

IN THE HIGH COURT OF JUDICATURE AT PATNA

Binita Kumari

vs.

The State of Bihar & Ors.

Letters Patent Appeal No. 280 of 2019

In

Civil Review No. 11 of 2015

29 July, 2024

**(Hon'ble Mr. Justice P. B. Bajanthri and
Hon'ble Mr. Justice Alok Kumar Pandey)**

Headnotes

Appeal - filed against order passed in Civil Review arising out of Civil Writ whereby the learned Single Judge has dismissed the civil review application.

Dispute arose between the appellant and respondent no. 9 (Mithila Kumari) regarding continuance on the post of Panchayat Teacher in terms of Bihar Panchayat Primary Teachers (Appointment and Service Condition) Rules, 2006 where both of them were claiming the appointment against the same post which led to several round of litigations from both sides.

Held - The qualifications and other eligibility criteria for such posts should be explicitly provided and the schedule of recruitment process should be published with certainty and clarity. The advertisement should also specify the rules under which the selection is to be made and in absence of the rules, the procedure under which the selection is likely to be undertaken. (Para 10)

Letter issued by District Magistrate does not indicate the number of vacancies category wise and what is the last date for submission of form. No advertisement was issued for the post of Panchayat Teacher and it lacks the wider participation of eligible candidates and which is against the spirit and mandate of Articles 14 and 16 of the Constitution and in the light of catena of judgments passed by the Hon'ble Supreme Court advertisement is

essentially required for inviting application for the post of teacher even for ad hoc post. (Para 13)

Appointments order passed by the respondents are in derogation of constitutional mandate. (Para 15)

Officials of the State have committed wrong so it is reasonable to impose exemplary cost upon the State as Officials of the State is expected to know that there is always presumption in favour of the constitutionality. (Para 16)

Case Law Cited

Renu and Others vs. District and Sessions Judge, Tis Hazari and Another (Civil Appeal No. 979 of 2014) ; State of Orissa & Anr. v. Mamata Mohanty, **(2011) 3 SCC 436**; Secretary To Government Department of Education (Primary) and Others vs. Bheemesh @ Bheemappa reported in **(2021) 20 SCC 707**

List of Acts

Bihar Panchayat Primary Teachers (Appointment and Service Condition) Rules, 2006

Appearances for Parties

For the Appellant/s : Mr.Harsh Anuj, Advocate

For the Respondent/s : Mr. Shashi Shekar Tiwari, Advocate; Mr.Vinay Kumar Mishra, AC to AAG-15

Headnotes Prepared by Reporter : Amit Kumar Mallick, Advocate

Judgment/Order of the Hon'ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.280 of 2019
In
CIVIL REVIEW No.11 of 2015

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Binita Kumari Daughter of Awadh Kishore Singh Resident of Village Saghar,
P.O. Maghar, P.S. Bhagwanpur Hat, District Siwan.

... .. Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Human Resources Development, Government of Bihar, Patna.
2. The Principal Secretary, Department of Human Resources Development Government of Bihar, Patna.
3. The Collector Siwan.
4. The District Program Officer (Establishment) Siwan.
5. The Block Development Officer Bhagwanpur Hat Block District Siwan.
6. The Block Education Extension Officer Bhagwanpur Hat Block, District-Siwan.
7. The Mukhia, Gram Panchayat Raj, Saghar Sultanpur Dakshini Bhagwanpur Hat Block, District Siwan.
8. The Panchayat Secretary, Gram Panchayat Raj, Saghar Sultanpur Dakshini, Bhagwanpur Hat Block, District- Siwan.
9. Mithila Kumari wife of Sri Suresh Kumar Singh Resident of Village Jajauli, P.O. Balsahi, P.S. Mashrakh, District Siwan.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Harsh Anuj, Adv.
For the Respondent/s : Mr. Shashi Shekar Tiwari, Adv.
Mr.Vinay Kumar Mishra, AC to AAG-15

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY)

Date : 29-07-2024

The present LPA is directed against the order
dated 07.02.2018 passed by learned Single Judge in Civil



Review No. 11 of 2015 arising out of C.W.J.C. No. 23465 of 2011 whereby the learned Single Judge has dismissed the civil review application on the basis of wrong appreciation of the fact as well as laws and it has been prayed to set aside the order dated 07.02.2018 passed by learned Single Judge in Civil Review No. 11 of 2015 arising out of C.W.J.C. No. 23465 of 2011.

