

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.276 of 2022

In

Civil Writ Jurisdiction Case No.17954 of 2019

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Gopal Kumar, S/o Shri Ram Swarth Rai, R/o Vill- Bhale, P.O.- Prem Nagar,
P.S.- Runni Saidpur, District- Sitamarhi.

... .. Appellant/s

Versus

1. The State of Bihar through its Secretary-cum-Commissioner, Education Department, State of Bihar, New Secretariat, Patna.
2. The Director, Primary Education, Education Department, Govt. of Bihar, New Secretariat, Patna.
3. The District Magistrate, Sitamarhi.
4. The District Education Officer, Sitamarhi.
5. The District Programme Officer (Estt.), Sitamarhi.
6. The Block Education Officer, Block- Suppi, P.S.- Majarganj, Block- Suppi, District- Sitamarhi.
7. The Mukhiya, Gram Panchayat Raj Mohini Mandal, Block- Suppi, P.S.- Majarganj, District- Sitamarhi.
8. The Panchayat Secretary, Gram Panchayat Raj Mohini Mandal, Block- Suppi, District- Sitamarhi.
9. The Presiding Officer, District Appellate Authority, Sitamarhi.
10. Shankar Kumar S/o Ram Naresh Rai, R/o Vill- Sirahi, P.O. and P.S.- Riga, District- Sitamarhi.

... .. Respondent/s

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with

Letters Patent Appeal No. 340 of 2022

In

Civil Writ Jurisdiction Case No.21685 of 2019

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Shankar Kumar, Son of Ram Naresh Rai, Resident of Village- Sirahi, P.O.-
Sahbajpur, P.S.- Riga, District- Sitamarhi.

... .. Appellant/s

Versus

1. The State of Bihar through Principal Secretary, Education Department, Govt. of Bihar, Patna.
2. The Principal Secretary, Education Department, Govt. of Bihar, Patna.
3. The Director Education Department, Govt. of Bihar, Patna.



4. The District Magistrate, Sitamarhi, District- Sitamarhi.
5. The District Education Officer, Sitamarhi, District- Sitamarhi.
6. The District Programme Officer (Est.), District- Sitamarhi.
7. The Block Education Officer, Suppy, District- Sitamarhi.
8. The Mukhiya Gram Panchayat Raj Mohini Mandal, Block- Suppy, P.S.-
Mejarganj, District- Sitamarhi.
9. The Panchayat Secretary, Gram Panchayat Raj Mohini Mandal, Block-
Suppy, P.S.- Mejarganj, District- Sitamarhi.
10. Sri Gopal Kumar, Son of Sri Siyaram Swarath Rai, Resident of Village-
Bhale, P.O.- Premnagar, P.S.- Runnisaidpur, District- Sitamarhi.

... ... Respondent/s

Appearance :

(In Letters Patent Appeal No. 276 of 2022)

For the Appellant/s : Mr. Rajeev Kumar Singh, Advocate

For the Respondent/s : Mr. Prabhat Ranjan Singh, AC to AAG-13

(In Letters Patent Appeal No. 340 of 2022)

For the Appellant/s : Mr. Sharda Nand Mishra, Advocate

For the Respondent/s : Mr. Apurva Kumar, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE HARISH KUMAR

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE HARISH KUMAR)

Date : 18-04-2024

Both the appeals have been preferred against a common order/judgment of this Court dated 28.04.2022 passed by a learned Single Judge of this Court in C.W.J.C. No. 17954 of 2019 and C.W.J.C. No. 21685 of 2019. The impugned order dismissed both the writ petitions with a direction to the State Government not to consider any one of them for the post of Teacher and to relieve, any one, who is working on any such



post. Besides the aforesaid direction, a cost of Rs.50,000/- to each one of the appellants have been imposed.

2. The chequered history of the present litigation, as gleaned from the records are as follows:

3. In terms of Bihar Panchayat Primary Teachers (Appointment and Service Conditions) Amended Rules, 2008, an advertisement was published for appointment to the post of Panchayat Teacher in Gram Panchayat Raj Mohini Mandal, Block Suppi, District Sitamarhi. Out of the seven posts, which were advertised, one was reserved for Backward Class category and two posts were for Unreserved Category, which are relevant for the present litigation. In response to the aforesaid advertisement, both the appellants have filed their applications before the Employment Unit at the Panchayat.

