

(2018) 12 PAT CK 0053

In the Patna High Court

Case No : Letters Patent Appeal No. 1647 Of 2017 In Civil Writ Jurisdiction Case No. 6681 Of 2016

Asha Kumari And Anr

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 11-12-2018

Acts Referred:

Citation : (2019) 2 PLJR 702

Hon'ble Judges : Jyoti Saran, J;Rajeev Ranjan Prasad, J

Bench : Division Bench

Advocate : Y.V. Giri, Nikhil Kumar Agrawal, Ashutosh Ranjan Pandey, Shashi Shekhar Tiwary, P.K. Shahi, Rajeev Kumar Singh

Final Decision : Allowed

Judgement

This intra-court appeal arises from the judgment and order dated 23.11.2017 of the learned Single Judge passed in CWJC No.6681 of 2016, whereby

the writ petition has been allowed, the order passed by the District Teachers Employment, Appellate Authority, Aurangabad (hereinafter referred to

as the Appellate Authority) in Appeal nos.118 of 2011 and 367 of 2011, whereby appeal of the appellants was allowed, was quashed and the

writ petitioners who are respondents herein were held validly appointed and deemed to continue on their respective posts.

Facts as noted from pleadings on record would confirm that in the second stage of appointment of Panchayat Teachers a selection process was

initiated in the year 2008 and a public notice to such effect was issued, enclosed at Annexure 3 to the writ petition whereby the schedule for the

selection including communication of date for counselling to the candidates, preparation of merit-list etc. was disclosed. That this notice was acted

upon, is confirmed from Annexure-2 series which are intimation to the writ petitioners for their appearance on the date of counselling i.e. 28.02.2009.

For some reason the counselling either did not take place or got postponed, which is evident from a Press Release, a copy of which is enclosed at

Annexure D/9 to the counter affidavit filed on behalf of writ petitioners in appeal and is dated 05.08.2010. The notice published is in modification of

the newspaper publication dated 08.07.2010 intimating the candidates about the date of counselling on 13th and 14th of August, 2010. The counselling

so held led to the appointment of the writ petitioners which aggrieved the appellants herein to move the "Appellate Authority" in Appeal No.118

of 2010 and which was allowed.

Feeling aggrieved, the writ petitioners came before this Court in CWJC No.1876 of 2012 and which was allowed by the judgment and order dated

29.01.2015, a copy of which is at Annexure-8 to the writ petition on sole ground that the writ petitioners had not been heard by the "Appellate

Authority" before the order was passed. The order dated 28.12.2011 passed in Appeal Nos.118 of 2011 and 367 of 2011 was quashed and the

matter was remitted to the "Appellate Authority" for fresh consideration and disposal.

It is on remand of the matter that the "Appellate Authority" examined the issue afresh and by an order passed on 14.03.2016, Appeal No.118 of

2011 and Appeal no.367 of 2011 were allowed with a direction to the Appointment Committee to prepare a fresh list after giving fresh opportunity to

all candidates including those who were selected as well as those who were found fit and suitable and thereafter to issue appointment orders as per

the merit list. This fresh exercise led to the appointment of not only the appellants herein but even the writ petitioner no.4 Md. Arsad Ansari and it is

feeling aggrieved by the order passed by the "Appellate Authority" on remand as well as the consequential action of the Employment

Committee to issue appointment orders in favour of the appellants herein, that the writ petitioners including Md. Arsad Ansari who got appointment

during the pendency of the writ petition in the fresh selection that ensued, approached this Court through the writ petition in question and which has

been allowed by the judgment and order impugned. Feeling aggrieved the private respondents as appellants are before this Court.

We have heard Mr. Y.V Giri, learned senior counsel appearing for the appellants with the assistance of Mr. Nikhil Kumar Agrawal, the Advocate on record. The State is represented by Mr. Ashutosh Ranjan Pandey, learned Additional Advocate General No.15 assisted by Mr. Shashi Shekhar Tiwari and the private respondent-writ petitioners are represented by Mr. P. K. Shahi, learned senior counsel who appears with Mr. Rajeev Kumar Singh, the Advocate on record.

