

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19036 of 2021

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Shabnam Parween @ Shabanam Pravin D/o Md. Mozib Ansari R/o Village and Post Teri, P.S. Mehandia, Dist. Arwal, Ex. Nagar Urdu Teacher in Urdu Middle School, Midah Toli, P.S. Ballia, District- Begusarai.

... .. Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Education Department, State of Bihar, Patna.
2. The Principal Secretary, Education Department, State of Bihar, Patna Email Id.
3. The Director Primary Education Govt. of Bihar Patna.
4. The District Magistrate, Begusari, District Begusari, Email-
5. The District Education Officer, Begusarai.
6. The District Programme Officer (Establishment), District Begusari.
7. The Chief Counsellor Municipal Council, The Present Employment Unit, Balia, Begusarai.
8. The Executive Officer, Municipal Council, The Present Employment Unit, Begusarai.
9. The and Then Chief Counsellor Nagar Panchayat, Balia, Begusarai, The Employment Unit, Balia.
10. The and Then Executive Officer, Nagar Panchayat, Balia, Begusarai, The Employment Unit, Balia.
11. The Block Education Officer, Block Ballia, Dist. Begusari.
12. The Block Education Officer, Block Ballia, Dist. Begusari.
13. Rabiya Khatoon D/o Ali Hassan Rain R/o Village and Post Lakhminia, P.S. Ballia, Dist. Begusarai.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ajit Kumar, Adv.
For the State	:	Mr. Madhaw Pd. Yadaw (Gp23)
For the Respondent no.13:	:	Mr. Abul Kalam, Adv.

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CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
CAV JUDGMENT

Date :30-07-2024

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

2. The present writ petition has been filed seeking the



following reliefs:

- “i. For quashing of judgment dated 16/09/2021 passed by the Ld. Chairperson (A), the State Appellate Authority, Patna Bihar in Appeal No. 18/2021, whereby and whereunder the Judgement and order dated 16/12/2020 (Vide Memo No. 49 dated 16/12/2020) passed in Appeal No. 168-169/2009-2/2019 passed by Ld. District Appellate Authority, Begusarai has been upheld and appeal of the petitioner has disallowed.*
- ii. For setting aside of consequential office-orders vide Memo Nos. 10 (Niyo) and 11 (Niyo) dated 26/02/2021 issued by the Respondents Nos. 11 and 12.*
- iii. For reinstatement of the Petitioner to the post of Municipal Nagar Elementary Urdu Teacher at Urdu Middle School, Mridah Toli, P.S Ballia, District Begusarai.*
- iv. For stay on operation of office-orders vide Memo Nos. 10 (Niyo) and 11 (Niyo) dated 26/02/2021 issued by office of the Respondents Nos. 11 and 12.*
- v. For payment of admitted dues and its arrears regarding due salary against discharged duty by the Petitioner.*
- vi. For any other appropriate writ/writs order/s direction/s for which the writ petitioner would be found entitled under the facts and circumstances of the case.”*

3. The short fact of the present case is that the advertisement for filling up post of Block Teachers including the post of Urdu Teacher was published in the year 2006, subsequently the first phase of appointment processed by the Block Employment Unit, Ballia, Dist. Begusarai. The petitioner and private Respondent No. 13 amongst other candidates have also applied for the post of Urdu Block Teacher, Untrained Female.



4. Learned counsel for the petitioner submits that this was the very first and foremost process of selection of Niyojit Teachers in the State. The said Employment Unit has organized a "Karayshala" on 01.09.2006 in which thirty-two High School Govt. Teachers (Nominated by the D.E.O, Begusarai) of the different High schools of the said Block had contributed their ideas/suggestions/resolutions regarding process of selection and preparation of panel in absence of silent feature/s mentioned in the Rule 6 of 2006. The father of the Private Respondent No. 13 namely Sri Ali Hasan Rain had also participated and the Karyashala was presided by the and then B.E.O., Ballia. In Karyashala, the Resolution No. 5 has been resolved that for the purpose of selection of Urdu Teacher, 200 marks (Not of 50 Marks in Urdu Subject) in the Intermediate and eligibility for Maulvi qualification shall be basis for the impugned selection of Urdu Teacher. The scheduled counselling was held on 06.11.2006 and shortlisted candidates under the category of Untrained Urdu Female had participated. After observing due proceedings, the petitioner was selected and appointed vide Letter No. 252 dated 09/03/2007 for the post of Urdu Teacher and directed to post at Urdu Middle School, Mirdah Toli, Ballia in the District Begusarai.



