

(2020) 08 PAT CK 0016

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 8953 Of 2018

Arvind Kumar

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 14-08-2020

Acts Referred:

Bihar Panchayat Primary Teacher (Appointment And Service Conditions) Rules, 2012 — Rule 8

Citation : (2020) 08 PAT CK 0016

Hon'ble Judges : Mohit Kumar Shah, J

Bench : Single Bench

Advocate : P.K.Shahi, Zainul Abedin, Awdhesh Kumar Mishra, Pratap Sharma, Ajay Kumar, Rita Rai

Final Decision : Allowed

Judgement

1. The present writ petition has been filed for quashing the order dated 18.4.2018 passed by the learned State Appellate Authority in Appeal No. 51 of 2017 whereby and whereunder the appeal filed by the Private Respondent No. 11 has been allowed.

2. The brief facts of the case are that the petitioner herein passed his matriculation examination in the year 2001 in first division, the intermediate examination in second division, B.A. (Hons) in Geography in second division and thereafter he has also passed the T.E.T Exam. It is the case of the

petitioner that he is a permanent resident of the State of Bihar, as is evident from his residential certificate issued by the Circle Officer, Bagaha-I,

West Champaran and belongs to the backward class, as is also apparent from the caste certificate issued by the Circle Officer, Bagaha-I, West

Champaran. The petitioner is stated to have passed Bihar Elementary Teachers Eligibility Test (herein after referred to as the ""BETET"") in the year

2011, held by the Bihar Examination Board, Patna, hence, is qualified to be appointed as a Primary Teacher. In the year 2012, the petitioner had

applied for appointment as Block Teacher at Bagaha I. The Appointment Rules of the year, 2006 clearly mentions that for appointment as Block

Teacher, a candidate must be a citizen of India and should be permanent resident of State of Bihar. Ultimately, the petitioner is stated to have not been

appointed as a Block Teacher, hence, he was compelled to file a case before the learned District Appellate Authority, West Champaran at Bettiah

bearing Case No. 25 of 2015, which was allowed by the learned District Appellate Authority by an order dated 9.9.2016 and the following findings

were recorded in the said judgment, gist whereof is reproduced herein below:-

(i) It is apparent from the materials on record that under a pre-planned scheme, private respondent, namely, Chhote Lal Patel had purchased .04

decimal of land in the State of Bihar vide document dated 2.7.2010 wherein he has depicted his address to be that of the State of Bihar and his caste

as 'Kurmi', a caste for which reservation is provided in the State services.

(ii) The said Chhote Lal Patel, showing himself to be resident of the State of Bihar and belonging to the reserved category, had applied for BETET-

2011 Exam whereas on that date, he was not the resident of the State of Bihar inasmuch as he neither possessed the residential certificate nor the

caste certificate. The examination was held on 20.12.2011 and 21.12.2011 and the result of the exam undertaken by the said Chhote Lal Patel was

declared under the backward category whereas he did not possess the reservation and residential certificate.

(iii) The said Chhote Lal Patel applied for appointment on the post of Teacher at Block-Bagaha-I, District-West Champaran under the category VI-

VIII and he was granted appointment on the post of Teacher on 19.11.2014 under the reserved category.

(iv) The appointing unit should have considered that a resident of some other State could not have been granted the benefit of reservation merely on

the basis of such person having purchased land in the State of Bihar. The said Chhote Lal Patel has obstructed the genuine backward class candidate

by merely purchasing a small piece of land for the purpose of passing the BETET-2011 Examination under the BC category and obtaining appointment

illegally on the post of teacher.

In such view of the matter, the learned District Appellate Tribunal, West Champaran, by a judgment dated 09.09.2016 had declared the said Chhote

Lal Patel to be a general category candidate and directed the Teachers Recruitment Committee of Block Bagaha-I, under the district of West

Champaran, to take up the appointment issue of the petitioner herein under the BC category as also consider other eligible BC category candidates

while finalizing the merit list for appointment of teachers.

3. It is the case of the petitioner that after the aforesaid order dated 09.09.2016 was passed by the Ld. District Appellate Authority, the petitioner was

selected on 27.3.2017 by the Block Niyojan Samiti Bagaha-I, West Champaran and was posted at Government Middle School, Tola Parsauni,

Bagaha-I vide memo no. 303 whereupon the petitioner had joined on 30.3.2017 and is working since then.

