. 10.

16. The fact of this case discloses a very sorrow state of affairs in the appointment of Panchayat Teacher, in which the son of the Mukhiya was appointed by the Employment Unit, headed by the Mukhiya. It has been established, beyond doubt, that the father of respondent no. 10, was not only present, but was



presiding over the meeting of the Selection Committee for appointment of Panchayat Teacher,. The respondent no. 10, namely, Binod Kumar Bimal, did not controvert this fact; rather, argued that there is no bar in the Act/Rules that son of Mukhiya cannot apply or be selected as Panchayat Teacher and being the son of Mukhiya is not *per se* a ground for disqualification from being appointed on the post of Panchayat Teacher.

17. The Supreme Court, in paragraph 16 of **Ashok Kumar Yadav and Others v. State of Haryana and Others**, reported in **(1985) 4 SCC 417**, has held as follows:

16. We agree with the petitioners that it is one of the fundamental principles of our jurisprudence that no man can be a judge in his own cause and that if there is a reasonable likelihood of bias it is “in accordance with natural justice and common sense that the justice likely to be so biased should be incapacitated from sitting”. The question is not whether the judge is actually biased or in fact decides partially, but whether there is a real likelihood of bias. What is objectionable in such a case is not that the decision is actually tainted with bias but that the circumstances are such as to create a reasonable apprehension in the mind of others that there is a likelihood of bias affecting the decision. The basic principle underlying this rule is that justice must not only be done but must also appear to be done and this rule has received wide recognition in several



decisions of this Court. It is also important to note that this rule is not confined to cases where judicial power *stricto sensu* is exercised. It is appropriately extended to all cases where an independent mind has to be applied to arrive at a fair and just decision between the rival claims of parties. Justice is not the function of the courts alone; it is also the duty of all those who are expected to decide fairly between contending parties. The strict standards applied to authorities exercising judicial power are being increasingly applied to administrative bodies, for it is vital to the maintenance of the rule of law in a Welfare State where the jurisdiction of administrative bodies is increasing at a rapid pace that the instrumentalities of the State should discharge their functions in a fair and just manner. This was the basis on which the applicability of this rule was extended to the decision-making process of a selection committee constituted for selecting officers to the Indian Forest Service in *A.K. Kraipak v. Union of India* [(1969) 2 SCC 262 : AIR 1970 SC 150 : (1970) 1 SCR 457] . What happened in this case was that one Naqishbund, the acting Chief Conservator of Forests, Jammu and Kashmir was a member of the Selection Board which had been set up to select officers to the Indian Forest Service from those serving in the Forest Department of Jammu and Kashmir. Naqishbund who was a member of the Selection Board was also one of the candidates for selection to the Indian Forest Service. He did not sit on the Selection Board at the time when his name was considered for selection but he did sit on the Selection



Board and participated in the deliberations when the names of his rival officers were considered for selection and took part in the deliberations of the Selection Board while preparing the list of the selected candidates in order of preference. This Court held that the presence of Naqishbund vitiated the selection on the ground that there was reasonable likelihood of bias affecting the process of selection. Hegde, J. speaking on behalf of the Court countered the argument that Naqishbund did not take part in the deliberations of the Selection Board when his name was considered, by saying : (SCC p. 270, para 15)

“But then the very fact that he was a member of the Selection Board must have had its own impact on the decision of the Selection Board. Further admittedly he participated in the deliberations of the Selection Board when the claims of his rivals ... was considered. He was also party to the preparation of the list of selected candidates in order of preference. At every stage of his participation in the deliberations of the Selection Board there was a conflict between his interest and duty.... The real question is not whether he was biased. It is difficult to prove the state of mind of a person. Therefore what we have to see is whether there is reasonable ground for believing that he was likely to have been biased.... There must be a reasonable likelihood of bias. In deciding the question of bias we have to take into



consideration human probabilities and ordinary course of human conduct.”

This Court emphasised that it was not necessary to establish bias but it was sufficient to invalidate the selection process if it could be shown that there was reasonable likelihood of bias. The likelihood of bias may arise on account of proprietary interest or on account of personal reasons, such as, hostility to one party or personal friendship or family relationship with the other. Where reasonable likelihood of bias is alleged on the ground of relationship, the question would always be as to how close is the degree of relationship or in other words, is the nearness of relationship so great as to give rise to reasonable apprehension of bias on the part of the authority making the selection.”

18. In the present case, the relationship of the selected candidate and the Mukhiya is very close, i.e. father and son, as such, it is not necessary to establish bias and it is sufficient to invalidate the selection process inasmuch as the nearness of relationship shall give rise to reasonable apprehension of bias on the part of the selection body making the selection.

19. Since the Mukhiya has participated in the selection process, in which his son was selected, as such it is not the fair process of selection.

20. Accordingly, in my opinion, the entire selection/ appointment made by the Employment Unit of Gram Panchayat



Raj Kundah, under Mahishi Block, in the district of Saharsa, stands vitiated and is hereby quashed. In the result, the selection/appointment of respondent no. 10 is also quashed.

21. In the result, the impugned order, dated 21.06.2018, passed, by the State Appellate Authority, in Appeal Nos. 286 of 2018 is also set aside as the Appellate Authority did no consider the fact that the father of one of the selected candidate, namely, Binod kumar Bimal, was the Chairman of the selection body.

22. The respondent-State is directed to fill up the post, which has fallen vacant, as per Bihar State School Teachers (Appointment, Transfer, Disciplinary Proceedings and Service Conditions) Rules, 2023.

23. This writ application is allowed to the extent indicated above.

24. There shall be no order as to costs.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

AFR/NAFR	AFR
CAV DATE	15-01-2024
Uploading Date	16-02-2024
Transmission Date	N/A

