

IN THE HIGH COURT OF JUDICATURE AT PATNA

Arbind Kumar Choudhary

Versus

The State of Bihar and ors.

Letters Patent Appeal No.1246 of 2019

In

Civil Writ Jurisdiction Case No.1947 of 2017

29 October, 2024

**(Honourable Mr. Justice P. B. Bajanthri and Honourable Mr. Justice
S. B. Pd. Singh)**

Headnotes

Petition - filed assailing the order in the writ petition by which writ petition was not allowed.

Held - There is glaring error committed by the selecting authority while preparing the select list with reference to the cut-off marks under general category read with the social reservation. Persons who are more merited under the social reservation have been accommodated against the social reservation category/quota despite the fact that they are more merited than the last selected candidate under the general category as is evident from the records. (Para 5)

Order passed in CWJC No. 1947 of 2017 is not a reasoned order. There is not even iota of facts of the case has been narrated by the court in writ petition. Question of approaching Civil Court in filing Civil Suit is not warranted in view of the fact that selecting and appointing authority are government servants and process of selection is to civil post. Article 12 of the Constitution and status of respondents suffice the CWJC is maintainable. Brief facts of the case and what is the issue was required to be narrated in the judgement are not forthcoming, since it is appealable in the form of LPA. (Para 7)

LPA is allowed. (Para 8)

Appearances for Parties

For the Appellant/s : Mr. Banwari Sharma, Advocate; Mr. Sanjay Kumar Sinha, Advocate

For the State : Mr. S. S. Tiwary, AC to AAG 15

For the respondents : Mr. Deepak Kumar, Advocate

Headnote prepared by Reporter:- Amit Mallik, Advocate

Judgment/Order of the Hon'ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1246 of 2019
In
Civil Writ Jurisdiction Case No.1947 of 2017

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Arbind Kumar Choudhary son of Hulash Choudhary Resident of Village Raikarh, P.O. Dosut, P.S. Warisaliganj, District- Nawada.

... .. Appellant/s

Versus

- 1. The State of Bihar through Principal Secretary, Department of Human Resources Development, Bihar, Patna Having his office at New Secretariate, Patna.
- 2. The District Teacher s Appointment Appellate Authority Nawada, through Presiding Officer.
- 3. The District Magistrate cum Collector Nawada.
- 4. The District Education Officer, Nawada.
- 5. The District Superintendent of Education-cum- District Programme Co-ordinator, Sarva Siksha Aviah, Nawada.
- 6. The Block Development Officer, Warsaliganj, Nawada.
- 7. The Gram Panchayat Sachiv, Dosut Panchayat under Warisaliganj Block, District Nawada.
- 8. The Mukhiya, Gram Panchayat Dosut, Warisaliganj, Nawada.
- 9. Sanjay Kumar Das son of Arjun Ravi Das Resident of Village Baghi Bardiha, P.S. Warisaliganj, District Nawada.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Banwari Sharma, Advocate
		Mr. Sanjay Kumar Sinha, Advocate
For the State	:	Mr. S.S.Tiwary, AC to AAG 15
For the respondents	:	Mr. Deepak Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE S. B. PD. SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)
Date : 29-10-2024

In the present appeal, the appellant has assailed the order of the learned Single Judge dated 06.08.2019. It is a short order, which reads as under:



“Considering serious disputed question of fact, the Court is not inclined to grant any indulgence to the petitioners. However, liberty shall be available to the petitioners to approach the Civil Court of competent jurisdiction for appropriate relief as the dispute raised in the present writ petition can only be adjudicated appropriately in a properly constituted civil suit.

With the aforesaid, the writ petition stands disposed of.”

2. Matter was heard time and again. On 26.09.2024, Co-ordinate Bench has passed the following order:

“The matter is relating to selection and appointment to the post of Panchayat Teacher, Gram Panchayat Dosut, Warsaliganj, Nawada. The appellant's claim is against one of the SC vacancy. In order to ascertain how the appellant is not eligible to be selected and appointed to the post of Panchayat Teacher, we have requested the State Counsel to prepare a chart relating to cut-off marks for each of the category, so as to understand what would be the cut-off percentage for SC and General category.