4. It appears that the private respondent no. 11, namely, Sri Chhote Lal Patel had challenged the aforesaid order dated 09.09.2016 passed by the

District Appellate Authority, West Champaran by filing an appeal bearing Appeal (Case) No. 51 of 2017 before the Ld. State Appellate Authority,

Patna, which has been pleased to allow the appeal of the respondent no. 11 by the impugned judgment dated 18.04.2018, relevant findings whereof are

quoted herein below:-

(i) The appellant had claimed the employment in the said category on the basis of documents appended at Annexures-1, 2 and 3. Annexure-1 is the

copy of the Sale Deed dated 24-02-2010, by which the appellant had acquired 04 decimal of land in Bagha. Annexure-2 is the copy of the Caste

certificate dated 24.02.2012 issued by the C.O., certifying that the appellant belongs to B.C. category. Annexure-3 is the Residential certificate dated

28-05-2012 issued by the C.O., Bagha-II, declaring that the appellant is the resident of Village/Town-Bheda Chura undr Laukariya P.S. in Block-

Bagaha-2, Sub-Division-Bagha in West Champaran (Bettiah). The learned D.A., on consideration of the case of the parties, found the Caste

certificate and the Residential certificate wrongly issued to the appellant by the C.O., Bagha-II and set aside those certificates. It was further found

that only the appellant and the private respondent were present during the selection process claiming appointment on the post of Block Teacher in the

said category. The appellant having found not entitled to be considered against

the B.C. (Male) category, the D.A. directed the Employment

Committee of Block Bagha-I to take up appointment issue of Arvind Kumar (private respondent) in B.C. category as the most urgent issue. It further

directed that in case of finalisation of the merit list, the case of other B.C. category candidates should also be taken into account.

(ii) The core issue is with respect to the definition of 'resident of Bihar'. In other words, who shall be treated as the resident of the State.

Pertinently, it may be noted that the same is not defined by the Rules governing the selection process. Both the parties have, therefore, referred to the

definition of such 'residency' in the context of other Rules/Act or Circular of the Government. However, there is no dispute among them that if

the appellant is held to be the resident of the district in the State of Bihar, then his selection as Teacher cannot be faulted. According to the appellant,

he is a resident of the district, after purchase of land in the year 2010 and getting all amenities such as electric connection etc. The land stand mutated.

The sale document and the revenue records such as Khatian etc. are the relevant papers/ documents that determine the 'residency' of the

applicant. It is also submitted that the appellant had filed application for deleting his name from the Electoral Roll/Voters List prepared and published in

the State of Uttar Pradesh. Secondly, it has been urged that in the context of the Rules in question, the State Government has issued an order

clarifying that the Caste certificate / Residency certificate can be issued by the C.O. of the concerned Anchal. The appellant has enclosed the Voters

List of the constituency in which he is currently staying, which contains his name. The Caste certificate and the Residency certificate, it is submitted,

have rightly been issued by the C.O. To support his claim of residency, the appellant has annexed the certificate issued by the Mukhiya of the Gram

Panchayat Raj Yamunapur Tarwaliya, Bagha-II.

(iii) Considering the submission made at the Bar on the point of validity of the Caste certificate and the Residency certificate issued in favour of the

appellant by the C.O., Bagha-II, the Court has no hesitation to hold that the Government had already clarified that such certificate(s) can be issued by

the Circle Officer. Another contention of the appellant is that the District Authority could not have set aside the Caste certificate and the Residency

certificate, as those certificates were issued after proper inquiry. It is not the

case of any of the party that the applicant in the process of selection must be the original resident of the State (ewy fuoklh). In order to verify the claim of residency, the administration is required to make appropriate inquiry and look to the revenue records as well. The appellant has produced few documents to show that he was the resident of the district when he made application.

(iv) The District Authority noted in the order that the C.O. has not appeared to vouch those certificates issued by him and that the appellant was not a permanent resident of Bihar, inasmuch as he had no land/ residential plot recorded in the Khatiyani. In the considered view of the Court, the consideration made by the District Authority for setting aside the Caste certificate and the Residency certificate were not appropriate. The Rule governing the field provides that the applicant should be a resident of Bihar. It does not say the permanent resident of Bihar. On consideration of the submission made by the parties and in the light of the discussions made above, the Court finds substance in the submission of the appellant. The appeal is allowed. The order dated 9.9.2016 passed in Appeal No. 25 /2015 by the District Authority is set aside. The order present, however, shall not preclude the State respondents from making inquiry with regard to validity / propriety of the Caste certificate / Residency certificate issued by the C.O., Bagha-II in favour of the appellant in accordance with law.â??