5. Learned counsel for the petitioner further submits that being aggrieved by the selection of the petitioner, the private respondent No. 13 has served applications to the different authorities including-DSO. J-S.C Begusarai, who has transferred the issue to hear vide Letter No. 1502 dated 20.07.2009 to the newly constituted District Appellate Authority, Begusarai. The District Appellate Authority has pleased to register the case as Case No. 949/2009 in the name of the private respondent no. 13 and disposed of the case on merit vide reasoned order dated 24.07.2009, mentioning the issue of limitation and other demerits of the case. The said order has not been set aside by any higher authority or in Court of law and hence attained finality.

6. Learned counsel for the petitioner further submits that the guidelines stipulated under the Rules 2008 vide Notification No. 7/Ni0 3-02/06 Ansh, Sanchika 3716 dated 23.10.2008 clearly manifests that the aggrieved appellant shall file the appeal within 30 days from the date of issue of process of employment [(Kha) (iv)]. The appeal may be considered after the prescribed limitation period with sufficient ground/s. The above said notification has been affirmed by the Honorable Patna High Court by the Division Bench order vide order dated



12.02.2015 passed in L.P.A. No. 1250/2014.

7. Learned counsel for the petitioner further submits that it is settled principle of law that if no time limit is prescribed under the Rule 18 for filing of complaint, it has to be read and understood as reasonable time of three months as has been held in the case of ***Rajni Bara vs. State of Bihar*** reported in ***(2011) 4 PLJR 846***.

8. Learned counsel for the petitioner further submits that the case of the private respondent is not only maintainable on the ground of delay and laches but also barred by the principle of *res judicata*. He also relied upon the judgment rendered in the case of ***Pramod Prasad Pandey v. State of Bihar*** reported in ***(2016) 2 PLJR 45***.

9. Learned counsel for the petitioner further submits that thereafter the private respondent No. 13 had filed a new case bearing Appeal No. 168-169/09 before the District Appellate Authority, Begusarai, *inter alia*, challenging the same issue of recruitment of the petitioner in 2006 process. The District Appellate Authority has heard the case by perusing the case records and passed a reasoned order dated 11.01.2012. The District Appellate Authority has observed that the private respondent No. 13 had already filed a case Appeal No. 949/09,



which was disposed of vide order dated 24.07.2009. It is further observed that the private respondent No. 13 had not chosen to appear for ten times (dates) of hearings before the Authority and the Authority has observed that the present appeal is barred by principle of *res judicata* also, and the Authority had no power to review its own order. Hence, the same was disposed of as rejected.

10. Learned counsel for the petitioner further submits that the private respondent No. 13 being aggrieved filed Civil Writ application bearing C.W.J.C. No. 21217 of 2012, which was disposed of vide order dated 21.08.2017 with a liberty to file an appeal before the State Appellate Authority, Patna within 30 days. In pursuance of order dated 21.08.2017, private respondent No. 13 has filed an appeal bearing Appeal No. 493/2017 against the order dated 11.01.2012 passed in Appeal no. 168- 169/2009 passed by the District Appellate Authority, Begusarai. The State Appellate Authority has heard the appeal at length after appearance of all parties concerned. The State Appellate Authority has disposed of the appeal vide order dated 24.01.2019 by direction to re consideration of the Appeal with cost in accordance with law. Thereafter, the District Appellate Authority has heard the case of the private respondent



No. 13 by reviving of Appeal No. 168- 169/2009 (as directed) to its original file and dispose of the same with a direction to Ballia Block Employment Samiti to consider the employment and appointment of appellant Rabia Khatoon (the respondent no. 13 herein) strictly on the basis of her merit on the post of Block female untrained Urdu Teacher in MBC category as a result of this post falling vacant due to cancellation and setting aside the appointment and posting of O.P. no. 5, Shabnam Praveen (the petitioner herein).

