

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.191 of 2021

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Shri Bhagwan Ram, S/o Late Ghurahu Ram, R/o Village Pawani, P.S.
Nasriganj, District Rohtas.

... .. Petitioner/s

Versus

1. The State of Bihar through its Secretary Education Department, Govt. of Bihar, New Secretariat, Patna.
2. The Director (Primary Education), Education Department, Govt. of Bihar, New Secretariat, Patna.
3. The District Magistrate, Rohtas.
4. The District Education Officer, Rohtas.
5. The District Programme Officer (Establishment), Rohtas.
6. The Block Development Officer, Nasariganj, Rohtas.
7. The Block Education Officer, Nasariganj, Rohtas.
8. The Panchayat Secretary, Gram Panchayat Raj, Pawani, Nasariganj, Rohtas.
9. The Mukhiya Gram Panchayat Raj, Pawani, Nasariganj, Rohtas.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shashi Bhushan Kumar
For the Respondent/s : Mr. Kameshwar Kumar (GP 17)

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CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
CAV JUDGMENT

Date : 19-03-2024

Heard Mr. Shashi Bhushan Kumar, learned counsel for the petitioner as well as Mr. Kameshwar Kumar (GP 17) for the State.

2. The petitioner has filed the present writ application for the following reliefs:-

(i) To quash the memo no.2541 dated 11.09.2020 issued by the District Education Officer, Rohtas, whereby and whereunder directed to the Secretary Employment unit for cancellation of appointment of the petitioner. A copy of memo



dated 11.09.2020 is annexed as Annexure-1 to the writ application.

(ii) To further direct the respondent authority to pay the salary of the petitioner w.e.f. November 2019 to till date.

(iii) To further direct the respondent authority not to disturb the petitioner in discharging his duty as a Panchayat Teacher in Primary School, Pawani, Nasariganj, Rohtas.

3. Learned counsel for the petitioner submits that in the year 2006, State Government published new Rule for appointment on the post of panchayat/block/secondary teacher. Accordingly, the petitioner and several applied against the post of panchayat teacher in Gram Panchayat Raj Pawani, Nasariganj, Rohtas.

4. As per the Rule, the appointment unit made the merit list and held counseling and selected candidates were issued appointment letter. The petitioner was selected and appointed on the post of Panchayat Teacher vide memo no.05 dated 17.01.2007 by which he got posting in Primary School Pawani Tola (Annexure-2). He joined the said school and started discharging his duty with satisfaction of authority concerned.

5. He further submits that, after completion of one year, one Surendra Prasad gave complaint before the Block Education Officer, Nasariganj and after due verification of appointment, it was found that the appointment of said Panchayat was legal and



valid (Annexure-3).

6. He further submits that, against the order of District Education Officer, Nasariganj, Surendra Prasad filed a writ application bearing C.W.J.C. No.10758 of 2011 before the High Court. The High Court after hearing the parties disposed off the said writ application on 09.03.2011 with a direction to file an appeal before the Appellate Authority (Annexure-4).

7. In the light of the order of High Court, Surendra Prasad filed an appeal before the District Appellate Authority, Rohtas. Accordingly, District Appellate Authority issued notice to all concerned. On the basis of the said notice, DEO, Nasariganj submitted his detailed reply, specifically mentioning that the appointment process in which the petitioner was appointment was valid and legal (Annexure-5).

8. The District Appellate Authority passed an order on 07.06.2011, after hearing the parties, and dismissed the appeal and absorbed the appointment of the petitioner and held that the appointment process was valid and legal.

9. Feeling aggrieved and dissatisfied with the order of District Appellate Authority, Rohtas, Surendra Prasad, again filed a writ application bearing C.W.J.C. No.12911 of 2011



before the High Court. After hearing the parties, the matter was withdrawn, with a liberty to Surendra Prasad to file appeal before the State Appellate Authority.

10. Surendra Prasad gave an application before the Vigilance on the basis of wrong facts and suppressed the matter but Vigilance did not properly perused the order of the High Court and lodged FIR against the petitioner. Despite the liberty given to Surendra Prasad, he has not filed any appeal before the State Appellate Authority till date.

12. He further submits that during the service period, petitioner participated in evolutionary test and passed it. During service period, as per the direction of the Department, petitioner participated in teacher training course and successfully completed it. Thereafter, the Department declared him as a trained teacher w.e.f. 05.01.2014. Accordingly, petitioner was discharging his duty as trained teacher but his salary stopped w.e.f. November 2019 without any reason.

13. He further submits that the action of the respondent authorities is illegal as the petitioner was appointed as per the Rules and against his appointment, Surendra Prasad filed appeal before the District Appellate Authority, which was subsequently



dismissed and the appointment of petitioner was found legal and in accordance with law.

14. The appointment of the petitioner was examined by the District Appellate Authority but the respondent authority, without any reason, regarded the appointment of petitioner as fake. No show cause notice was issued before issuance of impugned order and as per the Rule, they had no power to give direction to the employment unit for cancellation of petitioner's appointment.

