

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 20250 of 2021

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Kavita Kumari Daughter of Kapildeo Poddar, Wife of Sanjay Kumar,
Resident of Village and P.O. - Dharahra, P.S. - Banmankhi, District - Purnea.
... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Govt. of Bihar, Patna.
2. The Director Primary Education, Govt. of Bihar, Patna.
3. The District Magistrate Purnea.
4. The District Education Officer, Purnea.
5. The District Programme Officer (Establishment), Purnea.
6. The Block Education Officer, Banmankhi, District - Purnea.
7. The Mukhiya, Gram Panchayat Raj Dharhara, P.S. and Block - Banmankhi, District - Purnea.
8. The Panchayat Secretary, Gram Panchayat Raj - Dharhara, P.S. and Block - Banmankhi, District - Purnea.
9. Mamta Kumari, Daughter of Ram Bahadur Sah, Wife of Manish Kumar Gupta, Resident of Village and P.O. - Dharahra, P.S. - Banmankhi, District - Purnea.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rakesh Narayansingh
For the Respondent/s : Mr. Jitendra Kr. Roy 1 (Sc13)

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CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL JUDGMENT

Date : 16-07-2024

Heard learned counsel for the petitioner, learned
counsel for the State and learned counsel for the respondents.

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

- i) *The order passed in Appeal Case No.24/ 2019 (1002/11) passed by the District Appellate Authority, Purnea, communicated vide memo no.19 dated 27.02.2020 (Anx-14) may kindly be quashed as the same having no sanction of law as well as against the fact and the procedure involved inter alia.*
- ii) *The order dated-19.10.2021 passed in Appeal No.92/2020 (Anx-15) by the State Appellate Authority*



also may. kindly be quashed, as the same is not only alien to law rather the same is far from the actual factual matrix and the dispute in question so involved.

iii) An independent authority or agency may kindly be deputed / directed to examine / inquire the matter in its entirety and the respondent 1st set may kindly be directed to proceed thereafter only, the basis of the finding 90 recorded under the said proceeding/inquiry, after extending adequate opportunity of hearing to all the parties concerned coupled with due appreciation and examination of the record / material involved inter alia.

iv) The prior petitioner's to status SO available passing of the order dated 27.02.2020 in connection with Appeal No. 24/2019 (1002/11) may kindly be restored and the petitioner be allowed to work without being prejudice with any happenings, detrimental petitioner's cause.

v) The present case may kindly be looked into within the frame work of judicial pronouncement made in Digvijay Kumar Case since reported in 2013 (2) PLJR 893, Chotelal Choudhary case, reported in 2014 (4) PLJR 606, Ravi Prakash Case, reported in 2016(1) PL-JR 714, etc.

vi) That any other relief or reliefs which may be just, proper and equitable on the opinion of this Hon'ble court.

3. The short fact of the present case is that an application was invited for the appointment of panchayat teacher. As per schedule, the present petitioner as well as respondent no.9, Mamta Kumari, and many others submitted their applications in prescribed format before the Panchayat Secretary of the Dharahra Gram Panchayat. The petitioner was granted acknowledgment receipt no. 683 to the above effect. Subsequently, the petitioner has participated in counselling on the date fixed as an untrained candidate. The counselling, held under the Chairmanship of the then Mukhiya of the Gram



Panchayat the representatives of the Government have also participated as per the direction of the Human Resources Development Department, Government of Bihar.

4. In the counselling the petitioner, Kavita Kumari, appeared along with all the relevant documents, but the respondent no.9 Mamta Kumari failed to participate in the counselling process held on 28.02.2009 and, subsequently, on 29.12.2010. The petitioner having been suitable for appointment, as found was appointed (untrained) Panchayat teacher and posted at Primary School, Mandal Tola and order to the said effect was issued under letter no.85, dated 29.12.2010 under the signature of Panchayat Secretary (Annexure-2 of the writ petition).