2. Respondent no. 9/ Mithila Kumari who was the writ petitioner in CWJC No. 23465 of 2011 has filed the said writ petition for following reliefs:-

(i) For issuance of a writ in the nature of mandamus directing the respondent authorities to reinstate the petitioner on the post of Panchayat Sikshak under the Gram Panchayat Raj, Saghar Sultanpur Dakshini, Bhagwanpur Hat Block District-Siwan after setting aside the selection of private Respondent no.9 who has been illegally appointed on the post of Panchayat Shikshak in place of the petitioner and is continuing in service in connivance with the respondent nos. 7 and 8 who have taken recourse of illegal steps and has thus frustrated the claim of the Petitioner.

(ii) For issuance of an appropriate writ in the nature of Mandamus directing the concerned respondent authorities to



pay the salary to the petitioner from the date she joined on the post by treating her on along in service on the post of Panchayat Shikshak in Primary School, Baees Katha under the Saghar Sultanpur Dakshini Panchayat and further for taking proper action against the concerned respondent authorities who has unnecessarily harassed the petitioner and due to which she has been forced to unnecessary litigation and also to pay litigation cost.

(iii) For any other relief or reliefs to which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case to which the petitioner is entitled for.

3. Briefly stated facts of the present case are that dispute arose between the appellant/ Binita Kumari and respondent no. 9/ Mithila Kumari regarding continuance on the post of Panchayat Teacher in terms of Bihar Panchayat Primary Teachers (Appointment and Service Condition) Rules, 2006 where both of them were claiming the appointment against the same post which led to several round of litigations from both sides.

4. CWJC No. 9219 of 2007 was filed by the appellant/ Binita Kumari when he was terminated ex parte on 03.04.2007 and during the period of termination of appellant, respondent no. 9/writ petitioner in CWJC No. 23465 of 2011



was appointed on 04.04.2007. Thereafter, she fell ill and took leave and after recovery from illness she was not allowed to join which led to filing of CWJC No. 2040 of 2008 and the impact of the order passed on the writ petition so filed by the appellant and respondent no. 9 led to filing of CWJC No. 23465 of 2011 by respondent no. 9. Being aggrieved the appellant preferred LPA No. 1154 of 2014 but sought permission to withdraw the said LPA with liberty to file an application for review of the judgment and order in appeal and the Division Bench while disposing of appeal as withdrawn, gave liberty to the appellant to file review. Thereafter, the appellant filed Civil Review No. 11 of 2015 arising out of Civil Writ Jurisdiction Case No. 23465 of 2011 but the learned Single Judge dismissed the review application. Hence, the present LPA.

5. Learned counsel for the appellant submitted that judgment and order of learned Single Judge is erroneous in law and contrary to the facts of the case. Learned counsel further submitted that learned Single Judge has failed to appreciate that appellant has never reinstated rather she has been appointed. From the application receiving register it is clear that she is in the differently abled category and she was lone candidate in female category for the said category and she has



been rightly appointed under the said category and her services were terminated without giving ample opportunity which is against the principle of natural justice. Learned counsel further submitted that the learned Single Judge while deciding the Civil Review No. 11 of 2015 has not taken into account the eligibility criteria for which appellant has already been appointed and suffered a lot during course of litigation. In counseling register the respondent no. 9 has not claimed against differently abled category rather she claimed against General Category (trained teacher). In this way, appellant is entitled to get appointment and her appointment cannot be denied as she has fulfilled all the eligible criteria as mentioned in Bihar Panchayat Primary Teachers (Appointment and Service Condition) Rules, 2006.

