

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7083 of 2019

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Gangadhar Bihari Son of Sri Ram Chandra Mahto Residence of Village Mubarakpur, Fulkari Gram Panchayat Raj Parra Block Birpur, District Begusarai presently working under the Headmaster of Primary School, Saraunja (East) as Panchayat Teacher, Gram Panchayat Raj Parra, P.O and Block Birpur, District Begusarai.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Human Resources, Govt. Of Bihar, Patna.
2. The District Magistrate, Begusarai.
3. The District Education Officer, Begusarai.
4. The District Programme Officer (Establishment), Begusarai.
5. The Block Development Officer, Birpur, Begusarai.
6. The Block Education Extension Officer, Birpur, Begusarai.
7. The Mukhiya cum Chairman, Panchayat Teachers Niyojan Committee, Gram Panchayat Raj Parra, Block Birpur, Begusarai.
8. The Panchayat Secretary cum Secretary of Panchayat Teachers Niyojan Committee, Gram Panchayat Raj Parra, Block Birpur, Begusarai.
9. Lal Babu Sah Son of Sri Bhola Sah Resident of Village Saraunja under Gram Panchayat Raj Parra, Block and P.S. Birpur, District Begusarai.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Raj Kishore Prasad, Adv.
For the State	:	Mr.Umesh Narayan Dubey, A.C. to G.P.27
For the Resp. Nos.7 & 8 :	:	Mr.Harsh Anuj, Adv.

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CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL JUDGMENT

Date : 18-03-2024

Heard learned counsel for the petitioner and learned
counsels for the State and the respondent nos.7 and 8.

2. The present writ application has been filed for the
following relief/s:-

“(i) For issuance of writ in nature of certiorari



for setting aside the order dated 27.02.2019, passed by the Chairman of State Appellate Authority (Education Department, Bihar, Patna). In appeal no.513/2017 by which the order dated 31.01.2012 passed by the District Teacher Appointment Appellate Authority, Begusarai, in case no.110/2011 was set aside without considering the case of the petitioner, relying upon the report Block Education Officer, whose report is contradictory to the report of Panchayat Secretary Gram Panchayat Raj, Parra, Birpur, Begusarai as well as State Appellate Authority relying upon the report submitted in CWJC No.13836/2013 by the Panchayat Secretary Gram Panchayat Raj Parra, Birpur who was not present at the time of appointment.

(ii) For issuance of any other appropriate writ for commanding and directing the respondents to reinstate the petitioner at the same post on which he has been selected.

(iii) For issuance of any reliefs for which petitioner is entitled in the eye of law.”

3. The brief facts of the case is that pursuant to notification of Human Resources Development Department for selection/appointment of Panchayat Teacher 2nd phase in year 2008, the petitioner had applied his application with educational documents along with caste certificate and residential certificate



for selection on the post of Panchayat Teacher and application form was received to the Secretary Gram Panchayat Raj, Parra, Birpur, thereafter receiving was given to the petitioner on 01.11.2008 and his receiving serial no. was 360 under the signature of Panchayat Secretary. For selection of those teachers, total 1189 applications were received. The merit list of 10 applicants was to be prepared on one vacant post from every categories, in pursuance to that merit list was prepared and put up before the meeting and by the consent of every person the same was allowed and the merit list was affixed on the notice board and the date of counseling was fixed for 28.8.2009. On the said day, the petitioner participated in the counseling but the respondent no.9 did not come in counseling despite having more marks than the petitioner. Therefore, the petitioner was selected under the BC category and the respondent no.9 had applied under the general category which is evident from Aam Sabha proceeding register.

4. The petitioner was selected by the Aam Sabha and his selection letter was issued by the Panchayat Secretary Gram Panchayat Raj Parra through memo no.14 dated 14.08.2010 and same was provided to the petitioner, directing him to join within three days. In light of joining letter, the petitioner gave his



joining on 16.08.2010 and the petitioner was relieved from letter no.24 dated 28.08.2010 for giving his joining in Primary School Saraunja East part. The petitioner started giving his service to his school satisfactorily. After ten months of the joining of the petitioner, the respondent no.9 filed an application vide case no.110/2011 before the District Teacher Appellate Authority, who dismissed the application on the ground of limitation but neither limitation application was filed by the respondent no.9 nor the District Teacher Appellate Authority has considered on the said issue and the both parties were heard and order dated 31.01.2012 was passed in favour of the petitioner.

