

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13163 of 2021

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Mukesh Kumar Son of Sri. Gurudeo Prasad Jaiswal Resident of Village-
Laxmipur, P.S.- Barharakothi, 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, Education Department, Govt. of Bihar, Patna.
3. The Collector Purnea.
4. The District Programme Officer (Estb.) Purnea.
5. The District Education Officer Purnea.
6. The Block Development Officer x
7. The Member, District Teachers Employment Appellate Authority Purnea.
8. The Mukhiya Gram Panchayat Raj- Laxmipur, P.S.- Barharakothi, District- Purnea.
9. The Panchayat Secretary Gram Panchayat Raj- Laxmipur, P.S.- Barharakothi, District- Purnea.
10. Chandan Kumar Jaiswal Son of Sri. Yogendra Prasad Jaiswal Resident of Village- Mahikhanda, P.S.- Barharakothi, District- Purnea.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Navjot Yesu, Adv.
For the Respondent/s : Mr. Madanjeet Kumar (GP-20)

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CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH SHARMA
ORAL JUDGMENT

Date : 27-04-2022

1. The petitioner has prayed the following relief(s):-

- (i) That this is an application for issuance of an appropriate writ(s), order(s), or direction(s) for quashing of the order as contained in Appeal No. 352 dated 06.07.2021 (Annexure-1) passed by learned Chairperson (J), State Appellate Authority,



Patna (hereinafter referred to as Appellate Authority for short) whereby and whereunder the Appeal preferred by the petitioner against the order as contained in Case No. 18 of 2015 (Annexure-1/A) filed by the petitioner has been rejected.

(ii) And further for issuance of an appropriate writ(s), order(s), or direction(s) for quashing of the order as contained in Memo No. 204 dated 19.12.2015 (Annexure-1/A) passed by the Member, District Teachers Employment Appellate Authority, Purnea (hereinafter referred to as Tribunal for short) and whereunder the Case No.18 of 2015 filed by the petitioner has been rejected.

(iii) And further for issuance of an appropriate writ(s), order(s), or direction(s) to the respondent authorities to consider and insert the name of the petitioner in the final merit list and further consider and to appoint him on the post of Panchayat Teacher.

2. This is a case where protracted litigation was taken up earlier also before the District Appellate Authority and before this Court. Ultimately by directions of this Court dated



27.11.2018 in CWJC No. 2482 of 2016 the State Appellate Authority was directed to examine the case of the petitioner.

3. The dispute relates to the selection process of Gram Panchayat Laxmipur, Barharakothi in district Purnea. Ten vacancies were existing. In BC category, there was only one vacancy. After completing the selection process, a merit list was drawn, whereafter one Amit Kumar was selected and appointed in SC category. Other candidates against SC category, preferred appeals and one appeal was filed by Chandan Kumar Jaiswal and the appellant also filed an appeal.

4. Vide common order dated 14.09.2011, the District Appellate Authority gave a finding that in BC category Ranjan Yadav and Chandan Kumar Jaiswal had appeared in the counselling but their original documents were not accepted. Since Amit Kumar was the son of Panchayat Secretary, he was given undue advantage and appointed and therefore the selection of Amit Kumar was set aside. One of the appellants from the seven appeals preferred the writ petition before this court which was numbered as CWJC No. 5485 of 2012, wherein the matter was remanded back to the State Appellate Authority. Respondent Chandan Kumar Jaiswal then filed an appeal before the appellate authority and considering all the aspects, the



District Appellate Authority vide its order dated 12.09.2012 found Chandan Kumar Jaiswal to be meritorious and directed his employment in place of Amit Kumar whose appointment has been declared illegal and cancelled in the earlier proceedings. Accordingly, Chandan Kumar Jaiswal was given appointment.

5. The petitioner did not file any appeal before the District Appellate Authority nor he challenged the order passed in favour of Chandan Kumar Jaiswal. He filed an appeal before the District Appellate Authority in 2015 claiming himself to be higher meritorious than Chandan Kumar Jaiswal. The same came to be decided by the District Appellate Authority on 19.12.2015 holding that the appellant's claim in the previous proceedings has not been accepted. It was noticed that he did not participate in the counselling. Thereafter, he filed a writ petition before the High Court bearing C.W.J.C No. 2842 of 2016. The High Court disposed of the writ petition permitting the petitioner to file appeal before the State Appellate Authority. The State Appellate Authority has rejected the claim of the petitioner, and therefore, he is before this court again.

6. Counter affidavit was filed by the respondent no.9 State and it has been pointed out that the petitioner never participated in the counselling process, and therefore, his name



did not figure in the merit list drawn by the concerned employment unit, while the name of Chandan Kumar Jaiswal and one Ranjan Yadav was in the said merit list. Since he did not participate, his merit could not be assessed vis-a-vis those who have participated in the counselling. The State Appellate Authority has also given a finding that not only the petitioner absented himself from counselling he also has not been vigilant about his rights and remained silent up to 2015.

7. This Court noticed that in the earlier proceedings, before the Appellate Authority, the order was not passed in favour of the petitioner. However, he did not challenge it before any court. The order of the District Appellate Authority granting no relief to the appellant is of 14.09.2011. Thus, apart from the fact that he did not participate in the counselling and his name does not find place in the merit list he is also been found to be guilty of laches. This court finds that several years have passed by. The petitioner's merit vis-a-vis that of Chandan Kumar Jaiswal can not be assessed by this court in absence of the petitioner's name not been included in the merit list on account of remaining absent during counselling. In the opinion of this Court, even if a person may be having higher merit but fails to appear for counselling, cannot claim right of



consideration for appointment over others on the basis of his merit. The non-participation of a candidate in counselling is fatal and his claim shall be treated as having been abandoned on account of non-participation.

8. Keeping in view thereof, the view taken by the State Appellate Authority does not warrant any interference. No illegality can be said to have been committed.

9. The writ petition is devoid of merit and is accordingly dismissed.

(Sanjeev Prakash Sharma, J)

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AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

