

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3604 of 2019

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Rukhsar Ahmad Son of Abdul Hannan Resident of Village- Sabanpur, P.O.- Madhepur, P.S.
Baliya Beloon (Kadwa), District- Katihar.

..... Petitioner/s

Versus

1. The State of Bihar through the Director Education Department, Bihar, Patna,
2. The District Education Officer, Katihar.
3. The District Teacher Appellate Authority, Katihar.
4. The District Program Officer Katihar.
5. The Block Development Officer, Balrampur, Katihar.
6. The Block Education Officer, Balrampur, District- Katihar.
7. The Panchayat Secretary, Gram Panchayat Raj Bijol, District- Katihar.
8. The Headmaster, Primary School, Dhanhara, Balrampur, Katihar.
9. Md. Izhar Alam Son of Md. Noor Kasim Resident of Village- Rajol (Pelapur),
P.O.- Dangol, P.S. Balrampur, District- Katihar.
10. The Presiding Officer, District Appellate Authority, Katihar.
11. The State Appellate Authority, Bihar, Patna.

..... Respondent/s

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Appointment/selection of Panchayat teacher – signature as 1st candidate on the attendance sheet of the employment unit is a conclusive piece of evidence to prove *bona fide* of the petitioner that he was present for counseling but his name was not called by the employment unit – in the garb of guideline the authority cannot misuse the power and infringe the right of the petitioner for appointment on the basis of having secured the higher marks – both the appellate tribunals have failed to consider properly the proceeding book of the employment unit in which the petitioner was found selected and misdirected themselves on the basis of some guidelines that the petitioner did not appear for counseling upon thrice calling of his name – it does not stand to reason that on the date of counseling the petitioner was present and also signed the attendance register but did not appear – the rule of merit cannot be ignored by the authorities when the petitioner having higher marks than the respondent no. 9 was duly appointed by the employment unit.

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- 10. The Presiding Officer, District Appellate Authority, Katihar.
- 11. The State Appellate Authority, Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Md. Helal Ahmad
For the Respondent/s : Mr. Madhaw Pd. Yadaw (Gp23)
Mr. Qumrul Hodda, Adv.

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
CAV JUDGMENT
Date : 16-01-2024

- 1. Heard the parties.
- 2. The petitioner being aggrieved by the order dated 17.01.2019 passed in Appeal Case No. 291 of 2018 by the State Appellate Authority, Patna whereby the order passed by the District Appellate Authority has been affirmed, has preferred this writ application for setting aside the orders passed by the



District Appellate Authority as well as the State Appellate Authority.

3. The District Appellate Authority by its order dated 09.03.2018 passed in Appeal Case No. 25 / 2016 cancelled the appointment of the petitioner on the ground that he did not appear for counselling when his name was called and directed for appointment of respondent no. 9 in his place.

4. The brief facts giving rise to the present writ application is that the petitioner and the private respondent along with others applied for appointment as Panchayat Teacher for Urdu post in Gram Panchayat Bijol under Balrampur Block in Katihar District. There were six posts, out of which UR-02, UR (Female) -01, EBC (Female) -01, BC (Female) -01 and SC (Female) -01 of Urdu Teacher. No application in SC (Female) category was received as such selection was held on 5 posts. The present writ application is regarding selection of Teachers on 02 posts under Unreserved Category.

5. Learned counsel for the petitioner submits that petitioner passed the Moulvi examination from Bihar State Madarsa Education Board, Patna with 778 marks and was a *bona fide* applicant for appointment as Panchayat Teacher against Urdu post in Gram Panchayat Bijol. The employment



unit prepared the merit list in which the petitioner was placed at serial no. 2 on the basis of his marks and respondent no. 9 was placed at serial no. 3. The petitioner is having higher marks i.e. 62.95 % than the respondent no. 9 who has 61.25%. On 18-11-2016 the petitioner as well as respondent no. 9 appeared before the employment unit and signed the attendance sheet (Annexure-4).