4. It is the case of the appellant (Gopal Kumar) in L.P.A. No. 276 of 2022 that he submitted his application under Backward Class category. After receipt of the application form from the desirous candidate, a provisional merit list was prepared on 30.12.2008, the name of the appellant Gopal Kumar finds place in BC Category. After completing all the formalities, including the publication of final merit list, no objection was raised. Accordingly, the provisional merit list has been declared



as final merit list in the meeting of the Employment unit of the concerned Panchayat on 09.01.2009. Thereupon the date for counselling was fixed on 28.02.2009 by the Education department. However, none of the appellants appeared, as they were not within the consideration zone and on the said date only two persons were appointed under the Unreserved category. The rest of the posts, including the post under Backward Class category remained vacant.

5. On 21.07.2010 fresh communique was issued by the Principal Secretary, Education Department fixing the date of counselling on 13.08.2010 and 14.08.2010, inviting applications from all the candidates for filling up the posts of Panchayat Teacher in different Panchayats, where the appointment could not be completed. Pursuant thereto the appellant, Gopal Kumar along with others appeared in counselling and after proper verification of the certificates/testimonials vide letter no.10 dated 30.12.2010 appointment letter was issued in favour of the appellant Gopal Kumar, the copy of which is produced as Annexure-5 to the writ petition. On being appointed, the appellant Gopal Kumar submitted his joining in Upgraded Primary School, Mohini Mandal, Ward No.15.

6. On the other hand, it is contended on behalf of



the appellant (Shankar Kumar) in L.P.A. No.340 of 2022 that in response to the advertisement for appointment to the post of Panchayat Teacher, the appellant Shankar Kumar having qualification of B.A. (honours) and being a candidate of Backward Class category submitted his application before the Employment Unit on 07.11.2008, the copy of which is produced as Annexure-1 to the writ petition. It is further contended that appellant Shankar Kumar, by caste being 'Kurmi' comes in the Backward Class category has submitted caste certificate of BC category, issued by the Sub-Divisional Officer, Sitamarhi. The selection committee on receipt of the application has made endorsement in the register at serial no. 209 wherein his category has been mentioned as Backward Class category. Despite the facts, as noted hereinabove, the selection committee in the provisional merit list erringly mentioned the name of the appellant Shankar Kumar in the list of unreserved category, though the appellant has submitted his application against the vacancy of BC category. The appellant immediately filed an objection on 06.01.2009, which was said to be duly received by the Panchayat Secretary. Accordingly, necessary correction/rectification has been made and the name of the appellant Shankar Kumar has been placed under the Backward Class



category, but the final merit list has not been published.

7. It is the further case of the appellant Shankar Kumar that though the date of counselling was fixed on 28.02.2009 and subsequently the officials of the State issued another date of counselling through a communique, but the petitioner never received any call letter for counselling and suddenly he came to know that without holding a valid counselling, the employment unit, in collusion with Gopal Kumar, has issued appointment letter in a wholly arbitrary and illegal manner.

8. The appellant Shankar Kumar along with some other candidates, on being aggrieved, preferred appeal before the District Teachers Appellate Authority, Sitamarhi in Misc. Case No. 37 of 2011 and analogous cases alleging all the facts as stated hereinabove. It was the categorical case of the appellant Shankar Kumar that he having 81.77% marks, his appointment has been denied and on the other hand, the Employment unit has issued appointment letter to appellant Gopal Kumar, who secured only 74.55% marks.

9. The District Teachers' Appointment Appellate Authority, Sitamarhi vide its order dated 18.10.2011 set aside the selection of appellant Gopal Kumar and others and directed



to fix the date of counselling through proper advertisement in the daily newspaper to appoint the eligible candidates.

10. Against the order passed by the District Teachers' Appointment Appellate Authority, Sitamarhi (hereinafter referred to as 'the Appellate Authority'), the appellant Gopal Kumar preferred C.W.J.C. No. 21409 of 2011, which writ petition came to be disposed of vide order dated 25.04.2014, remanding the matter to the Appellate Authority for fresh consideration on the following issues noted hereinbelow. The copy of the order of this Court is marked as Annexure-6 in C.W.J.C. No. 21409 of 2011.

“(i) The Tribunal will decide as to whether after the publication of panel of General category candidate, backward category candidate, Shankar Kumar, respondent no.9 had filed any objection.

(ii) The Tribunal will also decide as to whether such notice was published fixing cut off marks for the general category candidate, backward category candidate and economically backward category candidate, and

(iii) If the objection was raised by Shankar Kumar, respondent no.9 about the panel, what step was taken by the Panchayat Secretary.

(iv) Whether the Shankar



Kumar, respondent No.9 had attached his caste certificate along with his application and if he had filed his caste certificate why his name was not added in the list of backward category candidate?”

