

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7685 of 2021

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Mamta Kumari Daughter of Sri Arun Kumar Mandal Resident of Village-
Bairiya, P.O.- Shankerpur, Chauwanian, P.S.- Nathnagar, Dist- Bhagalpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Human Resources Department, Govt. of Bihar, Patna-1.
2. The Commissioner, Bhagalpur Division, Bhagalpur.
3. The Collector, Bhagalpur.
4. The District Programme Officer cum District Superintendent Education Officer, Bhagalpur.
5. The Regional Deputy Director of Education, Bhagalpur.
6. The Block Education Extension Officer, Nathnagar, Bhagalpur.
7. The District Teachers Employment Appellate Authority, Bhagalpur.
8. The Mukhiya, Rattipur Gram Panchayat, Nathnagar Block, District- Bhagalpur.
9. The Block Development Officer, Nathnagar Block, Bhagalpur.
10. Panchayat Secretary, Rattipur Bairiya, Nathnagar Block, Bhagalpur.
11. The Headmaster, Nawsrijeet Primary School, Mohanpur Diara, District- Bhagalpur.
12. Renu Kumari Wife of Sri Ram Dev Mandal Resident of Village- Bairiya, P.O.- Shankerpur Chauwanian, P.S.- Nathnagar, District- Bhagalpur.
13. Shanbam Jyoti Daughter of Sri Chamalal Sarma Resident of Village- Ajmeri, P.O.- Shankerpur Chauwanian, P.S.- Nathnagar, District- Bhagalpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Vivekanand Vivek, Adv.
For the Respondent/s	:	Mr. Ashutosh Ranjan Pandey (Aag15)
For the Respondent No.12:		Mr. Dilip Kumar, Adv.
		Mr. Abhas Chandra, Adv.
For the Respondent no. 13:		Mr. Deepak Kumar Sinha, Adv.

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CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
CAV JUDGMENT

Date : 27-08-2024

Heard learned counsel for the petitioner and learned
counsel for the State, learned counsel for the respondent no. 12
and learned counsel for the respondent no. 13.



2. The present writ petition has been filed seeking the following reliefs:

“(i) For issuance of an appropriate writ /writs /order/ orders/ direction/ directions commanding the respondents for quashing the order dated 18.09.2019 passed by the Chairperson, State Appellate Authority (Education Dept.), Bihar in Appeal No- 62 of 2018 contained in Annexure- 19 of the application arising out of the order dated 19.10.2010 passed by the learned District Teachers Employment Appellate Authority, Bhagalpur in Appeal No- 295/2009 as well as to quash the consequential order dated 03.11.2008 issued under the signature of the respondent No- 10 (Panchayat secretary) contained in Annexure- 16 series of the application.

(ii) For issuance of an appropriate writ/ writs/ order/ orders/ direction/directions commanding the respondents after quashing the selection of the respondent no. 12 and 13 to reinstate the service of the petitioner against the post and pay the due salary and all consequential benefits with effect from her due date of selection.

(iii) For issuance of an appropriate declaration that the petitioner is eligible and suitable candidate among all candidates and has higher marks in merit list prepared by the selection committee.

(iv) For issuance of any appropriate writ/writs/order/orders/ direction/directions to which the petitioner is entitled in accordance with law.”

3. The short facts of the present case is that in pursuance to an advertisement published in the daily newspaper for appointment of Panchayat trained/untrained teacher under the provision of Bihar Panchayat Primary Teacher (Employment and Service Conditions) Rules, 2006 (hereinafter referred as ‘Rule 2006’) from eligible and desirous candidates and in pursuance to that advertisement the petitioner also applied in



prescribed form for the post of Panchayat untrained teacher and submitted her application to Panchayat Sachiv on 23.08.2006 along with two blank registered envelop and in receipt of that, a receipt was also granted by him.

4. In view of the application of the candidates, a merit list dated 19.02.2007 of untrained teachers was prepared by the respondent authorities and, accordingly, the merit list of 53 candidates along with their percentage of marks, date of birth and their category was also prepared. As per merit list respective candidates were informed to give their consent/counselling on 26.02.2007 at 10.30 A.M in the office of Gram Panchayat Rattipur Bairiya. The waiting list was prepared up to 60% marks obtained by the candidates and it was stated that if the candidate does not appear on the above noted date and time then their claim shall not be considered. The aforesaid merit list bears the signature of Panchayat Sachiv, Mukhiya and others (Annexure-2 of the writ application).

5. The name of the petitioner is mentioned at serial no.28 under O.B.C. category having 64.1% marks whereas the name of respondent no.12, Renu Kumari, under O.B.C category having 61.3% of marks is mentioned at serial no.40 and name of Shabnam Jyoti is at serial no.45 having 60.4% marks.