11. Learned counsel for the petitioner further submits that being aggrieved by the order impugned dated 16.12.2020, the petitioner preferred appeal bearing Case No. Appeal/18/2021 before the State Appellate Authority. The State Appellate Authority has admitted the Appeal, issued notices to the Respondents concerned, heard the matter at length and decided vide order dated 16.09.2021 and upheld the order dated 16.12.2020 and disallowed the appeal of the petitioner. The State Appellate Authority has passed its order by overlooking inherent raised issue of Jurisdiction, limitation, Res-Judicata etc. Further, the Recruitment Committee had passed its special resolution no. 6 dated 28.11.2006, the meeting held on 28.11.2006, in which the proposed issue related to pertinent



qualification against selection of Urdu Unit Block Teacher had been unanimously resolved in light of held "Karyashala" that the candidate/s having 200 marks in Urdu Subject will be eligible for the post and not 50 marks in Urdu Subject. The said resolution is also in consonance with resolutions taken by the District Level Departmental Meetings. He further submits that the in para-9 of the order passed by the District Appellate Authority it is stated about controversial issue of candidature under Urdu Teacher vis-à-vis prevailing of 200 Marks versus 50 Marks in Urdu Subject of the contesting candidate/s. It is contended that the 2006 Rules has suppressed the earlier guideline given under Letter dated 01.08.1985 as well as the Bihar Staff Selection Commission, dated 16.12.2003 advertisement, and Rule 6 of 2006 is silent upon the issue of selection of 200 marks or 50 marks in Urdu Subject. But it is matter of fact remains the marks with 200 in Urdu Subject, candidates have prevailed against 50 marks candidates across State.

12. Learned counsel for the petitioner further submits that on the point of vested interest between the petitioner and the respondent no. 12 being daughter and father, it is most humbly contended that the Rule 2006 is silent upon such



issue. Due to the complaints made by unsuccessful candidates, the Respondent Authority has decided to enquire the matter at length. The Letter No. 240 dated 15.07.2008 is the investigation report, investigated by R.E.O (Range Education Officer) and submitted to D.S.E Begusarai. The point-wise report vividly examined (after examining 201 pages case-records) the raised objection/complaint raised by the complainants including the private Respondent No. 13. After due enquiry the Letter No. 045 dated 26.09.2008 the investigation report has concluded and observed that the above said selection process has been duly observed as in accordance with law and the raised objection lack of merits. He further submits that the nature of earlier Ballia Nagar Panchayat upgrade as Ballia Nagar Parishad vide order of Hon'ble Governor mentioned in Letter No. 1240 dated 11.03.2021.

13. A counter affidavit has been filed on behalf of the respondent no. 13 in which it is stated that for the appointment of Parkhand Teacher an Advertisement was published by the Niyojan Ekai in the year 2006. In pursuance thereof the eligible candidates had given their application for such appointment. The petitioner and the respondent no. 13 and other had submitted their application for appointment as



Parkhand Teacher in Urdu subject. Both the petitioner and the private respondent no. 13 appeared for counselling. The respondent no.13 had obtained 549/900 of marks in Intermediate Examination and her percentage of marks comes to 61% and her name figures at Sl. No. 12 whereas the writ petitioner has secured 504/900 and her percentage of marks comes to 56% only and her name figures at Sl. No. 16 of the Merit List.

14. Learned counsel for the respondent no. 13 submits that as per the then existing rule/established norms the candidate securing more marks in intermediate was graded higher on merit. The respondent no. 13 was having requisite qualification of Urdu, as she was having Urdu of 100 marks in matriculation and Urdu of 50 marks as compulsory paper in intermediate and had secured 61% of marks in aggregate, much higher than the petitioner. Hence, the respondent no. 13 was having better claim for being appointed as Parkhand Teacher. He further submits that specialization in Urdu is not required. What is required is that a candidate must have a requisite qualification of Urdu so that he/she can teach the students of standard VII and VIII only. He also submits that the Public Information Officer of Department of Human Resources, had also issued a letter No.



1718 dated 06.02.2008 wherein it has clearly been stated that the candidates who have passed Matriculation with Urdu of 100 marks, and Intermediate with Urdu of 50 marks come under the category of Urdu Qualified under Rule 6 of 2006 Rules.

15. Considering the arguments of the parties and perusal of records, the District Appellate Authority as well as the State Appellate Authority has rightly held that the respondent no. 13 was qualified to be appointed as urdu teacher. The respondent no. 13, Rabiya Khatoon, is qualified to become a block urdu teacher. It has been established that respondent no. 13 has higher merit points as compared to the petitioner. Therefore, cancellation of appointment of petitioner is justifiable. The District Appellate Authority has not given direction for appointment of respondent no.13 rather it has given directions only for consideration of her appointment.

16. Accordingly, the present writ application stands dismissed.

(Anjani Kumar Sharan, J)

anand/-

AFR/NAFR	NAFR
CAV DATE	16.07.2024
Uploading Date	30.07.2024
Transmission Date	NA

