

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18131 of 2011

Sanjay Kumar Singh Son of Kharag Narayan Singh, Resident of Village-
Bihat Tola Gurdaspur, P.S.- Barauni, District- Begusarai.

.... Petitioner/s

Versus

1. The State of Bihar through Secretary, Human Resources Department,
New Secretariat Belly Road, Patna
2. The Selection/Appointment Committee of Primary Panchayat (South)
Under Barauni Block, District- Begusarai headed and represented by
its Mukhiya
3. Mukhia Malhipur Gram Panchayat (South), Under Barauni Block,
District- Begusarai
4. Panchayat Secretary, Gram Panchayat Raj, Malhipur (South), Under
Barauni Block, District- Begusarai.
5. District Teacher Employment Appellate Authority, Begusarai through
Member.
6. Dhiraj Kumar Singh Son of Late Sachidanand Singh, Resident of
Village- Sahuri, P.S.- Birpur, District- Begusarai.

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Dronacharya, Adv.

For the respondent no.2 : Mr. Pramod Kumar, Adv.

For the State : Mr. Nivedita Nirvikar, Adv. GP 10

Mr. Vikash Kumar Pankaj, Adv. AC to GA 10

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL ORDER

6 07-03-2014 Heard learned counsel for the petitioner and learned
counsel for the private respondent.

In this case, the petitioner is challenging the order dated 22nd August 2011 passed in Case No. 1079 of 2009 whereby and whereunder the appeal of respondent no. 6, Dhiraj Kumar Singh was allowed and direction was given to appoint him on his earlier post i.e. Panchayat Teacher which compelled the petitioner to file the present writ petition.

The petitioner and respondent no. 6 were the candidates for Panchayat Teacher in Gram Panchayat Raj Malhipur, Barauni. As per their statements, Dhiraj Kumar Singh, respondent no. 6 has obtained 702 marks i.e. 78% in I.A. and his name was standing at serial no. 3 whereas the petitioner, Sanjay Kumar Singh has obtained 583 marks i.e. 64.77% in I.A. and his name was standing at serial no. 146.

A merit list was prepared and on that basis Dhiraj Kumar Singh was appointed on 2nd July 2007 at roster point no. 1699 but on the next day, the objection was raised by the petitioner about the fraud played by respondent no. 6 to concerned Panchayat Secretary vide his application dated 3rd July 2007 where the petitioner has stated that Dhiraj Kumar Singh has obtained 532 marks, has wrongly been shown 702 marks in I.A. whereas the petitioner has obtained 583 marks in I.A. and certainly he has better marks than Dhiraj Kumar Singh was wrongly appointed. He has further submitted that on 6th September 2009 i.e. Annexure-14 shows that Dhiraj Kumar Singh has tendered his resignation which was accepted in the proceeding of Panchayat Samiti in its meeting dated 10th July 2007 (Annexure-15) in item No. 2 where it has been mentioned that Dhiraj Kumar Singh had given his consent and later on, on 6th July 2007 he has tendered his resignation and

same was accepted and after that a fresh counselling was conducted. When none appeared, ultimately the petitioner was appointed on roster point no. 1699.

The counsel for the petitioner submits that earlier the Panchayat Secretary, Malhipur was one Upendra Kumar and later on, Duniya Lal Paswan became Panchayat Secretary on 6th September 2009 and the charge report i.e. Annexure-14 shows that there is an entry at item No. 7 about the resignation letter of Dhiraj Kumar Singh.

It has further been submitted that while the petitioner was working on the post of Panchayat Teacher, Dhiraj Kumar Singh filed an appeal without impleading him as a party and obtained ex parte order in his favour and on that basis he approached the concerned Panchayat for his joining which is under challenged in this proceeding whereas the counsel for the private respondent in his submission admitted, Dhiraj Kumar Singh obtained 522 marks and not 702 marks in I.A. and he has never shown his marks as 702. He has further submitted that Dhiraj Kumar Singh has never tendered his resignation rather he was terminated from service on 10th July 2007 which is apparent from Annexure-6 is the letter of Panchayat Secretary, Malhipur where it has been mentioned, about the submission of forged

marks sheet led to his termination from service.

Counsel for respondent no. 6 has drawn attention of this Court to another charge report part of Annexure-F at page 84 of this brief which shows that the record does not show about resignation in items no. 7 about the resignation of Dhiraj Kumar Singh.

Two documents, contradictory to each other, have been filed in the present petition. It is admitted fact that Dhiraj Kumar Singh obtained 522 marks in I.A. whereas the petitioner obtained 583 marks in I.A. At the same time one side shows that the resignation was tendered by Dhiraj Kumar Singh but the other document shows termination of services on the basis of forged certificate. One thing is admitted from both sides that Dhiraj Kumar Singh filed the appeal before the Appellate Tribunal without impleading the petitioner as a party to the appeal, has been explained by Dhiraj Kumar Singh that he was working in different school whereas the petitioner was working in different school and as such, petitioner could not be made as a party but the fact remains that the person, who was ultimately affected by the order of the Appellate Authority, was not heard.

The counsel for the State has fairly submitted that this matter may be remanded back to the Appellate Authority, as

both parties have to place their cases and the Appellate Authority will decide their cases on its own merit.

Having considered the rival contentions of the parties as stated above, the conflicting documents have been filed from both sides at one point, Dhiraj Kumar Singh was terminated from service on account of committing forgery whereas other document shows resignation from service.

Be that as it may, the issue involved disputed question of facts cannot be adjudicated at this stage and it can only be adjudicated by the Appellate Authority who will examine the documents of each party carefully. As it appears from the record that some manipulation has done either by the petitioner or by the private respondent, the Appellate Authority will decide the case including examine the conduct of the parties.

If the Appellate Authority comes to a conclusion that any fraud has been committed, then the Appellate Authority will have a liberty to recommend for an action against erring person in accordance with law.

Accordingly, order dated 22nd August 2011 passed by the Appellate Authority in Case No. 1079 of 2009 is quashed and this matter is remanded back to the concerned Appellate Authority who will decide the case within six months from the date of



receipt/production of a copy of this order.

Accordingly, this petition is disposed of.

(Shivaji Pandey, J)

Mahesh/-