11. On being remanded, the matter was again heard by the Appellate Authority and the appeal filed on behalf of the appellant Gopal Kumar came to be allowed vide order dated 24.09.2014, the copy of which is produced as Annexure-8 in CWJC No. 17954 of 2019.

12. In the light of the order passed by this Court and the Appellate Authority, the appellant Gopal Kumar was reinstated in service as Panchayat Teacher. In the meantime, the appellant Shankar Kumar, on being aggrieved by the order of his termination, filed C.W.J.C. No. 17991 of 2014. The said writ petition was disposed of with liberty reserved to him to file appropriate appeal before the State Appellate Authority and accordingly Appeal No. 138 of 2017 was filed.

13. The State Appellate Authority, after appearance of all the concerned, directed the Panchayat Secretary to produce all the original documents related to employment of the Panchayat teachers, in dispute. Pursuant thereto the relevant documents were produced before the State Appellate Authority. Subsequently, the State Appellate Authority directed the District



Magistrate, Sitamarhi to constitute a two member committee to verify the correct facts and submit a report. Pursuant to the aforementioned direction, the District Magistrate, Sitamarhi vide its letter no. 874 dated 17.04.2019 has submitted its report. Finally order dated 01.07.2019 came to be passed in Appeal No. 138 of 2017 by the State Appellate Authority setting aside the order dated 24.09.2014 passed by the District Appellate Authority, Sitamarhi with a direction to the Panchayat Employment Unit, Gram Panchayat Mohini Mandal to publish a fresh merit list of BC category after proper communication and hold a fresh counselling to appoint meritorious candidate within the stipulated period.

14. Instead of participating in the fresh counselling, the appellant Shankar Kumar being aggrieved by the order dated 01.07.2019 passed by the State Appellate Authority, Bihar, Patna by which it was directed to the respondent Panchayat Employment Unit to publish a fresh merit list of all the candidates in the BC category, he again approached before this Court in C.W.J.C. No. 21695 of 2019. Similarly, the appellant Gopal Kumar being aggrieved by the State Appellate Authority, whereby the order of the District Appellate Authority was set aside, filed C.W.J.C. No. 17954 of 2019.



15. Both the writ petitions were heard together by the learned Single Judge and the learned court after having considered the materials available on record concluded that both the candidates have attempted to place forged documents before this Court in order to set up their case. Hence, they do not deserve to be considered for the post of teachers. Such conduct on the part of both of them was found to be sufficient to oust them from participation and consideration as a teacher. Accordingly, the learned Single Judge dismissed both the writ petitions with costs of Rs.50,000/- to each of the petitioners, who are appellants here.

16. This Court has heard the rival contentions of the parties and also carefully perused the materials on record.

17. Having gone through the materials on record, which clearly smack of malafides and interpolation in the records and, as such, this Court vide its order dated 19.07.2023 has directed to produce the files regarding selection, in question. In compliance therewith the files were placed before this Court.

18. It would be worth observing that fraud and collusion vitiate even the most solemn proceeding in any civilized system of jurisprudence. It is a concept disruptive of human conduct. It has been held by Hon'ble Supreme Court in a



number of decisions that fraud is an intrinsic, collateral act, and an act of deliberate deception with a design to secure something, which is not otherwise due. The expression fraud involves two elements, deceit and injury to the person deceived. It is a cheating intended to get an advantage [vide **Dr. Vimla Vs. Delhi Administration**, AIR 1963 SC 1572, **Indian Bank Vs. M/S Satyam Fibres**, (1996) 5 SCC 550 and **the State of Andhra Pradesh & Anr Vs. T. Suryachandra Rao**, (2005) 6 SCC 149.

19. In **United India Insurance Co. Ltd vs Rajendra Singh & Ors.**, (2000) 3 SCC 581, the Apex Court observed that Fraud and justice never dwell together and it is a pristine maxim which has never lost its temper over centuries. The ratio laid down by the Apex Court in various cases is that dishonesty should not be permitted to bear fruit and confer benefit to persons who have defrauded and made misrepresentation and in such circumstances the court should not perpetuate the fraud by entertaining petitions on their behalf.

20. Placing reliance in the decision in **District Collector and Chairman Vizianagaram vs M. Tripura Sundari Devi**, (1990) 3 SCC 655, the Apex Court in **Union of India Vs. M. Bhaskaram**, 1995 Supl (4) 100 observed as under:



“If by committing fraud any employment is obtained, the same cannot be permitted to be countenanced by the Court of law, as the employment secured by fraud renders it voidable at the option of the employer.”