15. He further submits that petitioner is the husband of the Mukhiya, who was the chairperson of the said Panchayat at the time of counselling of the petitioner and others. There is no bar under the Act/Rule that husband of Mukhiya cannot apply or get selected to the post of Teacher.

16. Learned counsel for the petitioner relied upon the L.P.A No.513 of 2015 passed by the Division Bench of this Court on 16.01.2019, in which it was held that there is no Act or Rule that prescribes that any relative of a Mukhiya is not entitled to apply to the post of Panchayat Teacher or can get selected.

17. Learned counsel for the petitioner further relied upon the judgment of this Court passed in C.W.J.C. No.18864 of 2011, in



which it was held that the notice issued under the UPC is valid and affirmed by the L.P.A. No.1497 of 2013.

18. Learned counsel for the State filed a detailed counter affidavit in the present case and has stated that Surendra Prasad filed an appeal by case no.56/2011 before the District Teacher Appellate Authority, Rohtas alleging that he had more merit marks than the petitioner but the petitioner was illegally selected by the Mukhiya, who was the wife of the petitioner. The employment unit issued notice under U.P.C. for appearing in the counselling which was held on 09.01.2007 and 11.01.2007. The District Appellate Authority, Rohtas dismissed the said case on the ground of limitation vide memo no.499 dated 07.01.2011.

19. Surendra Prasad filed a complaint before the Vigilance, alleging that the then Mukhiya, Smt. Lakhmuna Devi appointed her husband as Panchayat Teacher in the year 2006-07 in connivance with the Panchayat Secretary and no notice was issued to the concerned candidates and employment unit showed the notice under the U.P.C which was not valid. After proper enquiry, **the Vigilance found that more than 60 candidates had higher marks than the petitioner, who were shown absent from counselling.** Therefore, the Vigilance lodged Vigilance P.S. Case No.73 of 2017 on 02.09.2017 u/s



420/120(B) of the I.P.C.

20. After investigation, Vigilance submitted chargesheet and information was provided vide letter dated 15.10.2018 to the District Programmer Officer (Establishment) Rohtas and the District Programmer Officer directed the Panchayat Secretary, Pawani for approval of initiation of prosecution against the petitioner as Panchayat Employment Unit is the competent Authority. The Panchayat Secretary, Pawani on 14.12.2018 granted approval for initiation of prosecution. Thereafter, the District Programme Officer, on 18.12.2018 sent the said letter to the Police Superintendent, Vigilance, Bihar, Patna for further action.

21. He further submits that pursuant to the order passed by this Court in C.W.J.C. No.15459 of 2014 **Ranjeet Pandit and Ors. Vs State of Bihar and Ors.** the Additional Chief Secretary, Education Department, Bihar issued direction vide memo no.13 dated 17.07.2019 to take action against those teachers in view of the FIR lodged against them. The District Programme Officer vide letter no.L-2754 dated 16.12.2019 directed the Panchayat Secretary, Gram Panchayat Pawani to taken legal action in view of the Vigilance P.S. Case No.73 of 2017 against the petitioner. Thereafter, the District Education



Officer, Rohtas vide letter dated L-541 dated 11.09.2020 directed the Panchayat Secretary-cum-Secretary, Panchayat Employment Unit, Pawani to take steps for removal of the petitioner from the post of Panchayat Teacher and recover the paid amount in accordance with law.

22. He further submits that from the records, it is found that the petitioner could not be appointed as Panchayat Teacher because his wife was Mukhiya of that Panchayat and she, being a Chairman of Employment Unit could not have selected her husband. The information, that was provided to the candidates whose names appeared in the merit list by U.P.C. by the Panchayat for appearing in counselling which were also illegal/ Both issues were already been decided by this Court on 15.05.2013 in C.W.J.C. No.6671 of 2010 (Pramod Kumar Vs. State of Bihar and Ors.)

23. The petitioner argued that there is no bar in the Act or Rules that son of Mukhiya cannot apply or be selected as Panchayat Teacher.

24. 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 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 arguments 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 he 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.”

25. In the present case, the relationship of the selected candidate and the Mukhiya is very close i.e. husband and wife, 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.

26. Since the Mukhiya has participated in the selection process, in which her husband was selected, as such it is not the



fair process of selection. It is relevant to mention here that the Vigilance, after enquiry, came to the conclusion that more than 60 candidates secured more merit marks than the petitioner but the same was not considered by the Selection Committee.

27. Accordingly, in the aforesaid facts and circumstances, the District Education Officer, Rohtas, has rightly directed to the Secretary, Employment Unit for cancellation of appointment of the petitioner and petitioner shall not be entitled to the salary from March, 2019 to till date.

28. The stay granted by the co-ordinate Bench of this Court vide order dated 10.03.2022, is hereby recalled and Authority is directed to comply the memo no.2541 dated 11.09.2020, issued by the District Education Officer, Rohtas except that no recovery of salary shall be made from the petitioner.

29. In the result, this writ application is dismissed.

(Anjani Kumar Sharan, J)

shikha/-

AFR/NAFR	NAFR
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