5. During hearing of application of the appellant, the District Teacher Appellate Authority Begusarai considered the case of respondent no.9 and observed that the respondent no.9 was having more marks than the petitioner and his name was standing at serial no.1 in merit list and his category was general despite of being caste of Backward and the respondent no.9 did not participate in counseling due to the said reason his selection could not be made in final list. Thereafter, the respondent no.5 filed an appeal before the State Appellate Authority, which asked for the original application of the respondent no.9 in order to consider whether the respondent no.9 had applied his



application under the B.C. category or general category but the concerned respondent did not produce the original application of the respondent no.9 rather the State Appellate Authority has considered on fake application form of the respondent no.9 which appears itself from application because the receiving receipt is given to the candidate after receiving of the application. The application form of the respondent no.9 which is annexed as Annexure-3 in appeal no.513/2017.

6. Learned counsel for the petitioner submits that the respondent no.9 had not come with clean hand before the State Appellate Authority and mislead the Court by drawing the attention of the Court on order dated 03.04.2012 passed in C.W.J.C. No.6032/2012 by which the respondent shown that the petitioner had been noticed but he did not bring the real status of the case whether the notice had been served upon the petitioner or not. The reality is that the above mentioned writ application had stood dismissed due to non compliance of order dated 03.04.2012, thereafter restoration has been filed bearing M.J.C. No.412/2013 which was also dismissed on ground of limitation, hence a fresh writ application was filed by the respondent no.9 bearing C.W.J.C. No.13836/2013 in which the Hon'ble High Court was pleased to pass an order dated 19.06.2013 by which



the respondent no.9 was directed to go before the State Appellate Authority because the alternative remedy was before the respondent no.9.

7. It is submitted that the State Appellate Authority did not apply judicial mind in consideration of counter affidavit filed by the petitioner in appeal no.513/2017 and it did not consider specifically para no.17 of the counter-affidavit of the petitioner where it has clearly been mentioned that the report of B.E.O., Birpur, Begusarai is contrary to the report of Panchayat Secretary of Gram Panchayat Raj Parra, Birpur, Begusarai whereas the report of Gram Panchayat Secretary is the competent authority to provide the report with regard to category class of respondent no.9. He further submits that the respondent no.9 had mislead the State Appellate Authority and succeeded to get the order in his favour and without considering the matter properly, the State Appellate Authority passed the erroneous order dated 27.02.2019 in which despite order dated 04.02.2019 the State Appellate Authority did not compel the respondents to produce the original application of the respondent no.9 along with record and without having consideration for ascertaining whether the application of respondent no.9 had been applied under the category of



backward class or not, passed the erroneous order relying upon the report given by the Block Education Officer, Birpur, Begusarai through letter no.266 dated 19.09.2018 which is itself contradictory with the report of Panchayat Secretary.

8. A detailed counter-affidavit is filed on behalf of the private respondent no.9 wherein it is stated that altogether 9 posts of Panchayat Teacher in Gram Panchayat Raj Parra, Block-Birpur (Begusarai) was allotted for different categories of different subjects, with the approval of competent authority (Annexure-R/5 and R/5-1). From these Annexures, it is clear that the roster point-6530 allotted to Backward class Male/Female member and the vacancies have also been distributed as below:-

(i) Primary School, Saraunja East-2 posts (General)

(ii) Primary Urdu Maktab, Saraunja-6 posts (Urdu)

(iii) Primary School, Dasaithar, Saraunja-1 post (General).