5. In course of service the petitioner was sent for training by the Block Education Officer cum Co-ordinators, Block Resources Centre, Banmankhi by memo no. 8 dated 07.02.2011 which the petitioner has completed successfully in between 11.02.2011 and 14.03.2011. The petitioner has also passed B.A. (Sociology) Hons. Examination, 2016 from the B.N. Mandal University, Madhepura securing 2nd class after obtaining the department permission under the memo no. 1283 dated 09.12.2013 issued under the signature of the Block



Education Officer, Banmankhi, Purnea. The petitioner has also passed Elementary Teacher's Evaluation Examination, 2016. Thereafter, the petitioner also passed Diploma in Elementary Education (Open distance Learning) in the academic session 2016-18 with 1st division, which was/ is mandatory requirement under Rule 23 of the Right of children to Free and Compulsory Education Act, 2009. But admitted fact is that the respondent no.9 i.e. Mamta Kumari is neither having B.Ed Degree and nor the T.E.T qualification and as such she is not qualified for the appointment as Panchayat teacher.

6. Learned counsel for the petitioner submits that the Respondent no.9, Mamta Kumari, submitted an appeal being appeal no.1002/11 (without making any protest before the selection committee) before the District Teacher Appointment Appellate Authority, Purnea, her case, as per the memo of appeal, is that she has also applied for appointment in the second phase of teachers appointment in Dharahra Gram Panchayat on 11.11.2008 vide receipt no.446 and has also appeared for counselling on 28.02.2009 in the said Gram Panchayat, but she was not allowed to participate in the counselling. Regarding subsequent date of counselling fixed by the State of Bihar, her case is that she was not given any



information, inspite of that she has appeared, but she was not allowed to participate in the counselling. Further, case of the respondent no.9 was/is that in the Intermediate examination she has secured 498 marks out of 900 marks which comes to 55.33% and after adding weightage of one year experience, her percentage comes to 75.33%, whereas the marks of Kavita Kumari (petitioner herein) is only 52.77% . Both of them come from unreserved female category and both of them are untrained. Inspite of the fact that she has higher percentage of marks, she was not appointed and Kavita Kumari was wrongly appointed as Panchayat teacher.

7. Learned counsel for the petitioner further submits that respondent no. 9 filed an appeal before the District Authority, Appeal Teacher Appointment Purena, which was numbered as Appeal Case No.1002/11 and aforesaid appeal was dismissed by order dated 01.08.2011 on the ground that she has not appeared in the counselling on the first counselling date. Thereafter, the Respondent no.9, Mamta Kumari, preferred a writ application being C.W.J.C. No.17724 of 2014 before the Hon'ble High Court and the said writ application was disposed of by order dated 01.10.2018 with liberty to the writ petitioner (respondent no.9 herein) to file appeal before the State Appellate



Authority within a period of one month with a copy of the order of the Hon'ble High Court and in case the appeal is filed within such time the State Appellate Authority will condone the delay and decide the appeal on merit in accordance with law.

8. In pursuance to the order dated 01.10.2018 passed by the Hon'ble High Court in C.W.J.C. No.17724 of 2014 respondent no.9, Mamta Kumar, preferred appeal being Appeal No.17/2019 before the State Appellate Authority, Patna impleading the present petitioner as respondent no.9 in the said appeal. The aforesaid appeal was disposed of by order dated 09.08.2019 by remitting the case to the District Appellate Authority, Purnea for passing fresh order in accordance with law. In pursuance of order dated 09.08.2019 passed in Appeal No.17/2019, Mamta Kumari (respondent no.9 herein) submitted an application before the District Appellate Authority, Purnea along with copy of the order dated 09.08.2019 and prayed for cancellation of selection/appointment of Kavita Kumari (petitioner herein) and to appoint her in place of Kavita Kumari.

9. In pursuance to the notice the petitioner and the Panchayat Secretary, Dharahra Gram Panchayat appeared before the District Appellate Authority, Purnea. The Panchayat Secretary has submitted a hand written reply on 18.12.2019



along with the records, such as application register, counselling register as well as the Niyojan Panji for the perusal of the District Appellate Authority apart from above it was stated by him that in the relevant year, in which the appointment was made, he was not posted in the concerned Gram Panchayat. Instead of that the learned District Tribunal had not summoned the then Panchayat Secretary, who was custodian of the record at the relevant point of time and strong reliance has been placed over a hand written documents, not supported by any affidavit.