The foundation of the argument advanced by Mr. Giri, learned senior counsel appearing for the appellants herein to question the order of the learned

Single Judge lies in the guidelines placed at Annexure-2 to the appeal issued by the Human Resources Development Department bearing Notification

no.3151 dated 25.08.2008. These guidelines were issued in connection with the selection process initiated for appointment of Panchayat Teachers

after enforcement of the Bihar Panchayat Elementary Teachers (Appointment and Service Conditions) Rules, 2006 and Bihar Urban Bodies

Elementary Teachers (Appointment and Service Conditions) Rules, 2006. In reference to the guidelines he submits that clause (xi) specifically

provides for issuance of letter intimating the date of counselling to the candidates and which position is reiterated at paragraph 10 of the guidelines

which requires a letter to such effect being sent to all candidates intimating them about the date of counselling.

He next refers to a newspaper publication which was issued following the initiation of selection process in question, a copy of which is enclosed at

Annexure-3 to the writ petition to canvass his point and submit that not only the date of holding of counselling is mentioned as 28.02.2009, the

respondent authorities were under a duty to issue counselling letters to such effect by 20.02.2009. It is the argument of Mr. Giri, learned senior

counsel appearing for the appellants that this exercise in so far as the appellants are concerned was not carried out. According to Mr. Giri, the

counselling was postponed to 13th and 14th of August, 2010 and again no intimation was given to these appellants due to which they could not

participate in the second counselling and led to the appointment of the writ petitioners. According to Mr. Giri, the order in such circumstances and

where an exercise has been carried out afresh by the Employment Committee under the orders of the Appellate Authority on consideration of

the case of each of the candidates, which has led not only to the appointment of the appellants but also the writ petitioner no.4, Md. Arsad Ansari, the

fairness in the procedure requires no intervention. According to learned senior counsel the "Appellate Authority" bearing note of all these

aspects of the matter and on examination of the records, came to a just conclusion which led to a fresh exercise but was incorrectly interfered with by

the learned Single Judge. It is the argument of Mr. Giri that in the nature of the guidelines so issued by the Human Resources Development

Department themselves which mandates a communication of the date of counselling to the candidates, the conclusion drawn by the learned Single

Judge at paragraph 8 that a newspaper publication was sufficient compliance of such stipulation is contrary to the guidelines.

Per contra, it is the argument of Mr. P.K. Shahi, learned senior counsel appearing for the respondent-writ petitioners in reference to a letter of the

appellant no.1, Asha Kumari, a copy of which is a part of Annexure F/9 at running page 63 of appeal proceedings that the appellant no.1 having

participated in the counselling on 28.02.2009, it is wholly incorrect on her part to submit before this Court that she did not get any intimation about the

date of counselling. According to Mr. Shahi, the appellants herein having not chosen to participate in the counselling when it was originally held, that

the respondent-writ petitioners were selected for appointment on the basis of merit amongst those who attended the counselling, there was no

occasion for review of a process and without examination of the fact as to the non-appearance of the appellants in the counselling which plea in the

appeal is an afterthought.

According to learned senior counsel, the second counselling held on 13th and 14th of August, 2010 was a mere completion of the process left half

done and not a fresh initiation. In sum and substance, the arguments of Mr. Shahi, learned senior counsel has been that a selection process having

been completed with the appointment of the respondent-writ petitioners, there was no occasion for the "Appellate Authority" to reopen the

same.

It is under the orders passed by this Court on 30.08.2018 directing the respondents to place the records of the selection process before this Court in

order to demonstrate whether or not intimation letters were issued to the

candidates communicating the date of counselling that the records have been produced and Mr. Pandey, learned Additional Advocate General No.15 in reference thereto has fairly accepted that although the process stands discussed in the records but there is no evidence supporting the issuance of letters intimating the date of counselling to the candidates.

We have heard learned counsel for the parties and we have perused the records.