9. It is submitted that no any notice was sent to the Respondent no.9 in utter violation of the departmental guidelines but the respondent no.9 remained present on 28.02.2009 and took participation in the counseling, on the instruction of the Respondent no.8, made his signature at Sl. No.5 of another register and at Sl. no.15 of the attendance sheet (Annexure-R/6). It is submitted that from bare perusal of



Annexure-R/6 to the petition, it is clear that the respondent Niyojan Unit has no respect of law by violating and giving 4 posts to Urdu teachers and 5 posts to others against 6 posts approved for Urdu and 3 posts for others. The respondent nos.7 and 8 prepared a forged merit list in which the name of the respondent no.9 shown in the General Category showing 68.66% marks and further to dislodge the genuine claim of the respondent no.9 and to give the benefit of wrongful gain to the petitioner by giving the weightage of 20% totaling the marks as $53.55+20=73.55\%$ while in support of 20% additional weightage no any documents/certificate is available to the Niyojan Unit. Aggrieved by the illegal selection of petitioner, the respondent no.9 filed the representation on 31.08.2010 to all concerned including the respondent no.2 as well as the District Appellate Authority, Begusarai.

10. Learned counsel for the respondent no.9 further submits that the District Superintendent of Education, Begusarai ordered the respondent no.6 to enquire into the matter, who after thorough enquiry made his report dated 6.12.2010, found the illegality and irregularity committed by the Niyojan Unit i.e. respondent nos.7 and 8. On the basis of the report dated 6.12.2010, the then District Superintendent of Education,



Begusarai set aside the appointments on 22.12.2010 and later on modified the order on 27.12.2010 directing the selection Committee to review the proceedings and also directed the aggrieved candidates to agitate the matter before Appellate Authority. The selection Committee of Gram Panchayat Raj Parra did not act so the respondent no.9 has left with no option than to approach the District Appellate Authority, Begusarai in case no.110/2011 after obtaining relevant papers under R.T.I. Act. The respondent nos.7 and 8 appeared and a report dated 25.10.2011 has been filed by the respondent no.8 in which it is mentioned that the petitioner has 68.66% marks belonging to general category and did not participate in the counseling whereas the respondent no.9 belongs to extremely backward caste, merit percentage 53.55%, additional 20% i.e. 73.55% (Annexure-R/12). The respondent no.8 filed a subsequent report dated 11.11.2011 in which the marks shown as 53.55% to the petitioner (Annexure-R/13 to the counter-affidavit). The Appellate Authority, Begusarai, without calling the records from the Niyojan Unit as well as noticing the facts enumerated in the Annexure-R-9, 10, 11, 11/1 to the petition dismissed the case of the respondent no.9 on 31.01.2012.

11. It is further submitted that since the order dated 3.4.2012



was not complied with so the writ application being C.W.J.C. No.6032/2012 was dismissed for default. The respondent no.9 filed the restoration application bearing M.J.C. No.412/2013 and this Court was pleased to dismiss the M.J.C. No.412/2013 with a liberty to file fresh writ application. On the liberty granted by the Hon'ble High Court, Patna, the respondent no.9 filed a writ application being C.W.J.C. No.13836/2013 which was disposed of by order dated 11.09.2017 with a liberty to the respondent no.9 to file the appeal before the State Appellate Authority, Patna. During pendency of the writ application, C.W.J.C. No.6032/2012 and 13836/2013, the respondent nos.7 and 8 filed their respective counter affidavits and admitted that in the process of selection of petitioner, gross illegality have been committed (Annexure-R/15). The respondent no.9 filed the Appeal No.513/2017 before the State Appellate Authority, Patna and the Hon'ble Chairman of the State Appellate Authority after giving opportunity to the petitioner as well as the records produced by the respondent no.8 and the factual report submitted by the respondent no.6 has been pleased to rightly pass the order on 27.02.2019 in favour of the respondent no.9.

12. In the considered view of the Court, on the basis of relevant pleadings and perusal of the materials available on



record, inclined the Court to accept that the respondent no.9 was a candidate in the BC category. It is not the case of any party that the respondent no.9 had secured a very high merit point and as such, he could not have ventured to apply even against the unreserved category. Although the petitioner has disputed the claim of the respondent no.9 having applied in the B.C. category but has not disputed that the respondent no.9 belongs to the B.C. category because the certificate produced by the respondent no.9 has not been alleged to be got up/forged certificate/document.

13. Considering the argument of the parties and perusal of the record, I do not find any illegality in the order passed by the State Appellate Authority.

14. In the aforesaid background, this writ application is dismissed.

(Anjani Kumar Sharan, J)

pallavi/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	02.04.2024
Transmission Date	N.A.