6. Counter affidavit has been filed on behalf of respondent no. 9. It has been submitted by respondent no. 9 that she was the most competent candidate for the post of Panchayat Teacher under the physically handicapped quota but the authorities arbitrarily appointed one untrained candidate Binita Kumari/appellant. It is further submitted that as per Panchayat Shikshak Rule, the Block Development Officer was the competent authority and on his enquiry and direction the selection of appellant was cancelled. The respondent no. 9 was



the only teacher appointed at New Primary School, Baees Katha and during course of discharging her duties respondent no. 9 suffered paralytic attack and proceeded on leave on medical grounds but after recovery from illness she was not allowed to join which led to filing of CWJC No. 2040 of 2008, which was allowed on 25.03.2009 with direction to concerned respondent to accept her joining forthwith and during course of hearing it is found that appellant/Binita Kumari also obtained order from this Hon'ble Court setting aside her termination vide order dated 19.02.2008 passed in CWJC No. 9219 of 2007. It is further submitted that respondent no. 9 is physically handicapped trained candidate whereas appellant is not trained candidate and as per rule only respondent no. 9 was to be appointed. In this way, claim of respondent no. 9 for the post of Panchayat Teacher in the light of Bihar Panchayat Primary Teachers (Appointment and Service Condition) Rules, 2006 was rightful and justified.

7. Counter affidavit has also been filed on behalf of respondent no. 4. In para-11 of the counter affidavit the claim of respondent no. 9 has been justified as she has been selected and appointed against trained teacher (handicap category) whereas the appellant was untrained (handicap) and in view of



Rule 4 (11) of Bihar Panchayat Employment Rule, 2006, the appointment of respondent no. 9 is valid and justified.

8. This Court has given specific direction on 17.05.2024 which reads as under:-

State or Selecting Authority is hereby directed to furnish advertisement which reveals the classification of vacancies like untrained teacher (handicap category) and trained teacher (handicap category) whether each of the category separate posts have been advertised. If it is so why the 9th respondent has been selected and appointed against untrained teacher (handicap category) when her claim is for trained teacher (handicap category).

Re-list this matter on 27.06.2024.

9. Pursuant to order dated 17.05.2024 the State counsel did not produce any copy of advertisement. When specific query is made what method has been applied for inviting application for the post of Panchayat Teacher, then he produced copy of letter dated 22.10.2007 issued by District Magistrate, Siwan to all the concerned for completion of appointment of teachers but the State counsel has not properly assisted this Court as he has neither produced copy of



advertisement nor produced any specific notice which is the basis for inviting application for the post of teacher. The said letter does not indicate last date for submitting the form and same also does not reveal classification of vacancy either category wise or reservation wise.

10. When we talk about public appointment, the most important requirement of public appointment is that of transparency and transparency can be witnessed on the basis of advertisement as advertisement must specify the number of post available for selection and recruitment. The qualifications and other eligibility criteria for such posts should be explicitly provided and the schedule of recruitment process should be published with certainty and clarity. The advertisement should also specify the rules under which the selection is to be made and in absence of the rules, the procedure under which the selection is likely to be undertaken. This is necessary to prevent arbitrariness and to avoid change of criteria of selection after the selection process is commenced, thereby unjustly benefiting someone at the cost of others. The decisions of the Hon'ble Supreme Court have prescribed the limitations while making appointment against public posts in terms of Articles 14 and 16 of the Constitution. What has been deprecated by Hon'ble



Supreme Court time and again is "backdoor appointments or appointment de hors the rules.

11. The Hon'ble Supreme Court has strictly observed the issues of public employment in the case of ***Renu and Others vs. District and Sessions Judge, Tis Hazari and Another*** (Civil Appeal No. 979 of 2014) at para 16 and 17 which reads as under:-

"16. Another important requirement of public appointment is that of transparency. Therefore, the advertisement must specify the number of posts available for selection and recruitment. The qualifications and other eligibility criteria for such posts should be explicitly provided and the schedule of recruitment process should be published with certainty and clarity. The advertisement should also specify the rules under which the selection is to be made and in absence of the rules, the procedure under which the selection is likely to be undertaken. This is necessary to prevent arbitrariness and to avoid change of criteria of selection after the selection process is commenced, thereby unjustly benefiting someone at the cost of others.

"17. Thus, the aforesaid decisions are an authority on prescribing the limitations while making appointment against



public posts in terms of Articles 14 and 16 of the Constitution. What has been deprecated by this Court time and again is "backdoor appointments or appointment de hors the rules".