6. Learned counsel for the petitioner submits that the petitioner has not received any notice regarding date of counselling. He further submits that neither the petitioner nor the general candidates were informed about the date of counselling to be held on 26.02.2007. No notice anywhere was notified under the provision of Rule 2006. The date of counselling was only disclosed to highly motivated candidates who colluded with the authorities to deny the rights of other qualified candidates who scored higher. As a result, the petitioner was unable to appear on 26.02.2007 and ultimately she was shown absent and behind her back merit list dated 26.02.2007 was prepared and candidates having lesser marks to the petitioner was selected for untrained Panchayat teacher (Annexure-3 of the writ application).

7. Learned counsel for the petitioner further submits that when the petitioner came to know that the Panchayat Sachiv and the Mukhiya had only selected highly interested candidates without providing notice of the counselling date, and that the counselling process had been bungled, the petitioner made a complaint on 03.02.2007, to the B.D.O. Nathnagar and also to the Panchayat Sachiv and the Mukhiya. But when they did not respond to her complaint then



the petitioner made complaint to the Commissioner of Bhagalpur division on 05.04.2007 stating therein the facts and complaint made to the BDO, Nathnagar and office of the Commissioner granted receipt on the application itself. Thereafter, again a copy of such complaint addressed to the Commissioner, Bhagalpur was received by the B.D.O, Nathnagar on 05.04.2007 and in receipt thereof the B.D.O, Nathnagar himself put signature on the application. Thereafter, on the basis of her complaint, the Commissioner, Bhagalpur division directed for enquiry and the same was entrusted to three men committee, namely, D.S.E, Bhagalpur, Additional Collector Land ceiling and Deputy Collector, Food and Supply, Bhagalpur.

8. Learned counsel for the petitioner further submits that three men committee were directed to make enquiry in respect to allegation as to whether notice, for appearance in counselling i.e. held on 26.02.2007, was given to the selected candidates or not. The committee made enquiry and submitted report to the Commissioner, Bhagalpur Division, stating therein that no notice of counselling dated 26.02.2007 was given to the selected candidates or notified. On the basis of report of three men committee, the Commissioner, Bhagalpur



vide letter No. 1040 dated 20.06.2007 directed the District Magistrate, Bhagalpur to take action and proceed accordingly in accordance with law. Thereafter, vide Memo No. 1393 dated 26.06.2007, the D.M., Bhagalpur issued order directing the respective respondent authorities to take further steps. In pursuance of aforesaid direction, the authority cancelled the appointment of all candidates selected on the basis of counselling held on 26.02.2007 and it was communicated to all candidates.

9. Learned counsel for the petitioner further submits that being aggrieved by the order of cancellation of selection of respondent no.12, she filed C.W.J.C No. 15481 of 2007 before this Court for quashing the order of cancellation in which the petitioner was not made party. The petitioner had filed I.A. No. 3811 of 2008 for making her party. Aforesaid writ application was withdrawn by her (the respondent No.12) while she succeeded to get her appointment on the basis of the opinion of G.P.

10. Learned counsel for the petitioner further submits that the petitioner was informed the date of fresh counselling of the candidates to be held on 26.07.2007. Accordingly, fresh merit list in order of merit of the candidates



was prepared on 26.07.2007 in consultation with the Block Development Officer and other concerned authority, and the name of the petitioner was also included along with other eligible candidates shown at Serial No.6 having 64.11 % of marks and the same was issued by the signature of Panchayat Sachiv.

11. Learned counsel for the petitioner further submits that, thereafter, the petitioner was informed vide letter no.23 dated 26.10.2007 that she has been selected for untrained Panchayat teacher and was posted at Primary School, Mohanpur Diyara under Rattipur Bairiya Gram Panchayat, Nathnagar Block, District Bhagalpur and sought a letter of acceptance within ten days to be submitted at Panchayat office, Rattipur Bairiya by the petitioner accordingly on the same day she submitted her letter of acceptance of her selection to the assigned authority.

12. Learned counsel for the petitioner further submits that thereafter respondent no. 12, Renu Kumari, had made complaint before the Commissioner, Bhagalpur without making her party and behind the back of the petitioner, although her selection was cancelled but other candidate having lower marks to her was retained as such the Commissioner, Bhagalpur



modified the order vide dated 07.05.2008 and directed to select strictly in order of merit and others may be removed having lower marks.

13. Learned counsel for the petitioner further submits that taking into account the modified order dated 07.05.2008, the Regional Deputy Director of Education, Bhagalpur issued order that though selection of Renu Kumari (respondent no. 12) was cancelled but candidate having lower marks is still working as such direction was issued to cancel the selection of such candidate who has lower marks. The order was communicated vide Memo No.987 dated 20.08.2008 to the concerned respondents.

14. Learned counsel for the petitioner further submits that on the basis of collusive report of Government Pleader I/C, the Regional Deputy Director of Education, Bhagalpur in collusion with Panchayat sevak and Renu Kumari vide Letter No. 1201 dated 22.10.2008 issued direction to proceed with as per advice of Government Pleader I/C for selection of the respondent No- 12. He further submits that, accordingly, the Panchayat Sachiv cancelled the selection of the petitioner on the basis of advice of the Government Pleader I/C and appointed the respondent No- 12 Renu Kumari in place of



the petitioner ignoring the report of three men committee who came in conclusion that counselling held on 26.02.2007 was illegal and without notice. Even then the Panchayat Sachiv has justified the counselling dated 26.02.2007 which was declared to be violative of Rules and such order was never communicated to all candidates. Renu Kumari was appointed again vide Memo No.16 dated 03.11.2008 and selection of the petitioner was cancelled vide Memo No. 17 dated 03.11.2008.

