

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No.116 of 2021

In
Letters Patent Appeal No.965 of 2019

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Baijmanti Kumari W/o Raj Kishore Prasad Resident of Village- Beldari Bigha, P.O.- Mandach, P.S.- Telhara, Dist- Nalanda, At Present working as Panchayat Teacher in Primary School Kaluachak, Prakhand Jehanabad, Dist- Jehanabad.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department Government of Bihar, Patna.
2. The Director Primary Education, Government of Bihar, Patna.
3. The State Appellate Authority (Education Department Bihar) at Patna.
4. The District Teachers Employment Appellate Authority, Jehanabad through its Members.
5. The Members of District Teachers Employment Appellate Authority Jehanabad.
6. The District Magistrate, Jehanabad.
7. The District Education Officer, District- Jehanabad.
8. The District Programme Officer (Establishment), Jehanabad.
9. The Block Education Officer, Jehanabad.
10. The Mukhia, Gram Panchayat Raj- Mande Bigha, Prakhand- Jehanabad.
11. The Panchayat Secretary, Gram Panchayat- Mande Bigha, Prakhand- Jehanabad.
12. Mirdula Kumari W/O Praveen Kumar Resident of Village- Makhdumpur, P.S.- Alipur, Dist- Gaya.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr.Dinu Kumar, Adv Ms. Ritika Rani, Adv Mr. Vardhan Monglem, Adv
For Respondent No. 12	:	Mr. Amaresh Kumar Singh, Adv Mr. Dineshwar Prasad Singh
For the State	:	Mr. S.S. Tiwary AC to AAG-15
For the B.D.O	:	Mr. Anil Mishra
For the Panchayat Secretary	:	Mr. Amit Kumar

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 03-10-2024

In the instant Civil Review petition, Review-Petitioner has sought for review of the order dated 24.02.2021 passed in LPA No. 965 of 2019. Grievance of the review petitioner is in respect of selection and appointment to the post of Panchayat Teacher. The purpose of filing the present Civil Review is to the extent that co-ordinate Bench has committed error insofar as calculation of percentage of marks among the review petitioner and 12th Respondent- *Mridula Kumari*. The matter was heard from time to time. Ultimately, we have given a direction to the concerned official Respondent to furnish comparative merit among the petitioner and the 12th Respondent. The same has been filed in the form of counter affidavit on behalf of 9th Respondent alongwith Annexure-A Letter dated 08.08.2006. In para 16, it is stated as under:

That the comparative position of the aforesaid two would be more vivid from



the tabular chart pended herein below.

	Mridula Kumari 12 th Respondent	Baijmati Kumari Review petitioner
Intermediate examination	594 (which was inclusive of marks obtained in optional/ additional subject)	383 (without including marks of optional/ additional subject) + 20 weightage marks for teaching experience
Percentage	66.9	62.55

But after excluding the marks obtained in additional/optional subject, by the aforesaid Mridula Kumari/12th respondent, in Intermediate examination, her percentage would have come to 59.55% and as such the correct merit point of Mridula Kumari should been 59.55%, which was comparatively less than Baijmati Kumari/ review petitioner.

2. Learned counsel for the Review petitioner submitted that vocational marks obtained by the 12th Respondent in Intermediate is required to be excluded. On this point, he has failed to apprise that Rules of Recruitment governing the Panchayat Teacher of the year 2006, provides for exclusion of marks awarded for vocational is to be excluded. In Rule 9 of Rules, 2006 there is no iota of material to the extent that while taking percentage of marks from matriculation, Higher Secondary/Intermediate to the extent of marks to be excluded of vocational subject. There is no words incorporated to the extent of calculation of



percentage in the event of Intermediate, vocational course marks is required to be excluded. Therefore, comparative merit has been taken into consideration that 12th Respondent is more merited than the review petitioner.

3. Learned counsel for the review petitioner submitted that Section 23 of The Right of Children To Free And Compulsory Education Act, 2009 is required to be taken into consideration, in that event, Respondent is not entitled to selection and appointment. In the light of Section 23 of the Act, 2009 of the Central Government, corresponding amendment to Rules 2006 has not been undertaken by the State Government. Therefore, Section 23 of The Right of Children To Free And Compulsory Education Act, 2009 cannot be taken into consideration. Assuming that Section 23 of The Right of Children To Free And Compulsory Education Act, 2009 is taken into consideration, in that event, petitioner is also not entitled. That apart, the date of advertisement is of the year 2008 therefore, whatever the Rules existing with reference to Rules 2006 for the purpose of selection and appointment to the post of Panchayat Teacher is required to be taken into consideration. In other



words, The Right of Children To Free And Compulsory Education Act, 2009 introduced subsequent to the date of advertisement for the post unless and until advertisement is modified and date of process of recruitment is modified. Any Provision of The Right of Children To Free And Compulsory Education Act, 2009 is not binding on the present recruitment for the year 2008, since process of recruitment was already set in motion the principle of game changer is not attracted. Moreover, 12th Respondent is already working for the last 14 years. Accordingly, review petitioner has not made out a case.

4. Civil Review No. 116 of 2021 stands dismissed.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

vashudha/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.10.2024
Transmission Date	NA