21. In the background of the aforementioned settled legal position, this Court has examined the facts of the present case. However, before coming to the original records, this Court think it apposite to take into consideration the order passed by the Appellate Authority as well as the State Appellate Authority in order to settle the issue, in question, in disposal of the appeals.

22. While allowing the appeal filed on behalf of the appellant Gopal Kumar vide its order dated 24.09.2014, the District Appellate Authority has heard the parties and considered the case of both the appellants in the light of the direction passed in C.W.J.C. No. 21409 of 2011, which direction has also been quoted in this order. The learned District Appellate Authority after formulating the points, as directed by this Court, considered the submissions of the parties very meticulously and found the contention of the appellant Shankar Kumar not acceptable for various reasons; discussed in detail. Interpolations in the record to favour the appellant Shankar



Kumar is highlighted. The learned Appellate Authority finally concluded that all the points/issues have been decided in favour of the appellant Gopal Kumar, who had submitted his application for the post of Panchayat Teacher under BC category and in the light of press communique dated 04.12.2010, the cut off marks for all the categories have been fixed, wherein 60% marks has been fixed under the Backward Caste category.

23. On the contrary, it was held that the appellant Shankar Kumar had initially submitted his application under General Category candidate and accordingly in the provisional merit list his name has been shown to be a general category candidate and no objection was filed by him; leading to finalization of merit list on the basis of which appointment was made. However, when the matter travelled to this Court in C.W.J.C. No. 21409 of 2011 and the matter has been relegated to the learned District Appellate Authority to adjudicate the matter on the issues formulated by this Court, forged and fabricated documents have been created in order to substantiate the claim on the part of the appellant Shankar Kumar.

24. In opposition to the afore-noted order, an appeal was preferred before the learned State Appellate Authority. The learned State Appellate Authority vide its order dated



21.05.2018 has directed the Panchayat Secretary, Gram Panchayat Mohini Mandal to place the original documents relating to employment of Panchayat and accordingly required documents have been placed. The documents and the report submitted by the Panchayat Secretary, as has been placed on record vide Annexure-10 to C.W.J.C. No. 17954 of 2019, speaks volumes in favour of the appellant-Gopal Kumar and negate the claim of the appellant-Shankar Kumar.

25. Needless to observe that the said report was based upon the available records with the Employment Unit. However, for reasons best known to the learned State Appellate Authority, further direction has been given to the District Magistrate, Sitamarhi to constitute a team of officers to enquire into and verify the facts in relation to veracity of the contention of the parties. Despite the report of the Team of the officers, as contained in letter no. 874 dated 17.04.2019, the learned State Appellate Authority observed that the report did not address the questions raised by the learned Authority and the same was found ambiguous. Ignoring the earlier round of selection process, the learned State Appellate Authority justified the claim of appellant Shankar Kumar on the basis of the subsequent record, in relation to fresh counselling, which was duly held on



02.06.2012, in compliance of order dated 18.10.2011, passed by the District Appellate Authority and held that the appellant Shankar Kumar has submitted his application in BC category, but mistakenly his name could not find place in the provisional merit list. He had filed an objection, but the same could not be placed before the Employment unit, as at no point of time any further meeting was held and final merit list was published.

26. Having carefully gone through the order, this Court finds that, in fact, the learned State Appellate Authority has completely ignored the finding of the learned District Appellate Authority of manipulation in the record, where it was found that all the documents/records have been prepared in order to meet the points formulated by the Hon'ble Court in C.W.J.C. No. 21409 of 2011. The learned State Appellate Authority has held that the appellant Shankar Kumar belongs to BC category, having higher merit marks than the private respondent i.e. appellant Gopal Kumar. Only on account of the mistake on the part of the Employment unit his name could not be entered in the provisional merit list as BC category. Thus, the official respondent cannot be allowed to take advantage of their own mistake to deprive the appellant Shankar Kumar of the opportunity of employment, was the finding.



27. It was also observed that admittedly both the appellants could not appear in first counselling held on 29.02.2009 because they had less marks than the minimum cut off marks fixed for BC category. Subsequently, final counselling was held on 29.12.2010, but for which no public notice appears to have been published. The register does not mention any meeting held prior to 29.12.2010 for fixing the minimum cut off marks and for issuance of public notice for the counselling. Thus, the alleged proceeding dated 16.12.2010, in which minimum cut off marks is alleged to have been fixed, is a fabricated document. Making such observation, the learned State Appellate Authority has finally allowed the appeal and set aside the order of the learned District Appellate Authority dated 24.09.2014 and directed to publish a fresh merit list of the candidate in BC category and ensure a fresh counselling after giving a proper notice to all concerned and appoint the meritorious candidate as Panchayat Teacher in BC category.