5. The learned Senior Counsel for the petitioner has submitted that the name of the respondent no. 11 figures in the voter list of the year, 2015 pertaining to the State Legislative voters List, Siswa (General) in the State of UP, which shows that the respondent no. 11 was not the resident in the State of Bihar in the year, 2012. It is submitted that the caste and residential certificate issued to the respondent no. 11 is forged and fabricated inasmuch as the same has not been counter signed by the District Magistrate. It is also stated that merely acquiring a small piece of land, does not make the respondent no. 11, a permanent resident of Bihar. Other discrepancies have been also referred to inasmuch as the name of the respondent no. 11 has been stated to have been added in the voter list of Valmikinagar legislative assembly, 2015, by committing forgery, showing his address to be house no. 99, however, the said house no. 99 stands in the name of Nageshwar Kewat and his family members. It is further submitted that the

caste certificate issued to the Respondent No. 11 is dated 24.2.2012 showing him to be under the backward category, however, it is intriguing as to

how the petitioner had appeared in the BETET, 2011 examination as a backward category candidate, application for which was required to be

submitted in between 25.5.2011 to 6.6.2011.

6. The learned Senior Counsel for the petitioner has referred to a Constitution Bench judgment, reported in(2018) 10 SCC 312 (Bir Singh vs. Delhi Jal

Board & Others), to contend that person belonging to SC/ST in one State cannot be deemed to be SC/ST person in State of his migration for the

purposes of employment or education. In this regard, paragraph no. 38 of the said judgment rendered in the case of Bir Singh (supra) is reproduced

herein below:-

38. It is an unquestionable principle of interpretation that interrelated statutory as well as constitutional provisions have to be harmoniously construed

and understood so as to avoid making any provision nugatory and redundant. If the list of Scheduled Castes/Scheduled Tribes in the Presidential

Orders under Articles 341/342 is subject to alteration only by laws made by Parliament, operation of the lists of Scheduled Castes and Scheduled

Tribes beyond the classes or categories enumerated under the Presidential Order for a particular State/Union Territory by exercise of the enabling

power vested by Article 16(4) would have the obvious effect of circumventing the specific constitutional provisions in Articles 341/342. In this regard,

it must also be noted that the power under Article 16(4) is not only capable of being exercised by a legislative provision/enactment but also by an

Executive Order issued under Article 166 of the Constitution. It will, therefore, be in consonance with the constitutional scheme to understand the

enabling provision under Article 16(4) to be available to provide reservation only to the classes or categories of Scheduled Castes/Scheduled Tribes

enumerated in the Presidential Orders for a particular State/Union Territory within the geographical area of that State and not beyond. If in the opinion

of a State it is necessary to extend the benefit of reservation to a class/category of Scheduled Castes/Scheduled Tribes beyond those specified in the

Lists for that particular State, constitutional discipline would require the State to make its views in the matter prevail with the central authority so as to

enable an appropriate parliamentary exercise to be made by an amendment of

the Lists of Scheduled Castes/Scheduled Tribes for that particular

State. Unilateral action by States on the touchstone of Article 16(4) of the Constitution could be a possible trigger point of constitutional anarchy and

therefore must be held to be impermissible under the Constitution.

7. The learned Senior Counsel for the petitioner has also referred to a judgment rendered by the Hon'ble Apex Court in the case of *S. Pushpa &*

Others vs. Sivachanmugavelu & Others, reported in (2005) 3 SCC 1 to contend that a migrant SC/ST person of another State cannot be deemed to be

so, within the meaning of Article 341 and 342 of the Constitution of India, after migration to another State.

8. The learned Senior Counsel for the petitioner has also relied on a judgment rendered by the Hon'ble Apex Court in the case of *C handigarh*

Administration & Anr. vs. Surinder Kumar & Others, reported in 2004(1) SCC 530 to contend that each and every state has every right to recognize

a particular community in a particular manner and the ultimate decision with respect to extending the benefit of reservation has to be left to the

respective State.