6. The employment unit of Bijol Gram Panchayat started counselling on 18.11.2016 and called the name of 1st candidate in the panel i.e. Md. Gulam Gosh, who was having 63.26%. After his counselling the employment unit called the name of the private respondent no. 9 / Md. Izhar Alam, who was having lesser marks than the petitioner. The name of the petitioner was not called despite having higher marks than the private respondent no. 9. The petitioner immediately protested before the counselling team and subsequently employment unit allowed the petitioner to appear in the counselling. The counselling register was seen and verified by the Panchayat Secretary and Mukhiya of Gram Panchayat Bijol (Annexure - 5). The employment unit in the proceeding book dated 18.11.2016 took a decision that on 18.11.2016 counselling was conducted for appointment of Panchayat Teacher on five posts



in which against two unreserved posts one Md. Gulam Gosh having 63.26% marks and Rukhsar Ahmad i.e. petitioner having 62.95% marks have been selected for appointment. Accordingly, vide letter no. 36 dated 18.11.2016 the petitioner was appointed on the post of Urdu Teacher at Primary School Dhanhara, Gram Panchayat- Bijol, Block- Balrampur, Katihar [Annexure – 7]. The petitioner joined on 25/11/2016 in the Primary School Dhanhara against Urdu post (Annexure-8).

7. The private respondent no. 9 filed an appeal before the District Teachers Employment Authority, Kaihar vide Appeal Case No. 25 of 2016. The District Teachers Appellate Authority cancelled the appointment of the petitioner and directed for appointment of the respondent no. 9. The order passed by District Teachers Employment Appellate Authority has been upheld by the State Appellate Authority.

8. Assailing the order passed by both the appellate authorities, learned counsel for the petitioner argued that petitioner was present on the date of counselling but his name was not called. It was only after objection / protest being made by petitioner, he was allowed to appear in the counselling process and since he was having higher marks than the private respondent no. 9, the employment unit recommended for



appointment of the petitioner.

9. Both the appellate tribunals have completely failed to appreciate the fact that petitioner was very much present before the employment unit on the date of counselling i.e. 18.11.2016 and has put his signature as 1st candidate on the attendance sheet of the employment unit, as such, the said attendance sheet is a conclusive piece of evidence to prove *bona fide* of the petitioner that he was present for counselling but his name was not called. Since the petitioner was having higher marks and there is no entry in the counselling register dated 18.11.2016 that name of the petitioner was called thrice but he did not appear, both the Tribunals have committed gross error and wrongly decided the case relying upon the statement of private respondent as well as BDO , Balrampur that petitioner did not appear when his name was called. The BDO has not signed the counselling register. Admittedly the instruction of the Education Department was merely a guideline and in the garb of the said guideline the authority cannot misuse the power and infringe the right of the petitioner for appointment on the basis of having secured the higher marks.

10. Learned counsel for the respondent no. 9 argued that respondent no. 9 had applied for appointment as Panchayat



Teacher (Urdu post). On the date of counselling i.e. 18.11.2016 Md. Gulam Gosh and the respondent no. 9 appeared for counselling. The petitioner in collusion with the concerned authorities of the appointment committee fraudulently and wrongly recorded his presence at serial no. 4 in the counselling register. As per the guidelines after counselling of Md. Gulam Gosh and respondent no. 9, the said counselling should have been stopped but violating the departmental direction dated 07.10.2016 the concerned appointment committee has wrongly selected and appointed the petitioner.

11. The Block Education Officer, Balrampur and BDO, Balrampur in their affidavits filed before the District Appellate Authority have stated that during counselling first Gulam Gosh appeared and then petitioner name was called thrice but he did not appear at serial no. 2 and thereafter the name of respondent no. 9 / Md. Izhar Alam was called out and he appeared at serial no. 2. The petitioner did not appear in the counselling and in connivance with the concerned authority he signed on the attendance register. The District Appellate Authority and the State Appellate Authority have covered every aspect of the case and has passed a reasoned order.