12. In the same judgment, at para 14 the case of ***State of Orissa & Anr. v. Mamata Mohanty***, (2011) 3 SCC 436 has been cited in which the Hon'ble Supreme Court dealt with the constitutional principle of providing equality of opportunity to all which mandatorily requires that vacancy must be notified in advance meaning thereby that information of the recruitment must be disseminated in a reasonable manner in public domain ensuring maximum participation of all eligible candidates; thereby the right of equal opportunity is effectuated. The Court held as under:-

"Therefore, it is a settled legal proposition that no person can be appointed even on a temporary or ad hoc basis without inviting applications from all eligible candidates. If any appointment is made by merely inviting names from the employment exchange or putting a note on the noticeboard, etc. that will not meet the requirement of Articles 14 and 16 of the Constitution. Such a course violates the mandates of Articles 14 and 16 of the Constitution of India as it deprives the



candidates who are eligible for the post, from being considered. A person employed in violation of these provisions is not entitled to any relief including salary. For a valid and legal appointment mandatory compliance with the said constitutional requirement is to be fulfilled. The equality clause enshrined in Article 16 requires that every such appointment be made by an open advertisement as to enable all eligible persons to compete on merit."

13. It is crystal clear that letter dated 22.10.2007 issued by District Magistrate, Siwan does not indicate the number of vacancies category wise and what is the last date for submission of form. It is also crystal clear that no advertisement was issued for the post of Panchayat Teacher and it lacks the wider participation of eligible candidates and which is against the spirit and mandate of Articles 14 and 16 of the Constitution and in the light of catena of judgments passed by the Hon'ble Supreme Court advertisement is essentially required for inviting application for the post of teacher even for ad hoc post. From reading of counseling register as well as application receiving register, it appears that cuttings and interpolations have been made in several places which indicate that said registers are very casual in nature and preparation of said registers does not serve



the purpose of transparency. The interpolations and cuttings in the said registers are susceptible to improper handling of appointment of teacher and several disputes can arise on account of such cutting and interpolation. In counter affidavit nothing has been mentioned that under which provision of law these registers are maintained. The said registers are also against the spirit of transparency and in public appointment transparency is most important thing so that employment has been properly advertised and proper procedure has been followed just to fulfill the constitutional mandate under Articles 14 and 16 of the Constitution.

14. The Hon'ble Supreme Court in the case of ***Secretary To Government Department of Education (Primary) and Others vs. Bheemesh @ Bheemappa*** reported in (2021) 20 SCC 707 has held at para 6 as under:-

"6. As held by this Court repeatedly, every appointment to a post or service must be made strictly by adhering to the mandate of Articles 14 and 16 of the Constitution.

15. Keeping in view discussion made above, appointments order passed by the respondents are in derogation of constitutional mandate as discussed above. Resultantly, appointments of appellant and respondent no. 9 are hereby



cancelled. Accordingly, the order dated 07.02.2018 passed in Civil Review No. 11 of 2015 and order in CWJC No.23465 of 2011 are hereby set aside.

16. In the light of discussions made above, it is clear that there are several round of litigation between the appellant and respondent no. 9 on the same post and appellant after being appointed on the said post, initially, her services was terminated without affording opportunity to her and this led to filing several round of litigation and she suffered lot of pain and mental agony. Further, action of the State is totally irresponsible for not issuing advertisement for the appointment on public post. This action of State is against the spirit of constitutional mandate which is required under Articles 14 and 16 of the Constitution of India and there cannot be excuse for not following the spirit of constitutional mandate whenever issue of public employment is raised. In this way, the Officials of the State have committed wrong so it is reasonable to impose exemplary cost upon the State as Officials of the State is expected to know that there is always presumption in favour of the constitutionality. Cost is quantified in terms of rupees one lakh and out of said amount, Rs. 50,000/- be remitted in the Patna High Court Legal Services Committee within a period of



four weeks from the receipt of this order and remaining Rs. 50,000/- is to be given to the appellant/ Binita Kumari who has suffered a lot after being initially appointed and later on, she suffered termination without adhering the principles of natural justice.

17. In the aforesaid manner, the present LPA stands disposed of.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

shahzad/-

AFR/NAFR	AFR
CAV DATE	27.06.2024
Uploading Date	29.07.2024
Transmission Date	N.A.