28. It is this order, which compelled both the appellants to file their respective writ petitions, which were disposed of by the common order dated 28.04.2022, impugned in both the appeals.

29. After analyzing the order of both the District



and State Appellate Authority, this Court has also carefully examine the files and the register in relation to the selection, in question; produced before us. Having gone through the records, this Court finds that the application form submitted on behalf of the appellant Shankar Kumar was demonstrably filed under the category of unreserved, whereas the application form filed by the appellant Gopal Kumar was under reserved category. This Court also finds that along with the application form of the appellant Shankar Kumar, no caste certificate is attached whereas the self attested other testimonials and certificates were produced. On the other hand, with the application form of appellant Gopal Kumar along with the self attested other testimonials/certificates, there is a caste certificate showing his category under the BC issued by the Sub-Divisional Officer, Sitamarhi dated 24.10.2008. Further, in the employment register, the name of the appellant Shankar Kumar finds place at serial no. 209 under unreserved category and the name of appellant Gopal Kumar is found placed at serial no. 2108 under reserved category. The entries made in the register, being contemporaneous to the submission of application, can be safely relied on.

30. The records further reveal that a meeting was



held on 30.12.2008 and after getting approval of all the members of Employment unit a provisional merit list has been published inviting objections within one week. In the provisional merit list, the name of the appellant Shankar Kumar figures under unreserved category. Further, the meeting was held on 09.01.2009 and the Committee consisting of Sone Lal Singh, the then Panchayat Secretary, has found that till 07.01.2009, the Employment unit has not received any objection from any corner by any candidate and as such the provisional merit list has been declared as final merit list and accordingly counselling was conducted on 29.12.2010 and the committee has taken a decision to appoint Gopal Kumar as Panchayat Teacher against BC category along with other eligible candidates of different category.

31. Surprisingly, in the light of the order of the learned District Appellate Authority, subsequently when fresh counselling was fixed on 25.05.2012, but the same could not be held and directed the applicants to appear on 02.06.2012. The name of the appellant Shankar Kumar has been shown to be under BC category then, and as he was having higher merit marks, he has been selected, which led to the filing of the earlier writ petition by appellant Gopal Kumar vide CWJC No. 21409



of 2011.

32. After careful perusal of the same, this Court is of the opinion that the appellant Shankar Kumar had initially submitted his application under unreserved category whereas appellant Gopal Kumar had submitted his application under BC category, which fact has also been verified from the provisional merit list and adopting the procedures, as prescribed under the Bihar Panchayat Primary Teachers (Appointment and Service Conditions) Rules, 2006 (As amended in the year, 2008). Initial selection has been made, but subsequent thereto, when the matter was remanded, interpolation has been made only in order to favour the appellant Shankar Kumar. Further the report submitted by the State officials also is in support of the contention of the appellant Gopal Kumar and negates the case of appellant Shankar Kumar.

33. Now coming to the order/judgment dated 28.04.2022 passed by the learned Single Judge, which is impugned herein, this Court is of the considered view that it explicitly deals with the manipulation on the part of the appellant Shankar Kumar and no substantive materials have been found suggesting involvement of the appellant Gopal Kumar in manipulating any document/record. In this view of the



matter, this Court finds that the order rejecting the claim of the appellant Gopal Kumar is not sustainable in any view and accordingly this Court would set aside the order of the learned Single Judge to that extent, which rejected the claim of the appellant Gopal Kumar.

34. So far as the rejection of the claim of the appellant Shankar Kumar is concerned, this Court does not find any error in the impugned order and thus, in our considered opinion, it does not require any interference. However, after taking a lenient view, this Court also would set aside the order to the extent of a cost of Rs.50,000/- imposed on each of the appellants.

35. This Court further, in order to set the dispute at rest directs the respondents to reinstate the appellant Gopal Kumar in service as Panchayat Teacher with effect from the date he has been ousted from service after treating the services of the appellant as continuous with effect from his first joining. However, it is made clear that he shall not be allowed any monetary benefit for the period he has not discharged any duty and remained out of service. It is further made clear that the earlier period of the appellant Gopal Kumar shall be computed for all other purposes, except the monetary benefit.



36. Accordingly, L.P.A. No. 276 of 2022 stands allowed and L.P.A. No. 340 of 2022 stands dismissed only to the extent indicated hereinabove.

(Harish Kumar, J)

K. Vinod Chandran, CJ: I agree

(K. Vinod Chandran, CJ)

uday/-

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