9. Lastly, the learned Senior Counsel for the petitioner has relied on a judgment, reported in 2009 (2) BLJ (PHC) 160, rendered by a learned Division

Bench of this Hon'ble Court in the case of *Baleshwar Prasad Rajak vs. The State of Bihar & Ors.*, paragraph nos. 14 and 15 whereof are reproduced

hereinbelow:-

14. Having appreciated the rival submission, we find substance in the submission of Mr. Singh and the decisions relied on clearly support his

contention. The terms of advertisement have been quoted in extenso in the preceding paragraph of the judgment and from its plain reading, it is evident

that the requirement is not of permanent resident but the place of origin. The resident may change but not the origin. Further requirement is that the

candidate must be of Scheduled Caste of the State of Bihar. There is no inhibition in migration of a member of the Scheduled Caste from one place to

another but when he migrates, it is well settled, he does not and cannot carry any special rights or privileges attributed to him or granted to him in their

original State.

15. Admittedly, respondent nos. 4 and 5 were born not in the State of Bihar and, according to their own showing, after their father joined the Bihar

Judicial Service in the year 1980, they have started living in the State of Bihar. Intention to settle in the State of Bihar will not make them the members

of the Scheduled Caste of the State of Bihar or for that matter their origin cannot be considered to be of this State. In that view of the matter, we are

of the opinion that respondent nos. 4 & 5 ought not to have been considered for appointment to the post of Civil Judge (Junior Division) against the vacancies reserved for the members of the Scheduled Caste.â??

10. The learned counsel for the Respondent No. 12 i.e. the State Council of Education Research and Training, Patna has submitted, by referring to the counter affidavit filed in the present case, that the brochure of Teachers Eligibility Test-2011 would show that there is no condition, which bars any outsider i.e. those not belonging to the State of Bihar from appearing in the Elementary Teachers Eligibility Test.

11. The learned counsel appearing for the Respondent No. 11 has supported the judgment rendered by the Ld. State Appellate Authority, Patna dated

18.4.2018 and has submitted that the respondent no. 11 had purchased 4 decimal of land on 2.7.2010 in Block Bagaha-II in the District of West

Champanan and has constructed a small house there. It is submitted that for the purposes of appearing in the BETET Examination 2011, there is no

bar that a person not residing in the State of Bihar cannot appear in the said exam. The learned counsel for the Respondent No. 11 has also referred

to the notification dated 24.11.2014 containing the guidelines for appointment of teachers in the primary schools in the State of Bihar for the year,

2014-15, Clause 15 whereof grants exemption from possessing two years diploma pertaining to primary school training for the purposes of

appointment as teachers in Class I-V, as also exemption from possessing the B.Ed Degree for the purposes of being appointed as teachers for the

Class VI-VIII. The said exemption is available for a period upto 31.3.2015.

12. The learned counsel for the Respondent No. 11 has further submitted that the respondent no. 11 had appeared as BC category candidate in the

BETET examination 2011. It is submitted that there is no ambiguity in the order passed by the learned State Appellate Authority, Patna, hence, the

same is required to be upheld.

13. I have heard the learned counsel for the parties and perused the materials on record.

14. First of all coming to the BETET Examination, this Court finds that there is no requirement of a candidate being permanent resident in the State of

Bihar for the purposes of appearing in the said examination, as also has been clarified by the Respondent No. 12 by filing a counter affidavit.

However, now the question would be as to whether the private respondent no. 11 would be entitled to the benefit of backward category for the

purposes of the said BETET Examination, 2011. In the bulletin and brochure published for making an application for BETET, 2011 examination

(Annexure -20 to the writ petition), as per Clause 8, an applicant should be citizen of India and resident of the State of Bihar and further, the same also

provides for grant of benefits to the respective reserved categories. This Court further finds that the last date for submitting the application forms was

10.6.2011 and the examination was to be held on 17.7.2011. The private Respondent No. 11 had filed an application for appearing in BETET

Examination, 2011 whereupon the examination had taken place on 20.12.2011 and 21.12.2011, a date on which the private respondent no. 11 did not

possess the caste certificate showing him to be under the backward category, which was only issued on 24.2.2012, hence, the result of the private

respondent no. 11 issued on 14.5.2012 showing him to be under the backward category and showing the private respondent no. 11 to have passed

BETET-2011 Examination, is based on an incorrect representation made by the respondent no. 11, regarding him belonging to the backward category.

15. As far as appointment on the post of teacher is concerned, the petitioner and the respondent no. 11 appear to have applied for appointment as

Block Teacher before the Block Appointment Committee, Bagaha-I in the year 2012 itself, whereafter the private respondent no. 11 is said to have

been appointed on 19.11.2014.