2. Today, learned counsel for the State furnished a chart relating to cut-off marks. Perusal of the chart, it is evident that last selected and appointed candidate of the General category has secured 55.90% whereas the selected candidate under SC category are three in number and they have secured 64.55%, 59.33% and 58.77%. All these three SC candidates were required to be adjusted against General category for the reasons that they have secured more than 55.90% with reference to last General category selected candidate who has secured 55.90%. The Selecting and Appointing Authority has committed a serious error while preparing selection list to the extent that initially he should have prepared a merit list irrespective category and



thereafter, depending upon the percentage secured by General category persons and reserved category persons, he should have prepared separate social reserve list. If the above exercise had been undertaken by the Selecting and Appointing Authority, in that event, three persons who have been selected under SC Category and who have secured more than the last candidate under General category would have earned place under General category. In other words, they would have been assigned slot under General category. Resultantly, appellant would have been selected under SC category. This exercise has not been undertaken by the Selecting and Appointing Authority.

3. Recently, Hon'ble Supreme Court in the case of **Ramnaresh Vs. State of Madhya Pradesh** reported in **2024 SCC Online SC 2058** reiterated that SC/ST/OBC candidate who qualify on their own merit can compete for open seats in the General category. The Court said that petitioners were denied admission in medical colleges in Madhya Pradesh in 2023-24 session due to "erroneous application of methodology in applying original term and vertical reservation". It is said that meritorious reserved category candidate who is entitle to 'General' category of the said horizontal reservation in his own merit will have to be allotted a seat from the said 'General' category of the horizontal reservation. GS quota was introduced in Madhya Pradesh in 2023. "It is to be noted that, in the present case, the cut-off for UR candidates were much less as compared to the cut-off for SC/ST/OBC/EWS candidates. As such, the respondents ought to have admitted the present admission against the UR-GS categories. It is further to be noted that many seats from UR-GS were required to be transferred to the General category" the Court said.

4. It is high time to rectify the aforementioned error committed by the Selecting and Appointing Authority. Therefore, we are of the view that instead of undertaking



preparation of revised selection list with reference to merit and accommodating such of those reserved category who have secured more marks than the last selected under General category, in that event, there will be an administrative chaos for the reasons that last there candidates under General category were required to be ousted from the post held by them. In order to accommodate them, the Selecting and Appointing Authorities are requested to create a supernumerary post to accommodate the appellant against one of SC category and extend all consequential benefits including seniority and other monetary benefits. On this point, Principal Secretary, Education Department, Govt. of Bihar, Patna is hereby directed to file his affidavit whether the above exercise shall be undertaken or not?

5. Re-list this matter on 17.10.2024.”

3. Personal affidavit has been filed on behalf of the Additional Chief Secretary, Education Department, Government of Bihar, Patna. Paragraph Nos. 17 to 28 of the affidavit filed reads as under:

“17. That it is humbly stated that both the appellant and one Sri Bhagirath Prasad, preferred intra court appeal against the order dated 06.08.2019 bearing LPA No. 1246 of 2019 and LPA No. 1229 of 2019 respectively before this Hon'ble Court.

18. That it is humbly stated that the appeal filed by Sri Bhagirath Prasad bearing LPA No. 1229 of 2019 has been dismissed by the Hon'ble Division Bench of this Hon'ble Court vide order dated 10.08.2023, which is being brought on record for the better appreciation of this fact.

19. That it is humbly stated that as per the direction of the learned Tribunal in its aforementioned order dated



03.10.2016, the selection committee of the Panchayat in question prepared a fresh merit list of untrained SC category on 25.02.2018.

20. That it is humbly stated that a bare perusal of aforesaid list would reveal that in the SC category, one Sanjay Kumar Das has secured the highest 64.55% merit point and immediately thereafter one Santosh Kumar secured the second highest 62.55% marks whereas the appellant secured only 57.66% of marks.

21. That it is humbly stated that as there were two posts of Panchayat Teachers in SC category hence the first two i.e. Sanjay Kumar Das and Santosh Kumar were selected.

22. That it is important to mention here that the Hon'ble Division Bench of this Hon'ble Court vide order dated 10.08.2023 passed in LPA No. 1229 of 2019, in the case of other selected SC candidate namely Sri Bhagirath Prasad, has discussed the said aspect.

23. That it is humbly stated that now coming to the query and observation made by this Hon'ble Court vide order dated 26.09.2024 regarding higher merit point of SC candidate vis a vis unreserved candidate and they being treated to be appointed under unreserved category, it is humbly stated that all the unreserved male category candidate selected in the selection process in question were trained teachers, whereas there was no trained teachers under the SC category.