10. Learned counsel for the petitioner further submits that considering the submission of the parties and perusing the records produced by the Panchayat Secretary, the District Appellate Authority has allowed the appeal preferred by Mamta Kumari (respondent no.9) by order no. 19 dated 27.02.2020 passed in Appeal Case No.24/2019 (1002/11) mainly on the ground that the District Appellate Authority has perused the records and found that there has been interpolation in the records of application register, overwriting, counselling register by making interpolation and use of whitener. Apart from above further finding of the District Appellate Authority is that the petitioner (respondent no.9 herein) has higher merit points of 75.338, whereas the merit point of Kavita Kumari (petitioner



herein) is 52.778 and such as the selection and appointment of Kavita Kumari was illegally made, therefore, the appeal has been allowed and the selection and appointment of the petitioner, Kavita Kumari has been cancelled with direction to appoint Mamta Kumari in place of Kavita Kumari.

11. Learned counsel for the petitioner further submits that being shocked and dismayed with the order dated 27.02.2020, the present petitioner preferred an Appeal no.92/2020 before the State Appellate Authority while categorically raising point of law like, non -appearance in counselling, no any objection before the committee selection by the respondent no.9, validity of experience said to be tagged with the respondent no.9 etc. But without discussing the fact as as the question of law involved well inter-alia, the petitioner's contention has been outrightly rejected vide order dated- 29.10.2021, without application of independent judicial mind.

12. Learned counsel for the petitioner further submits that the stand of respondent no.9, Mamta Kumari, towards appearance in counselling, complain before the B.D.O of the Block in question, weightage towards 1 year experience etc. like situation has been accepted by the learned Appellate Forum/Tribunal without being bothered to verify the veracity of



the same, make both the orders impugned nonest in the eye of law. He further submits that the Authority has not considered the decision passed by Hon'ble High Court in the case of ***Chotelal Choudhary*** reported in ***2014 (4) PLJR 606***, even if it is proved that a candidate who obtained the training in question for 1-2 years (which is doubtful in the present matter as no any verification at all made from the author of the said certificate) the grace/addition of 20 marks be extended but not the 20% marks, make the entire finding over the same, erroneous and as such liable to be set aside in the interest of justice.

13. Considering the arguments of the parties and perusal of record, the State Appellate Authority has rightly passed the order and held that the petitioner has filed photocopies of appointment documents obtained from the office of District Appellate Authority under Right to Information. She has expressed her full faith in these documents and her contention is that after the District Authority passed order in her favour in Appeal no. 1002/11 on 01.08.2011, the appointment documents were forged and manipulated to suit the respondent. But from these documents itself authority has found that name of the petitioner was inserted in counselling register by manipulation. Neither the petitioner nor the respondent no. 9



had actually participated in the counselling. Name of petitioner, Kavita Kumari, was later on inserted by interpolation to facilitate her appointment. Thus, the District Authority has rightly cancelled the appointment of the petitioner and that part of the impugned order is upheld. As far as, the respondent no. 9 is concerned she has admitted that she was not present in counselling. But she has contended that she had gone for counselling but was returned. She also claims that she gave a representation before the B.D.O. which she had forgotten to mention at earlier occasions before the District Appellate Authority and the Hon'ble High Court. For 2008 appointment process B.D.O. was not the competent authority. Therefore, her representation is *ab initio*. She has not explained why she did not give a representation before the District Authority. It may be noted that counselling took place on 28.02.2009 and the respondent no. 9 filed an application in District Authority for the first time on 02.04.2011. She failed to explain this delay. In fact she has not made any attempt to explain this delay. The Authority holds the view that the allegation of the petitioner that when the respondent no. 9 discovered that a candidate holding lower marks had been appointed she saw in it an opportunity to build-up a case for her appointment. In result the State Appellate



Authority comes to the conclusion that neither the petitioner nor the respondent no. 9 appeared in counselling on their own will. As such, they were excluded from the process of appointment at counselling stage itself. The appointment of petitioner has already been cancelled by District Authority. If she has not been removed she will be removed within a period of one fortnight. As far as, the respondent no. 9 is concerned the part of order of Appellate Authority about her appointment is set aside and her appointment letter issued in compliance of that is also quashed. She will be removed from service within a period of one fortnight.

14. Considering the above-mentioned facts, there is no need of positive order to be passed in favour of the petitioner or the respondent no. 9.

15. Accordingly, the writ application stands dismissed.

(Anjani Kumar Sharan, J)

anand/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.07.2024
Transmission Date	NA

