
(2010) 09 PAT CK 0045
In the Patna High Court
Case No : CWJC No. 942 of 2008

Aarti Kumari

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 08-09-2010

Acts Referred:

Citation : (2011) 2 PLJR 674

Hon'ble Judges : J.N. Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

J.N. Singh, J.—Heard learned Counsel for the Petitioner and learned Counsel for the State.

2. Petitioner's challenge in this writ application is to an order dated 27.11.2007 passed by the Divisional Commissioner, Saran Division in Case Nos. 33-101/2007, as contained in Annexure-12, which has been passed in terms of the order of this Court dated 15.5.2007 in C.W.J.C. No. 1470 of 2007 (Annexure-8) . Petitioner had earlier come to this Court challenging the process of appointment made for appointment of Panchayat Teacher in Agahara Panchayat, Prakhand Marhaura, District-Saran.

3. As per the case of the Petitioner noticed by this Court in earlier order, Petitioner was having higher marks in Intermediate Examination and she had applied for her appointment but she was not considered and her name was not included in the panel and was not appointed, whereas candidates having lesser marks were selected and appointed by the Respondents. Before this Court, learned Counsel for the Petitioner pointed out that a representation dated 22nd November, 2006 by the father of the Petitioner had already been filed which was pending before the authorities. Therefore, this Court disposed of the writ application with a direction to the Divisional Commissioner, Saran to dispose of the representation expeditiously, preferably within a period of three months from

the date of receipt/production of a copy of the order.

4. Accordingly, Petitioner filed representation, as contained in Annexure-9 enclosing the said order of this Court as well as copy of the writ application alongwith Annexures. The Commissioner, Saran Division noticed the Panchayat Secretary and Mukhiya and heard them besides learned Counsel for the Petitioner. After hearing the parties, he came to the conclusion that the Petitioner had not appeared in the counseling and on the basis of some forged documents she had filed the application. It was also found that the application submitted by the Petitioner for consideration of her case was also suspicious. He also found that all applications on behalf of the Petitioner were filed by her father and Petitioner had never appeared. On the basis of these findings, the said representation of the Petitioner was rejected.

5. Learned Counsel for the Petitioner submits that the Respondent Commissioner has blindfolded accepted the submissions of Mukhiya and Panchayat Secretary and he did not call for the counseling register to verify as to whether Petitioner had signed on the register or not, and without such verification, he came to the finding that the Petitioner had not appeared in the counseling.

6. Process for appointment of Panchayat Teachers contains three stages. First stage is that on notification of vacancies, applicants apply and applications are received with photocopies of certificates enclosed with the applications. Second stage is that the date for counseling is fixed and candidates are informed to appear in the counseling alongwith their original certificates. Before the actual counseling is held, certificates of candidates in original are verified and thereafter if the certificates are found to be genuine as per requirement of eligibility for the post, they are called for counseling. Rejection of the representation of the Petitioner by the Commissioner is on the ground that she had not appeared in the counseling. The Commissioner has re-, corded in his order that the certificates were got verified by her father and Petitioner had not herself appeared in person.

7. Learned Counsel for the Petitioner submitted that Petitioner had appeared in person and had- signed on the main counseling register which the Commissioner ought to have called for and checked before coming to the finding that she had not appeared in the counseling.

8. This Court, with a view to verify whether Petitioner had taken the said stand earlier before the authorities or this Court, has looked to the representations filed on behalf of the Petitioner earlier to the authorities, and as noticed in the earlier order of this Court, the representation filed by the father of the Petitioner dated 22.11.2006. The representations are Annexure-5 series with the present writ application also. The documents show that the representations filed before different authorities have identical averments and the contents are almost word to word same. In the writ application, nowhere it has been stated that the Petitioner had appeared for counseling and had signed on the main register.

Statement is made that she had appeared and certificates were verified, still she was not included in the merit list. Thus, in the earlier objections filed on behalf of the Petitioner, there is no stand of the Petitioner that she had appeared in the third stage of counseling and had put her signature on the counseling register. From the order passed by this Court in the earlier writ application also, it appears that the Petitioner did not take this specific stand before this Court that she had appeared in the counseling and had put her signature on the counseling register.

9. The next document of the Petitioner is her representation filed before the Commissioner pursuant to the earlier order of this Court. In that representation also, there is no averment at all that she appeared in the counseling and had put her signature on the counseling register. At this stage, learned Counsel for the Petitioner points out that in paragraph 11 of the earlier writ application, as also in the present writ application, it has been stated that "after the last date for submission of application, the Respondent Nos. 9 and 20 had scrutinized all the applications and had called all those applicants for counseling whose application forms was found in order and they had the eligibility for appointment as a Panchayat Shikshak. The Petitioner was also called for counseling and in response thereto she appeared for counseling before the Respondent Nos. 9 and 10 on 16.11.2006 and had produced her original testimonials for counseling before the Respondent Nos. 9 and 10 as a candidate at serial No. 22 and after verification of the certificates, the Panchayat Secretary, the Respondent No. 10 had placed a note to this effect on the back of the receipt of the application form". In support of this pleading, the certificate dated 16.10.2006 is annexed as Annexure-4. This pleading of the Petitioner also does not show that she had put her signature on the counseling register. Therefore, nowhere this stand was taken by the Petitioner earlier at any stage. In the earlier pleading, as noticed above, it was stated that after verification of certificates a note was put by the Panchayat Secretary in respect of verification of her certificates. The note which was annexed with the earlier writ application as Annexure-4 has also been annexed with the present writ application as Annexure-4. This is on a blank paper and it is noted that all certificates are verified in respect of serial No. 23. The date put on this note is in controversy. Learned Counsel for the Petitioner submits that the date was 16.11.2006 i.e. the date on which counseling was held. This date reflects in Annexure-5 series also. One significant fact which has to be noticed with respect to Annexure-4 is that the Stamp on Annexure-4 is not of Panchayat Secretary as claimed by the Petitioner but is of Panchayat Sevak. Learned Counsel for the Petitioner submits that Panchayat Sevak is Panchayat Secretary. Even if this note is accepted to be valid, participation of the Petitioner in the process is complete only upto the second stage of process. After this verification of certificates, last stage was physical appearance in the counseling and signing on the counseling register. So far last stage of the process is concerned, Petitioner never raised that ground anywhere earlier and has never claimed that she had physically appeared in the counseling and had put her signature on the counseling register.

10. Today, entire argument of learned Counsel for the Petitioner is confined to the procedural illegality committed by the Commissioner in accepting the stand of the Respondents that Petitioner had herself not appeared in the counseling, without calling for the counseling register to verify whether she had put her signature on the same or not.

11. This plea of learned Counsel for the Petitioner is the ingenuity of the learned Counsel appearing in the case and not supported by any plea or any stand of the Petitioner in this respect made earlier at any point of time. Moreover, this is highly controversial question of fact which required determination only if such plea was specifically raised by the Petitioner at the earliest stage or even at the time of arguments before the Commissioner. From the order it appears that Petitioner was represented before the Commissioner through a learned Counsel. This is also not the stand of the Petitioner before this Court in this case that this claim was made by her counsel before the Commissioner which was not noticed by him.

12. In the circumstances, this Court finds it difficult to accept novel plea of learned Counsel for the Petitioner at this stage of the writ application. The application is accordingly dismissed.