24. That it is reiterated here that Rule 4(2) of the aforesaid Rule stipulate that first appointment of trained teachers will be made and thereafter, if the vacancies are available, un-trained teachers will be appointment.

25. That it is humbly stated that as per the aforesaid provision, the candidature of trained and untrained candidates cannot be equated as these are two separate categories and there is a specific provision that merit list



of both the trained and untrained candidates are prepared separately.

The appellant admittedly is untrained and all the unreserved category candidates are trained hence he cannot be placed under unreserved category being untrained.

26. That it is humbly stated that, in view of the aforesaid averments, the claim of the appellant that the selected SC candidates having more merit marks than the selected unreserved category candidates and shifting of the SC candidates in place of unreserved category is misconceived as the appellant as well as selected SC candidate are untrained whereas all the selected candidates under unreserved category are trained.

27. That in the facts and circumstances mentioned herein above, the present appeal has no merit hence is fit to set aside particularly in the light of the fact that another LPA arising out of the same impugned order has already been dismissed by the Hon'ble Division Bench of this Hon'ble Court.

28. That the statement made in paragraph No. 3 to 6, 8, 9, 11, 12, 15 to 17, 20 to 26 are true to the best of my knowledge and those made in paragraph No. 7,10,13,14,18,19. are true to the best of my information derived from the records of the case and rest are by way of submission before this Hon'ble Court."

4. The reasons in not accommodating the appellant is not satisfied by this Court for the reasons that similarly situated persons who are stated to be more merited than appellant are not before this Court.



5. The appellant is pursuing this matter from the year 2017 as is evident from CWJC No. 1947 of 2017. There is glaring error committed by the selecting authority while preparing the select list with reference to the cutoff marks under general category read with the social reservation. Persons who are more merited under the social reservation have been accommodated against the social reservation category/quota despite the fact that they are more merited than the last selected candidate under the general category as is evident from the records. For having committed serious error and in not following the decisions of the Hon'ble Supreme Court in which time and again it is held that such of those social reservation candidates, if they have secured more marks than the last selected candidate under general category, in such circumstances they are required to be accommodated under general category head subject to fulfillment of other criteria. This principle has been violated by the selecting authority - official respondent.

6. In fact, in the present recruitment, three of the SC candidates should have been accommodated under general category having regard to the percentage of their marks read with the last selected candidate. If there is no vacancy as on this day under SC category, for no fault of the appellant, he shall not be



punished, therefore, the concerned respondents are hereby directed to create supernumerary post and accommodate the appellant while selecting and appointing him. However, it is made clear that appellant is not entitled to any back wages, on the other hand, he is entitled to all service and monetary benefits on par with such of those selected candidates at the relevant point of time like fixation of pay, grant of increments and other service benefits. He is also entitled to have the benefit of seniority in the respective cadre. This exercise shall be undertaken by the concerned selecting and appointing authority within a period of three months from the date of receipt of this order.

7. In the light of the above analysis read with the decision of the Hon'ble Supreme Court insofar as principle to the extent of preparation of select list of social reservation persons and general category to the extent that in the event of social reservation candidate had secured more marks than the last selected candidate under general category read with the facts in the present case, order of the learned Single Judge dated 06.08.2019 passed in CWJC No. 1947 of 2017 is not a reasoned order. There is not even iota of facts of the case has been narrated by the learned Single Judge. Question of approaching Civil Court in filing Civil Suit is not warranted in view of the fact that selecting and appointing



authority are government servants and process of selection is to civil post. Article 12 of the Constitution and status of respondents suffice the CWJC is maintainable. In fact, brief facts of the case and what is the issue was required to be narrated in the judgement are not forthcoming, since it is appealable in the form of LPA.

8. Accordingly, order of the learned Single Judge dated 06.08.2019 stands set aside. CWJC No. 1947 of 2017 and LPA No. 1246 of 2019 filed by the appellant are allowed.

9. Pending I.A.s, if any, stand disposed of.

10. At this stage, learned counsel for the State, *Mr. S.S. Tiwary*, abusing the process of this Court in re-arguing the matter once again after dictating the present order. The same is deprecated for the reasons that he has been provided ample opportunity to address the matter, on the other hand, he is reiterating whatever stated in the personal affidavit filed on behalf of the Additional Chief Secretary, Education Department, Government of Bihar, Patna.

(P. B. Bajanthri, J)

(S. B. Pd. Singh, J)

GAURAV S./-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	30.10.2024
Transmission Date	NA

