
(2011) 03 PAT CK 0017

In the Patna High Court

Case No : CWJC No. 8272 and 13535 of 2008

Aradhna Kumari and Rummana Khatoon

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 08-03-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 59 BLJR 2552 : (2011) 2 PLJR 822

Hon'ble Judges : Ravi Ranjan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Dr. Ravi Ranjan, J.—I.A No. 4993 of 2008 has been filed for impleading Rumana Khatoon, daughter of Md. Wazid Ali, as has been described in paragraph-"2" thereof, as a party in C.W.J.C. No. 8272 of 2008.

2. The prayer is allowed.

3. The Petitioner in C.W.J.C. No. 8272 of 2008 is permitted to implead the aforesaid Rumana Khatoon as Respondent No. 8 in the aforesaid writ application.

4. Both the writ applications have been filed against the order dated 9.5.2008 passed by the District Magistrate, Purnea, however, challenge is to the different part thereof. Thus, both have been heard together and are being disposed of by this common order.

5. I have heard parties.

6. C.W.J.C. No. 8272 of 2008 has been filed on behalf of the Petitioner challenging the order as contained in Annexure-T passed by the District Magistrate, Purnea on 9th of May, 2008, whereby her appointment to the post of Shiksha Mitra made vide order dated 23.12.2005 has been held to be illegal and having obtained in connivance with the then Mukhiya, Panchayat Secretary and the Block Education Extension Officer concerned.

7. Learned Counsel challenges the aforesaid order basically on three grounds. Firstly, that the District Magistrate-cum-Collector concerned was not authorised to entertain such complaint and pass such order after coming into force of the Bihar Panchayat Prarambhik Shikshak (Niyojan Avam Seva Sart) Niyamawali, 2006 (hereinafter referred to as "the Rules") with effect from 1st of July, 2006. Thus, it has been contended that the order is without jurisdiction. Secondly, it is submitted that the Petitioner was appointed vide Annexure-"5/A" dated 23.12.2005 at the post of Shiksha Mitra in an Upgraded Middle School and she has, subsequently, been absorbed under Rule 20 of the Rules as a Block Teacher and, thus, the complaint against her could have only been entertained by the Deputy Development Commissioner concerned as per the provisions as contained under Rule 18. Thus, it is contended that once the Petitioner has been absorbed as a Block Teacher, her appointment as a Shiksha Mitra could not have been set aside. It is also contended that the documents produced by the Petitioner have not been considered by the District Magistrate-cum-Collector concerned in its proper perspective and, thus, it is contended that the order is fit to be set aside.

8. A counter affidavit has been filed on behalf of the Respondent No. 4, the District Superintendent of Education, Purnea.

9. Learned Counsel appearing for the State submits that the Respondent No. 8 had earlier filed a writ application bearing C.W.J.C. No. 12599 of 2006, wherein the present Petitioner had been impleaded as a party-Respondent No. 7 and vide order dated 10.7.2007 as contained in Annexure-"5" to the C.W.J.C. No. 13535 of 2008, the aforesaid writ application was disposed of with a liberty to the Petitioner to file a representation before the District Magistrate, who was directed to dispose of the same with a reasoned order in accordance with law.

10. Pursuant to the aforesaid order, the Respondent No. 8 had filed her representation before the District Magistrate concerned. Notice was issued to the Petitioner, who had appeared and filed her response alongwith the documents and after considering the documents and the materials available on record including the inquiry report submitted by the District Superintendent of Education concerned as contained in Annexure-"D" to the counter affidavit, the impugned order has been passed as the District Magistrate has found that gross illegality has been committed in connivance with the earlier Mukhiya, Panchayat Secretary as well as Block Education Extension Officer and F.I.R. has also been directed to be lodged against them, which has eventually been done and a criminal case is proceeding against them in accordance with law.

11. Prima facie, the first submission of the Petitioner that after coming of the Rules-, the District Magistrate was not a competent authority to decide the lis under Rule 18, appears to be attractive. However, the Collector concerned has passed the order only in compliance of the order of this Court. Order dated 10.7.2007 passed in C.W.J.C. No. 12599 of 2006 has been appended as Annexure-"5" to the C.W.J.C. No. 13535 of 2008. A learned Single Judge of this Court after considering paragraph-14 of the Memo No. 1458 dated 11.8.2004 has

found the District Magistrate competent to dispose of the representation filed by the Petitioner of that case. The Petitioner, even after getting knowledge of the order, admittedly has not made any attempt to file any application or appeal to get such order modified. Therefore, she can only succeed if she could satisfy this Court that some prejudice has been caused to her due to such order. From the impugned order, it appears that the District Magistrate concerned has considered the documents including the proceeding of the Sukh Suvidha Committee and entire selection process including the merit list and has come to the conclusion that in the merit list, one Maimuna Farheen was at the top and on the second place, Rumana Khatoon, i.e., the Respondent No. 8, has been placed whereas the Petitioner was placed at third position. Since Maimuna Farheen has written that she is not interested in joining the post, according to the merit list, the Respondent No. 8 should have been given appointment. However, her appointment was not made on a flimsy ground that she was residing at a distant place which is 31/2 kilometers away and, thus, she could not have served the purpose. The District Magistrate has come to the conclusion that gross illegality has been committed in connivance with the then Mukhiya, Panchayat Secretary etc., which is apparent from the inquiry report conducted by the District Superintendent of Education as directed by the District Magistrate, which has been brought on record as Annexure-"D" to the counter affidavit. Even before this Court, the Petitioner could not show that she was above the Respondent. No. 8 in the merit list and, thus, her appointment had illegally been cancelled. In above view of the matter, it is very difficult for this Court to exercise its discretionary power under Article 226 of the Constitution of India in favour of the Petitioner. The Petitioner, admittedly being at lower place in the merit list, can not claim appointment.

