

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4274 of 2021

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Zila Parishad Sitamarhi cum Employment Unit through its Secretary DDC
cum CEO, Zila Parishad, Sitamarhi.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Govt. of Bihar, Patna.
2. The District Education Officer, Sitamarhi.
3. The District Programme Officer (Establishment), Sitamarhi.
4. The District Appellate Authority, Sitamarhi.
5. The State Appellate Authority, 5 C-D, Niyojan Bhawan, Bailey Road, Patna.
6. Kunal Kapoor Son of Dinesh Mehta R/o Village- Bishunpur, P.S.- Bela, Via- Parihar, District- Sitamarhi.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ranjeet Kumar Pandey, Advocate
For the Respondent/s : Mr. Subhash Chandra Mishra (SC16)

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

11 11-11-2024 The District Education Officer, Sitamarhi issued a vacancy notification in respect of the post of teachers in Madhyamik School, in which, the declared vacancy for Social Science was sixteen. The vacancy was published under the Joint Signature of the District Education Officer, Sitamarhi, the District Programme Officer (Madhyamik Siksha), Sitamarhi and the District Programme Officer (Establishment), Sitamarhi and approved by the Regional Deputy Director of Educational Directorate. In the said vacancy notification, there was no vacant post declared for the grand children of freedom fighters,



and the reason being 2 per cent of total vacancy of sixteen posts comes to 0.32 which is even below .50, so no post could be notified as vacant post under the said class of vacancy.

2. It is also admitted by the petitioner that as per the prevailing rule, 2 per cent reservation in respect of the vacancy of teachers in the category of grand children of the freedom fighters is required to be kept mandatorily. After selection, the petitioner inadvertently issued appointment letter in favour of Respondent No. 6 on 5th of October, 2017 in the category of grand children of freedom fighters. On the very next day, the said appointment order was cancelled vide an Annexure 7 of the writ petition.

3. Challenging the said order of cancellation, the petitioner moved the District Appellate Authority (Sitamarhi), Respondent No. 6. The District Appellate Authority rejected the order of cancellation of appointment of Respondent No. 6, passed by the petitioner herein and the Respondent No. 6 was directed to be appointed by the petitioner. The petitioner preferred an appeal before the State Appellate Authority in the Education Department, Government of Bihar. The said appeal was also dismissed.

4. Under such factual backdrop, the petitioner, DDC-



cum-CO, Zila Parishad, Sitamarhi has filed the instant writ petition praying for direction that the order of appointment in favour of Respondent No. 6 was inadvertently made and he was not entitled to be appointed under the quota of grand children of freedom fighters.

5. The respondents have filed a counter affidavit. It is stated by the official respondent that maintenance and preservation of quota for the grand children of freedom fighters is mandatory in respect of the vacancy declaration of teachers in Madhyamik School. The concerned authority was wrong when it failed to maintain the quota in the group of grand children of freedom fighters. When Respondent No. 6 was appointed, the District Tribunal as well as the Appellate Authority held that the said appointment was against the quota for the grand children of freedom fighters and the said appointment was held to be valid and maintained.

6. I have heard the learned Counsel for the parties at length.

7. It is needless to say that an appointment must be made in respect of vacancies and if the vacancy to a certain recruitment process does not disclose quota for a particular cadre/group, appointment cannot be made taking into account



the vacancy in the said group. In this case, no quota was declared in the vacancy notification for grand children of freedom fighters. Therefore, the Tribunal or the Appellate Authority cannot be presumed that the appointment of the Respondent No. 6 was made in the said quota.

8. I am also impressed on the submission made by the learned Advocate for the petitioner that there cannot be any 2 per cent vacancy declaration where the sum total of vacancy is sixteen.

9. Considering such aspect of the matter, this Court is not in a position to agree with the decision passed by the District Appellate Authority as well the State Education Appellate Authority vide their judgement dated 19-09-2019 and 12-02-2018, respectively.

10. The above-mentioned orders are, accordingly, quashed and set aside.

11. The instant writ petition is, thus, allowed.

(Bibek Chaudhuri, J)

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