

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9020 of 2019

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Nirmala Kumari, Wife of Kesto Mohan Yadav, Resident of Village- Chopra Bakhari, P.O. Haldi Khora, P.S.- Kochaa Dhaman, District- Kishanganj.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Govt. of Bihar, Patna.
2. The Director, Primary Education, Bihar, Patna.
3. The Education Officer, Kishanganj, District- Kishanganj.
4. The District Programme Officer, (Establishment), Kishanganj.
5. The Block Education Officer, Kochadhaman Block and District- Kishanganj.
6. The District Appellate Authority, Kishanganj.
7. The State Appellate Authority Bihar, Patna.
8. The Mukhiya, Gram Panchayat Haldikhora, Block Kochadhaman, District- Kishanganj.
9. The Panchayat Secretary, Gram Panchayat Haldikhora, Block Kochadhaman, District- Kishanganj.
10. Shama Naz Begum, Wife of Masihuzzamma, R/o Village and P.O. Haldikhora, P.S. Kochadhaman, District- Kishanganj.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Jitendra Kumar

For the Respondent/s : Mr.Prabhakar Jha (Gp27)

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CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL JUDGMENT

Date : 15-02-2024

Heard learned counsel for the parties.

2. The petitioner has prayed for following reliefs:

“That the present writ petition is being filed for setting aside the order dated 08.03.2019 passed in Appeal No. 400 of 2017 by the learned State Appellate Authority, Bihar, Patna, whereby and whereunder the appeal preferred by the respondent no. 10 has been allowed and directed the Panchayat Employment Unit, Haldikhora to reinstate the appellant (respondent no. 10) on the post of panchayat teacher after cancellation of



employment of the petitioner and for any other necessary relief/reliefs to which the petitioner is found legally entitled in the facts and circumstances of the case.”

3. Learned counsel for the petitioner submits that in Gram Panchayat, HaldiKhora, four posts were vacant for appointment of Panchayat Teacher in the second phase-2008, which are as follows: 2 post- Urdu Knowing Candidates, 1 post- Unreserved Female, 1 post- Backward Class.

4. Learned counsel for the petitioner further submits that in view of the guideline issued by the Education Department, the employment unit invited the applications for appointment of Panchayat Teacher. The petitioner applied for appointment on the post of Panchayat Teacher. After receiving of applications, the Panchayat Secretary issued notice dated 20.02.2009 to the petitioner and direct her to appear in the counselling on 28.02.2009 along with original certificates.

5. Learned counsel for the petitioner further submits that on the due date the petitioner appeared in the counselling and necessary certificates was issued by the Panchayat Authority, inspite of higher marks she was not appointed. He further submits that without conducting the counselling on 14.08.2010, the respondent no. 10 was appointed



vide memo no. 05 dated 14.08.2010 as Panchayat Teacher under UR Female Category who has lesser mark than the petitioner. He further submits that the petitioner had appeared in the counselling held on 28.02.2009 and 14.08.2010 respectively. In this regard the Sarpanch and other panch issued certificate on 15.12.2010 for appearance of the petitioner on 14.08.2010 at Panchayat Bhawan.

6. Learned counsel for the petitioner further submits that when the petitioner was not appointed on the post of Panchayat Teacher although she has higher marks, she moved before the District Appellate Authority, Kishanganj, and the District Appellate Authority, Kishanganj, passed order on 19.09.2011 with a direction to conduct the counselling of the petitioner in accordance with law on the ground that she possessed higher marks than the appointed candidate and cancelled the appointment of respondent no. 10. He further submits that pursuant to the order of the District Appellate Authority, Kishanganj, the employment unit issued appointment letter vide memo no. 02 dated 22.10.2011 in favour of the petitioner after completing the entire formalities. On the strength of the said appointment letter, the petitioner submitted her joining on 05.11.2011 at New Primary School, Bhoraha



(Sighari), Kochcdhawan.

7. Learned counsel for the petitioner further submits that respondent no. 10, being aggrieved by the order dated 19.10.2011 of the District Appellate Authority, filed C.W.J.C. No. 18394 of 2011 before Hon'ble High Court. After hearing the parties, the Hon'ble High Court disposed of C.W.J.C. No. 18394 of 2011 by order dated 01.10.2012, by which order dated 19.09.2011 passed by learned District Authority was set aside and the matter was remitted back to the District Appellate Authority for fresh consideration and passing afresh reasoned and speaking order. The Mukhiya and Panchayat Secretary, Haldikhora were also directed to produce the original records before the District Appellate Authority.