12. So far as the second submission is concerned, even if the Petitioner has been absorbed as a Block Teacher after coming into force the 2006 Rules, the same would not come to her help as her initial appointment as Shiksha Mitra has been held to be illegal as aforesaid. Therefore, her subsequent absorption at the post of Block Teacher has also to go as a consequence.

13. It has also been urged on behalf of the Petitioner that certain documents have not been considered by the District Magistrate concerned.

14. Learned Counsel has drawn attention of this Court towards the averments made in paragraphs-17, 18 and 19 in this regard. However, from none of the documents, the Petitioner could demonstrate before this Court that she was placed at higher rank than the Respondent No. 8 in the merit list. So far as the averment made in paragraph-17 which refers to Annexure-"14", it does not appear that the same was addressed to the District Magistrate. However, the point has been taken therein that the Respondent No. 8 for the last one year was working as Anganwari Sevika. The consideration of the same would be of no purpose for the reason that the appointment has not been offered to the Respondent No. 8 by the impugned order. Simply the appointment of the

Petitioner has been held to be illegal. It is also not demonstrable that the Respondent No. 8 has refused joining. It has also been submitted that the appointment letter was earlier issued to the Respondent No. 8. However, the District Magistrate, in the impugned order, has clearly stated that the then Mukhiya alongwith Panchayat Secretary and other officials have connived to ascertain that somehow the Respondent No. 8 could not join the post and the Petitioner could be appointed, which is also clear from the inquiry report conducted by the District Superintendent of Education as contained in Annexure-"D" to the counter affidavit. It has also been stated in paragraph-8 of the counter affidavit that though on 3.1.2006, appointment letter was issued to the Respondent No. 8 but she was not allowed by the concerned Block Education Extension Officer to get training as the present Petitioner has approached the concerned Block Education Extension Officer and produced the Provisional Certificate of Intermediate Degree whereby she had claimed to have passed her Intermediate Examination in First Division and also claimed to have better marks and weightage than Rumana Khatoon. On the basis of that Intermediate Certificate, somehow, the Petitioner managed to get herself admitted in the training by the concerned Block Education Extension Officer. These facts stand indicated in the inquiry conducted by the District Superintendent of Education concerned.

15. It has been urged on behalf of the State that the Block Education Extension Officer was not authorized to look and review the matter of selection at his own level and alter the merit list which has been made by the Sukh Suvidha Committee. Thus, in the opinion of this Court, the Petitioner has miserably failed to demonstrate that she had correctly been appointed by the concerned authority.

16. As a result, I do not find any merit in the submissions raised on behalf of the Petitioner.

17. Learned Counsel for the Petitioner also submits that the emolument paid, to the Petitioner has been directed to be recovered which is illegal. However, the District Magistrate concerned has already stated in his order that the Petitioner was paid in compliance of the letter dated 16.2.2008 of the Regional Deputy Director of Education, Purnea on the basis of the affidavit filed by her that in case, her appointment is found to be illegal, the amount would be liable to be recovered.

18. In view of the fact that by the impugned order, the Petitioner's appointment has been found illegal and obtained by managing the officials and in their connivance, this relief is also not fit to be granted to the Petitioner.

19. As a result, this writ application fails and is, accordingly, dismissed.

20. C.W.J.C. No. 13535 of 2008 has been filed against the another part of the same order passed by the District Magistrate, Purnea, appended as Annexure-"6" to this writ application, whereby the Petitioner's claim of her appointment as Panchayat Shiksha Mitra in place of Aradhna Kumari (Petitioner

of C.W.J.C. No. 8272 of 2008) has been refused on the ground that after coming into (sic) the earlier Rules, Circulars, Orders, Regulations etc. stands superseded and nullified. Since it is admitted position that in view of the provisions contained in Rule. 20(i) of the Rules, all the earlier rules, memorandums, orders or circulars etc. stand obliterated after enforcement of the Rules, and there is no post of Panchayat Shiksha Mitra existing on date, she could not have been appointed as such.

21. So far as the appointment of Prakhad Panchayat Teacher is concerned, appointment can only be made after following the procedure of selection contained in the Rules. Since Petitioner has never worked as a Shiksha Mitra, there would be no question of her absorption in terms of Rule 20(iii) either.

22. I do not find any illegality in that part of the order also. Thus, this writ application also stands dismissed. However, it is made clear that this order would not come in the way of the Petitioner of this writ application (C.W.J.C. No. 13535 of 2008), if a fresh advertisement is made and she is willing to apply for the same. In case such advertisement is made and she duly applies then she will also be considered alongwith the other candidates in accordance with the procedure laid down in the concerned Rules if the same permits otherwise.