16. At this juncture, it would be relevant to state that with the coming into force of the Bihar Panchayat Primary Teacher (Appointment and Service

Conditions) Rules, 2012, the 2006 Rules and the connected resolutions / orders / notifications have stood repealed. Thus, considering the various

provisions of the aforesaid Rules, 2012, it is apparent that Rule 8 postulates appointment of teachers as per the reservation Rules notified by the

General Administration Department, Government of Bihar. The said Rules also postulate that the teachers applying for being appointed to class VI to

VIII, which is relevant for the present case, should possess BA/B.Sc educational qualification and two years training diploma in primary teachers

education or should possess 50% marks in BA/B.Sc and B.Ed qualification or should possess 45% marks in BA/B.Sc with B.Ed qualification which

should have been obtained according to the NCTE Regulations, 2002 or should possess other alternative qualifications, with which this Court is not

concerned qua the present case. The subsequent guidelines issued by the Government of Bihar dated 22.6.2012, pertaining to the appointment of

primary teachers, further clarify that the application for such appointment can be made by citizen of India.

17. Thus, from a bare reading of the aforesaid rules and regulations, referred to in the preceding paragraphs, it is clear that for the purposes of

appointment as primary teachers, apart from possessing the basic educational qualifications such as BA/B.Sc, a candidate is required to possess

teachers training certificate (BETET pass certificate in the present case) and should be a citizen of India. This Court is of the opinion that as far as

the private respondent no. 11 is concerned, he being a citizen of India and also possessing the BETET-2011 pass certificate, he would definitely be

eligible to appear in the selection process for the purposes of appointment as a primary teacher in the Block Bagaha-I, District-West Champaran

inasmuch as the eligibility criteria of an applicant being necessarily a resident of the State of Bihar, as prescribed under the Regulations 2006, have

been done away with in the Regulations, 2012, however, the difficulty is that the BETET pass certificate of the private respondent no. 11 is apparently

not valid since he has obtained the same by misrepresenting his caste status in as much as on the date of filing the application for appearing for the

BETET-2011 Examination, i.e. in the year, 2011, the private respondent no. 11 was not in possession of any caste certificate, issued by the competent

authority, showing him to be belonging to the backward category. Moreover, it is not necessary that if the respondent no. 11 belonged to the backward

category in the State of UP, he would automatically be deemed to be under the backward category in the State of Bihar. Therefore, it is held that the

BETET pass certificate of the private respondent no. 11 is illegal, invalid, null and void, having been obtained by misrepresenting his caste status as

also by commission of fraud in as much as on the date of filing of application for appearing in the BETET-2011 examination as also on the date of

examination, which was held on 20.12.2011 and 21.12.2011, the private respondent no. 11 was admittedly not in possession of any caste certificate, issued by the competent authority of the Government of Bihar, showing him to be belonging to the backward category, since the same was issued only on 24.2.2012.

18. Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove, I am of the opinion that the appointment of the Respondent No. 11 on the post of Primary Teacher, Block Bagaha-I cannot be sustained in as much as he has obtained BETET-2011 pass certificate illegally and fraudulently, by misrepresenting the actual facts, hence, since this Court has found the BETET-2011 pass certificate of the private respondent no. 11 to be illegal, null and void, the private respondent no. 11 is held to be not possessing the requisite qualification for the purposes of appointment on the post of Primary Teacher, consequently, it is held that the private respondent no. 11 is not eligible for appointment on the post of primary teacher. Thus the Ld. State Appellate Authority has erred by not considering the aforesaid aspect of the matter while passing the impugned order dated 18.4.2018 in Appeal No. 51 of 2017.

19. In view of the findings arrived at by this Court, herein above in the preceding paragraphs, this Court finds that the order dated 18.4.2018, passed by the learned State Appellate Authority in Appeal No. 51 of 2017 is not sustainable in the eyes of Law, hence is set aside. Consequently, the letter dated 05.05.2018 (Annexure-23 to the writ petition), issued by the Block Development Officer, Bagaha-I, West Champaran contained in Memo No. 1017, whereby and whereunder the appointment of the petitioner herein has been cancelled and the appointment of the private respondent no. 11 has been restored and he has been posted at the Government Middle School, Tola Parsauni, is also quashed.

20. The writ petition stands allowed.