

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.717 of 2018
In
Civil Writ Jurisdiction Case No.3241 of 2016

Suprita Kumari D/o Sri Pal Narayan Singh Resident of Village- Majhaulia , P.O- Majhaulia
Block Bathnaha, District Sitamarhi.

... .. Appellant/s

Versus

1. The State of Bihar
2. The Director , Department of Primary Education, Government of Bihar, Patna.
3. The District Magistrate, Sitamarhi.
4. The District Teachers Appointment Appellate Authority, Sitamarhi.
5. The District Education Officer, Sitamarhi.
6. The District Programme Officer Establishment Sitamarhi.
7. The Block Development Officer, Bathnaha, Sitamarhi.
8. The Block Education Extension Officer, Bathnaha, Sitamarhi.
9. The Mukhiya, Gram Panchayat Raj Majhaulia, Block Bathnaha, District Sitamarhi.
10. The Panchayat Secretary, Gram Panchayat Raj Majhaulia Block Bathnaha, District Sitamarhi.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Mrityunjay Kumar, Advocate
For the Respondent/s : Mr. Priyadarshi Matri Sharan, AC to AAG-15

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE RUDRA PRAKASH MISHRA
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

Date : 18-12-2023

The present appeal is filed under Clause 10 of the Letters Patent Appeal of the Patna High Court Rules against order dated 19.03.2018 passed by the learned Single Judge in Civil Writ Jurisdiction Case No. 3241 of 2016, whereby the learned Single Judge has dismissed the writ petition filed by the appellant/original writ petitioner.



2. The facts leading to filing of the present appeal are as under:-

2.1. It is a case of the appellant that the Director, Primary Education published an advertisement for the appointment of Panchayat Teacher for 2nd phase of appointment of Panchayat Teacher Employment 2008. Out of the total vacancies in the state of Bihar, 6 were allotted to the different Panchayats as per the availability of the vacancies. The Gram Panchayat Raj Majhaulia, Block-Bathnaha in the District of Sitamarhi was allotted 3 seats namely, U.R.-01, U.R.(F)-01, E.B.C.(F)-01 respectively and the appellant applied under the category U.R. (F) (General Category). It is further stated that pursuance of the advertisement issued in the year 2008, the appellant along with other applicants applied for the post of Panchayat Shikshak, Gram Panchayat Raj Majhaulia in the district of Sitamarhi on 17.11.2008.

2.2. It is further stated that after completion of the scrutiny of the application forms of all the applicants, the final merit list dated 10.01.2009 was prepared and the date for counseling was fixed. However, thereafter, the counseling of the appellant was not done and, therefore, the appellant preferred the appeal before the District Teacher Employment Appellate Authority. The said authority called for a report from Panchayat



Secretary of the concerned Gram Panchayat who submitted the report and tentative merit list as well as vacancy roster arising out of the 2nd phase of appointment of Panchayat Teacher during the year 2008.

2.3. It is also stated that the appellate authority, after hearing the parties and going through the record produced by the Panchayat Secretary dismissed the appeal preferred by the appellant vide order dated 09.01.2016 on the ground that since the entire process of the appointment of Panchayat Teacher 2nd phase of the selection year 2008 has been concluded vide letter dated 04.12.2010 issued by the Education Department, Government of Bihar, the said appellant authority is not in a position to pass an order for the appointment of Panchayat Teacher.

2.4. The appellant, therefore, preferred the caption Civil Writ Jurisdiction Case No. 3241 of 2016.

2.5. The learned Single Judge vide impugned order dated 19.03.2018 dismissed the said writ petition and, therefore, the appellant has filed the present appeal.

3. Heard learned advocate Mr. Mrityunjay Kumar for the appellant and Mr. Priyadarshi Matri Sharan for the State.

4. Learned advocate for the appellant has mainly contended that the selection process for the appointment of



Panchayat Teacher for 2nd phase of appointment of Teacher Employment was commenced under 2008 Rules and the name of the appellant was reflected in the provisional merit list despite which the appellant was not called for the counseling. The appellant, therefore, immediately filed the appeal before the concerned appellate authority in the year 2010 itself. However, the decision was taken by the said authority only in the year 2016. Thus, there was no delay on the part of the appellant, despite which the appellate authority has not entertained the claim of the appellant. The learned Single Judge also failed to consider the said aspect by relying upon the 2012 Rules which was introduced only in the year 2012. Learned counsel for the appellant would thereafter submit that the appellant applied for the post in question as per the Rules of 2008 and though the appellant has successfully cleared the examination, she was not called for the counseling in the year 2009 itself and, therefore, Rules of 2008 would be applicable to the case of the appellant. Learned counsel, therefore, urged that the impugned order passed by the learned Single Judge as well as the appellate authority be quashed and set aside and thereby, direction be issued to the respondents to give appointment to the appellant/writ petitioner.



5. On the other hand, learned counsel appearing for the contesting respondents has opposed the present appeal. It is submitted that the name of the appellant reflects only in the provisional merit list and the same was not the final merit list. It is further submitted that merely because the name of the appellant figured in the provisional merit list, no right is created in the favour of the appellant. It is further submitted that even otherwise also, now the said selection process was over and thereafter new Rules of 2012 are introduced and, therefore, it is not open for the appellant to contend that she is required to be appointed as per the old rules. Learned counsel further submits that the learned Single Judge has not committed any error while dismissing the writ petition filed by the appellant and, therefore, this Court may not interfere with the impugned order.

