
(2015) 07 PAT CK 0152

In the Patna High Court

Case No : LPA No. 1405 of 2012 in CWJC No. 23424 of 2011

Anjana Kumari

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 24-07-2015

Acts Referred:

Citation : (2015) 4 PLJR 245

Hon'ble Judges : Navaniti Prasad Singh and Nilu Agrawal, JJ.

Bench : Division Bench

Advocate : Ratan Kumar, for the Appellant; Dinbandhu Singh and Satyeshwar Prasad, for the Respondent

Final Decision : Disposed Off

Judgement

Navaniti Prasad Singh, J.—The present controversy relates to selection and appointment of Panchayat Teachers. The writ petitioner, who is appellant, claims that she had applied for the position along with hundreds of others. As per the merit list published, she claimed that she was the most meritorious candidate but mischievously, by committing fraud, her name was deleted from the merit list. Selections were made in a highly irregular manner. This gave her cause to move the Block Development Officer (BDO) who was designated appellate authority in the matter in terms of Rule 18 of the Bihar Panchayat Primary Teachers (Recruitment and Service Conditions) Rules, 2006. There were 15 applicants before the BDO as the appellate authority challenging the whole selection process. BDO issued notice to the Panchayat Secretary and others and after hearing the matter, by his order dated 13.3.2008, set aside the entire selection process. While doing so, he also directed the Block Education Extension Officer to make further enquiries so as to facilitate lodging of first information report against the guilty persons. This order is Annexure-7 to the writ petition. Pursuant thereto, the authorities, at the Panchayat level, should have cancelled the whole process and have restarted the process. Nothing was being done. Accordingly, the writ petitioner moved the District Teachers Appellate Tribunal which had since

been constituted as the Appellate Tribunal in place of the BDO. Before the District Teachers Appellate Tribunal, it was disclosed by the Panchayat Secretary that subsequently the BDO, by order dated 31.5.2008 recalled his earlier order without notice to any party. This order is Annexure-8 to the writ petition. In view of the aforesaid fact and in view of the fact that the Tribunal was a substitute for BDO as the Appellate Tribunal, the Tribunal refused to interfere. Accordingly, she moved this Court and the learned Single Judge agreed with the Tribunal and, without noticing the fact that the BDO had recalled his earlier order which he was not competent to do, dismissed the writ petition. Hence, this appeal. Pursuant to notices issued by this Court, all the parties have appeared including persons who had been selected at the first instance and with their consent, this appeal is being taken up for its final disposal at this stage itself.

2. On behalf of Panchayat Secretary, it is stated that in fact the writ petitioner/appellant had made no application at all. This, in our view, is irrelevant inasmuch as this is the stand taken by the Panchayat Secretary before the BDO at the first instance and the BDO had rejected it by his order dated 13.3.2008 which is Annexure-7 to the writ petition. The Panchayat Secretary took no remedial steps to challenge that order which was statutory order made as an appellate authority. Instead of going pursuant to the order of the BDC, they surreptitiously filed a report before the BDO and the BDO, forgetting that he had exercised the powers as a statutory appellate authority, without notice to any party, without hearing any one, recalled and set aside his earlier order and restored the selection process. Such a process, in our view, is not only unauthorized but unknown to law. When BDO passed the first order on 13.3.2008 after hearing the parties, he had passed the order as a statutory authority exercising power under Rule 18 being the appellate authority. That order may have been wrong or right, it matters little. It was a final order. Once that order was passed, he became functus officio. The Rules do not confer any power of review much less a substantive review. Thus, clearly the order of the BDO dated 31.5.2008 was an order which was void ab initio. The learned Single Judge failed to notice this aspect of the matter.

3. Thus, though the District Teachers Appellate Tribunal was correct in not interfering with the order of the BDO because BDO was not an authority subordinate to the Tribunal but the Tribunal was a substitute to BDO and, therefore, the order of the Tribunal on this count cannot be faulted yet, in our view, on the facts as found above, it was a fit case in which the learned Single Judge ought to have interfered and set aside the order passed by the BDO on the ground that he exercised review jurisdiction which he did not have.

4. We, thus, have no option but to allow the appeal, set aside the order of the learned Single Judge as also the order of the BDO dated 31.5.2008 and restore the order of the BDO dated 13.3.2008. The Panchayat Secretary is directed to act accordingly and start the selection process all over again and complete it within a period of two months from today. This appeal is, accordingly, disposed of.