12. I have heard learned counsel for the parties and have



perused the materials available on record including the order passed by both the appellate authorities. The specific case of the petitioner is that on the date of counselling the petitioner was present at the place of counselling and signed the attendance sheet. Attendance sheet having been signed by the petitioner is not disputed. The petitioner was placed at serial no. 2 in the merit panel having higher marks than the respondent no. 9 is also not disputed. When the name of the petitioner was not called by the counselling team during the process of counselling, the petitioner immediately protested accordingly his counselling was held by the counselling team and he was given appointment letter based upon which he started working as Urdu Teacher in the Primary School, Dhanhara.

13. The District Appellate Authority cancelled the appointment of the petitioner which has been upheld by the State Appellate Authority on the basis of some guidelines issued vide letter no. 1122 dated 07/10/2016 [which has not been placed on record] in which instruction has been given that the name of a candidate will be called for counselling in order of merit. Name of a candidate will be called thrice and if a candidate whose name is called thrice does not appear on being called and subsequently wants to participate in the counselling,



he / she would not be allowed. If a candidate in the merit list does not appear on being called thrice, name of the next candidate in the merit list will be called. The District Appellate Authority concluded that the petitioner despite having higher marks in the merit list got his counselling done at serial no. 4 is not valid inasmuch as per rule, counselling should have been stopped after filling the two posts.

14. The fact that counselling was held on 18.11.2016 is not disputed and from perusal of Annexure - 4 which is attendance sheet dated 18-11-2016 it appears that the petitioner has signed the attendance sheet before counselling at serial no. 1 along with other candidates. After protest being made by the petitioner that his name was not called out at serial no. 2 in the counselling on the basis of his merit position and the name of the respondent no. 9 was called who was having lesser marks, the counselling team allowed the petitioner to participate in the counselling and accordingly counselling of the petitioner was held on the same date i.e. 18.11.2016 itself. The counselling register duly verified by the Panchayat Secretary and Mukhiya of the Gram Panchayat Bijol is at Annexure- 5 which reflects the name of the petitioner. The proceeding book of the employment unit dated 18.11.2016 also reflects that in the



counselling for appointment of Panchayat Teacher against two unreserved seats one Md. Gulam Gosh having 63.26% marks and Rukhsar Ahmad i.e. petitioner having 62.95% have been selected for appointment. Both the Appellate Tribunals have failed to consider properly the proceeding book of the employment unit in which the petitioner was found selected and misdirected themselves on the basis of some guidelines that the petitioner did not appear for counselling upon thrice calling of his name. It does not stand to reason that on the date of counselling the petitioner was present and also signed the attendance register but did not appear. Hence, there is no reason which seems prudent to conclude that the petitioner did not appear when his name was called by the counselling team.

15. On the basis of counselling having been done of the petitioner, the employment unit in the proceeding book dated 18.11.2016 has recorded the selection of petitioner along with Md. Gulam Gosh. The rule of merit cannot be ignored by the authorities when the petitioner having higher marks than the respondent no. 9 was duly appointed by the employment unit.

16. On consideration of the aforesaid facts and discussions held hereinabove, I am of the considered opinion that both the orders passed by the District Appellate Authority,



Katihar as well as the State Appellate Authority are not sustainable. Accordingly, both the orders dated 09.03.2018 passed in Appeal Case No. 25 of 2016 and 17.01.2019 passed in Appeal Case No. 291 of 2018 are hereby quashed.

17. Consequently the appointment of the respondent no. 9 is also set aside.

18. The concerned respondents authorities are directed to re-instate the petitioner on the post of Urdu Teacher from where he was removed in pursuance of the order passed by District Appellate Authority, Katihar.

19. The writ application is allowed in the aforesaid terms.

20. There shall be no order as to cost.

(Anil Kumar Sinha, J)

praful/- AFR

AFR/NAFR	AFR
CAV DATE	30-11-2023
Uploading Date	17-01-2024
Transmission Date	NA