8. Learned counsel for the petitioner further submits that, thereafter, the petitioner filed a case before the District Teacher Employment Appellate Authority, Kishanganj, which was registered Fresh Case No. 109/12 (Nirmala Kumari vs. Shamanaz Begam). In course of fresh consideration, learned District Authority called for counselling register from the employment unit. The employment unit produced the same in which page nos. 1 to 12 of the counselling register was not made available. After hearing the parties, the said appeal was



allowed on 04.03.2013 by reasoned and speaking order.

9. Learned counsel for the petitioner further submits that pursuant to the order passed by the District Teacher Employment Appellate Authority, Kishanganj, the employment unit issued reappointment letter in favour of the petitioner vide memo no. 04 dated 30.04.2013. On the said strength, the petitioner again joined against respective post. He further submits that as per Government circular/rules the petitioner also passed T.E.T. Examination and necessary certificate was issued by the State Council of Education Research and Training, Bihar.

10. Learned counsel for the petitioner further submits that, by order dated 04.03.2013 passed by the District Teacher Appellate Authority, it is evident that Panchayat Employment Unit submitted the counselling register dated 28.02.2009 in which page nos. 01 to 12 and page no. 17 and 22 were missing which show the conduct of the employment unit. He further submits that the respondent no. 10 has filed a writ petition vide C.W.J.C. No. 7051 of 2013 before this Hon'ble High Court and the same was dismissed as withdrawn with liberty to prefer an appeal before the State Appellate Authority against the order dated 04.03.2013 passed in Case No. 109 of 2012 by the District Teachers Employment Appellate Authority,



Kishanganj on 29.08.2017. He further submits that in view of the aforesaid liberty the respondent no. 10 preferred an appeal vide Appeal No. 400 of 2017 before the State Appellate Authority, Bihar, Patna, which was heard and allowed the same on 08.03.2019 and directed the panchayat employment unit, Haldikhore to reinstate the appellant on the post of Panchayat Teacher after cancellation of the employment of the petitioner.

11. Learned counsel for the petitioner further submits that the State Appellate Authority has not considered the fact that some pages of the original document were missing and the said pages has not been produced by the concerned Authority and also not considered the fact that the petitioner has higher marks, but on the basis of the High Court's order the State Appellate Authority has passed the order in favour of the respondent no. 10.

12. Learned counsel for the petitioner further submits that in course of fresh consideration of the matter, learned District Authority called for the original counselling register from the concerned Mukhiya and the Panchayat Secretary. But, instead of producing the original register, they produced before the District Authority, a photocopy of the relevant pages of the counselling register. He further submits



that the District Appellate Authority has relied on secondary collateral evidences regarding participation of candidates in the counselling, instead of relying on the counselling register, in contravention of the direction given by the Hon'ble High Court in its order dated 01.10.2012 passed in C.W.J.C. No. 18394 of 2011.

13. Learned counsel for the State as well as learned counsel for the respondent no. 10 submitted that the State Appellate Authority has rightly passed the order in favour of the respondent no. 10 and also submitted that by the order dated 01.10.2012 passed in C.W.J.C. No. 18394 of 2011 filed by the respondent no. 10 challenging the Memo No. 2011 dated 22.09.2011 passed by learned District Authority, this Hon'ble Court has made following observation:

“ If counselling was fixed on 14.08.2010 and the petitioner claims to have participated and signed the counselling register, the best evidence with regard to whether respondent no. 10 had participated or not was the counselling register itself. If it contained her signature no further issues would arise. If it did not contain her signature but did contain the signature of the petitioner and any other who appeared on that date, the onus would lie on the respondent no. 10 to demonstrate



in what manner she was present and in what manner counselling was denied to her even while others were counselled on 14.08.2010. No such evidence was placed before the Tribunal.

It is peculiar that the Tribunal proceeded to make a decision on a question of fact on basis of materials outside the selection records. It did not consider it necessary to call for the primary and best evidence by way of the selection records.”

14. Considering the facts and circumstances of the case and the fact that there is no illegality in the order passed by the State Appellate Authority, this Court finds no merit in the present writ petition and the same stands dismissed.

(Anjani Kumar Sharan, J)

anand/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.02.2024
Transmission Date	NA