6. We have considered the submissions canvassed by the learned advocates appearing for the parties. We have also perused the material placed on record. It transpires from the record that in the year 2008, the concerned respondent had published an advertisement for the appointment of Panchayat Teachers for 2nd phase under the scheme Panchayat Teacher Employment 2008. The appellant herein, applied for the same under the U.R. Category. The counseling for the appointment was done in



February 2009. However, subsequent procedure could not take place as a result of killing of the *mukhiya* of the concerned Panchayat. As no decision was taken by the respondent, the appellant preferred appeal before the concerned appellate authority in the year 2010. It is pertinent to note that in the meantime, new Rules of 2012 have been introduced. Now, in the year 2016, the concerned appellate authority did not entertain the claim of the writ petitioner/appellant herein. It is also reflected from the record that the concerned respondent had produced the provisional merit list in which the name of the appellant figured. However, no final merit list was prepared and, therefore, we are of the view that the appellant has no vested right of appointment on the basis of the provisional merit list prepared by the concerned respondent authority.

7. At this stage, we would like to refer the decision rendered by the Hon'ble Supreme Court in the case of ***State of M.P. and Others Vs. Raghuveer Singh Yadav and Others***, reported in ***(1994) 6 SCC 151***, wherein the Hon'ble Supreme Court has observed in **Para-5** as under:-

“5. It is not in dispute that Statutory Rules have been made introducing Degree in Science or Engineering or Diploma in Technology as qualifications for recruitment to the posts of Inspector of Weights and Measures. It is settled law that the State has got power to prescribe qualifications for



recruitment. Here is a case that pursuant to amended Rules, the Government has withdrawn the earlier notification and wants to proceed with the recruitment afresh. It is not a case of any accrued right. The candidates who had appeared for the examination and passed the written examination had only legitimate expectation to be considered of their claims according to the rules then in vogue. The amended Rules have only prospective operation. The Government is entitled to conduct selection in accordance with the changed rules and make final recruitment. Obviously no candidate acquired any vested right against the State. Therefore, the State is entitled to withdraw the notification by which it had previously notified recruitment and to issue fresh notification in that regard on the basis of the amended Rules.”

7.1. From the aforesaid observation made by the Hon’ble Supreme Court, it can be said that the candidates who had appeared for the examination and passed the written examination had only legitimate expectation to be considered of their claims according to the rules then in vogue. The amended Rules have only prospective operation. The Government is entitled to conduct selection in accordance with the changed rules and make final recruitment. Further, no candidate acquired any vested right against the State.

8. In the case of ***State of U.P. and Others Vs. Rajkumar Sharma and Others***, reported in ***(2006) 3 SCC 330***, the Hon’ble Supreme Court has observed in **Para-14** as under:-

“14. Selectees cannot claim the appointment as a matter of right. Mere inclusion of candidate's name in the list



does not confer any right to be selected, even if some of the vacancies remained unfilled and the candidates concerned cannot claim that they have been given a hostile discrimination. (See Shankarsan Dash v. Union of India [(1991) 3 SCC 47 : 1991 SCC (L&S) 800 : (1991) 17 ATC 95 : AIR 1991 SC 1612] ; Asha Kaul v. State of J&K [(1993) 2 SCC 573 : 1993 SCC (L&S) 637 : (1993) 24 ATC 576] ; Union of India v. S.S. Uppal [(1996) 2 SCC 168 : 1996 SCC (L&S) 438 : (1996) 32 ATC 668 : AIR 1996 SC 2340] ; Hanuman Prasad v. Union of India [(1996) 10 SCC 742 : 1997 SCC (L&S) 364] ; Bihar Public Service Commission v. State of Bihar [(1997) 3 SCC 198 : 1997 SCC (L&S) 775 : AIR 1997 SC 2280] ; Syndicate Bank v. Shankar Paul [(1997) 6 SCC 584 : AIR 1997 SC 3091] ; Vice-Chancellor, University of Allahabad v. Dr. Anand Prakash Mishra [(1997) 10 SCC 264 : 1997 SCC (L&S) 1265] ; Punjab SEB v. Seema [1999 SCC (L&S) 629] ; All India SC & ST Employees' Assn. v. A. Arthur Jeen [(2001) 6 SCC 380 : AIR 2001 SC 1851] ; Vinodan T. v. University of Calicut [(2002) 4 SCC 726 : 2002 SCC (L&S) 606] ; S. Renuka v. State of A.P. [(2002) 5 SCC 195 : 2002 SCC (L&S) 689 : AIR 2002 SC 1523] and Batiarani Gramiya Bank v. Pallab Kumar [(2004) 9 SCC 100 : 2004 SCC (L&S) 715 : AIR 2003 SC 4248] .)”

8.1. From the aforesaid observation made by the Hon'ble Supreme Court, it can be said that the selectees cannot claim the appointment as a matter of right. Mere inclusion of candidate's name in the list does not confer any right to be selected, even if the some of the vacancies remain unfilled and the candidates concerned cannot claim that they have been given a hostile discrimination.



9. Keeping in view the aforesaid decisions rendered by the Hon'ble Supreme Court, if the facts of the present case as discussed hereinabove are examined, we are of the view that the appellant herein whose name figured in the provisional merit list cannot claim as a matter of right that she is required to be selected and appointed on the post in question as per the Rules of 2008.

10. We have also gone through the reasoning recorded by the learned Single Judge while dismissing the petition filed by the writ petitioner/appellant herein and we are of the view that no error is committed by the learned Single Judge. Hence, no interference is required in the present appeal.

11. In view of the aforesaid discussion, this appeal is dismissed.

(Vipul M. Pancholi, J)

Rudra Prakash Mishra, J: I agree.

(Rudra Prakash Mishra, J)

Sachin/-

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