The issue raised in this appeal does not require deep discussion rather the limited issue that comes up for consideration is that whether or not the

guidelines requiring the authorities to communicate the date of counselling to the candidates is a mandatory obligation or the paper publication would

suffice the requirement as held by the learned Single Judge.

It is fairly admitted by the learned Additional Advocate General No.15 that the records so presented before this Court does not contain any document

to support that any letter was issued to the appellants or others intimating them the date of counselling initially on 28.02.2009 followed by the second

counselling on 13th and 14th of August, 2010. It is peculiar that whereas Mr. Pandey, learned AAG- 15 accepts that there is no evidence to such

effect in the records, the writ petition contains letters informing the writ petitioners about the date of counselling on 28.02.2009 and there is also

acceptance by one of the appellants of her participation on 28.02.2009. There is again no explanation that in case the counselling was completed on

28.02.2009 what stopped the respondents from issuing appointment letters and then again, what prompted them to hold a second counselling on 13th

and 14th August, 2010 which is almost 18 months after the first counselling. These are issues which remain unanswered and neither the writ

proceeding contains any explanation nor the counter affidavit of the State provides any answer thereto.

In the circumstances, we are willing to accept that there must have been some lacuna occurring in the first counselling held on 28.02.2009 which

persuaded the respondent authorities to hold a second counselling on 13th and 14th of August, 2010. In between this period and even if some kind of

counselling had taken place on 28.02.2009, yet none of the candidates nor the writ petitioners approached the appropriate forum for appropriate

direction on completion of the process. In such view of the matter we would presume that the second counselling fixed on 13th and 14th of August,

2010 was with a view to give opportunity to all the candidates to participate in the counselling and while the Press Release at Annexure D/9 to the

counter affidavit of the writ petitioners in the appeal confirms a modification to an earlier newspaper publication and also mentions that the other

conditions present in the earlier publication would continue, yet there is nothing on record that any intimation to such effect was issued to the

appellants, consequent upon the Press Release at Annexure D/9.

We have examined the discussed order of the â??Appellate Authorityâ?? who has taken pains to go through the records for arriving at a conclusion

that the selection process was fractured and not lawfully carried out. The guidelines of 2008 at Annexure-2 to the appeal read alongside paragraph 10

thereof leaves nothing to speculate that an obligation is cast upon the â??Appointment Unitâ?? vested with power to appoint Panchayat Teacher, for

intimating the date of counselling to the candidates and once this essential steps is taken and it is confirmed that the candidates were duly intimated, no

objection can be raised by any candidate on lack of communication.

A public employment has to be transparent and has to withstand the test of fair play which is lacking in the present exercise. The learned Single Judge

has overlooked the object behind the stipulation present at paragraph 10 of the guidelines of 2008 requiring an intimation to the candidates which is

step towards transparency and fair play in public appointments, which is an essential part of such exercise.

In view of the fair acceptance by Mr. Pandey on the lack of communication to the appellants regarding the date of counselling following the second

Press Release which fixes 13th and 14th of August, 2010 as the date of counselling, we are satisfied to record that the â??Appellate Authorityâ??

committed no error in directing for a fresh exercise and which order of the learned â??Appellate Authorityâ?? had no occasion for interference.

We would reiterate that the obligation cast upon the Appointment Committee under the guidelines of 2008 is mandatory in nature and every such

selection process has to be accompanied with an exercise of intimation of the date of counselling to all the applicants.

That the â??Appointment Unitâ?? has accordingly moved in such manner and which has resulted in appointment of one of the writ petitioners as

well, we are satisfied with the exercise so undertaken as well as its endorsement

by the Appellate Authority by the order impugned before the writ Court.

For the reason so discussed, we are in respectful disagreement with the judgment and order of the learned Single Judge dated 23.11.2017 passed in CWJC No.6681 of 2016 and accordingly set aside the same to dismiss the writ petition.

The appeal is allowed. That the appellants have continued on their respective posts by virtue of the interim order, they shall be entitled to the consequential benefits to which they are found entitled.