15. Learned counsel for the petitioner further submits that selection of Renu Kumari and cancellation of selection of the petitioner is based only on the basis of opinion of a Government Pleader I/C whereas three men committee appointed by the Commissioner conducted enquiry and submitted report. Thereafter, the petitioner filed C.W.J.C. No. 17481/2008 before this Court but during the pendency of the application District Appellate Authority was constituted by the State Government as such the writ application was permitted to be withdrawn to file appeal before the appellate authority. Accordingly, Appeal No. 295 of 2009 was filed before the District Teacher Employment Appellate Authority, Bhagalpur, which was heard on 19.10.2010 and the same was rejected. The order was communicated to all concerned vide Memo No.795



dated 19.10.2010.

16. Learned counsel for the petitioner further submits that against the order of the District Appellate Authority the petitioner filed C.W.J.C. No. 1682 of 2011 before this Court for quashing the order dated 19.10.2010 passed in Appeal No. 295/2009, in which notices were issued to the concerned respondents and in pursuance to that they had appeared and filed their respective counter affidavits. The case was heard on 11.10.2017 and the same was permitted to be withdrawn due to constitution of State Appellate Authority with a liberty to file appeal within a period of 30 days, hence, the appeal was filed. The State Appellate Authority, after hearing the parties, dismissed the appeal of the petitioner on the ground that proper notice regarding date of counselling was given to the petitioner.

17. Learned counsel for the petitioner further submits that the State Appellate Authority has held that the petitioner did not file any complaint to the B.D.O, Nathnagar and her complaint before the Commissioner, Bhagalpur amounts to filing of no complaint under Rule 18 of the Employment Rules, 2006. She has straight way filed a complaint before the District Authority in the year 2009 which was time barred. However, the learned District Authority considered her case on



merit and came to conclusion that the notice was issued to the petitioner for counselling but she did not appear on the due date. The State Appellate Authority further held that the private respondents were employed in the year 2007 and have been continuing in service for last 12 years. They were eligible for employment in the said year. During that period they have acquired valuable proficiency and experience in teaching. Hence, their removal from service after acquiring long experience and proficiency will be to the benefit of none. The State Appellate Authority also held that the claim of the petitioner for employment in place of private respondents, is not justified. The learned District Authority has rightly rejected the claim of the petitioner for her employment. The impugned order dated 19.10.2010 passed by the learned District Teacher's Employment Appellate Authority, Bhagalpur, in Appeal No. 295/2009 does not warrant interference and the said appeal was dismissed by the State Appellate Authority.

18. A counter affidavit has been filed on behalf of the respondent no. 12 in which it is stated that the waiting list of Untrained persons have been prepared for Gram Panchayat Ratipur, Bairiya in which the name of respondent no. 12 has been mentioned with 61.3% marks. The same list was notified



with directions that on 26.02.2007, the counselling will be conducted for those persons, who have obtained 60% and more marks under the signature of Panchayat Secretary, Mukhiya and Up-Mukhiya. Further, it was directed that who at least obtained 60% marks will have to appear on 26.02.2007 for their consent and also to come along with self-attested copy of documents, photographs and affidavits.

19. Learned counsel for the respondent submits that on 26.02.2007 only nine (9) candidates/persons had participated in the counselling in which the respondent no. 12 had also participated but the petitioner didn't choose to appear in counselling. On the counselling list Mukhiya, Panchayat Secretary, Up- Mukhiya put their respective signatures with date.

20. Considering the arguments of the parties and perusal of record, the main grievance of the petitioner is that no notice of the counselling, which was held on 26.02.2007, was given to her and she has higher merit marks but she was not appointed. The petitioner has filed C.W.J.C. No. 1682 of 2011 before this Court in which by order no. 8 dated 17.01.2017, this Court held as follows:

“Mr. Dilip Kumar No. 1 appears for the respondent no. 12 and hands over a document to canvass that it is incorrect on the part of the petitioner to state that she



did not have the information regarding the counselling on 26.02.2007 rather the notice issued in this regard was received by her father on 02.02.2007, whose initials are present on the notice.”

21. Considering the facts and circumstances of the case and from perusal of materials available on record, it appears that the petitioner had already been informed regarding counselling but she had chosen not to attend the counselling on 26.02.2007. Further, there is no illegality in the order passed by the District Appellate Authority and the State Appellate Authority.

22. Accordingly, the present writ application is dismissed.

(Anjani Kumar Sharan, J)

anand/-

AFR/NAFR	NAFR
CAV DATE	13.08.2024
Uploading Date	27.08.2024
Transmission Date	NA

