

(2024) 05 PAT CK 0056

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1164 Of 2020

Bijendra Singh

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 08-05-2024

Acts Referred:

Employment Rules, 2006 — Rule 18

Citation : (2024) 05 PAT CK 0056

Hon'ble Judges : Anjani Kumar Sharan, J

Bench : Single Bench

Advocate : Subhash Kumar, Madanjeet Kumar, Narendra Kumar

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the petitioner and learned counsel for the respondents.

2. The present writ application has been filed for the following relief/s:-

“(i) For issuance of a writ in the nature of certiorari for quashing the order dated 14.12.2018 passed by the Chairperson of State Appellate Authority, Education Department in Appeal No.340/2018 whereby and whereunder the learned Chairperson of the State Appellate Authority was pleased to dismiss the order dated 13.09.2017 passed by learned District Appellate Authority in Appeal Case No.18/2017.

(ii) For issuance of an appropriate writ/order/direction for commanding and directing the respondent authorities to appoint the petitioner on the post of Block Teacher in Bihta Block for the Niyojan Year, 2006 under visually disabled category.”

3. The short fact of the case is that in the year 2006, petitioner submitted his application for his selection on the post of Block Teacher under visually disabled category, in Bihta Block, for the Niyojan year, 2006. Petitioner was directed to

appear in counselling on 28.02.2007 vide letter no.104 dated 16.02.2007 issued under the signature of Block Education Extension Officer cum Member Secretary Teacher Employment year, 2016. In response to letter no.104, petitioner appeared in counselling on 28.02.2007 and in fifth merit list, his name was placed at serial no.12.

4. A person namely Shivnandan, who was placed at serial no.39 in the seventh merit list was selected in place of petitioner. Thereafter, petitioner moved before the Lokayukt, Bihar and District Magistrate, Patna on 08.11.2007 and complaint case no.5/ Lok Shiksha 555/2007 was registered in Lokayaukta Office but no action was taken by the District Magistrate, Patna and the matter was pending till 2015 before the Lokayukta, Bihar. On 15.01.2015, complaint case no.5/(Lok Shiksha) 555/07 399 was disposed of by the Lokayukta, Bihar whereby and where under the petitioner was directed to raise his grievances before the District Teacher Appellate Authority which is empowered to pass appropriate order and petitioner was informed. Thereafter, petitioner moved before District Teacher's Appellate Authority, Patna vide Appeal Case No.05/2015 and on 12.10.2015 after hearing both sides the learned District Appellate Authority, Patna was pleased to direct the Block Teacher Niyojan Committee, Bihta to consider the case of petitioner in accordance with law and complete the selection process. The District Programme Officer (Establishment), Patna vide letter no.2672 dated 04.04.2016 directed to Block Development Officer-cum-Member Secretary, Block Teacher Niyojan Committee, Bihta to comply the memo no.534 dated 04.11.2015 issued by the District Appellate Authority, Patna.

5. In pursuance of Memo No.534 dated 04.11.2015 issued by the District Teacher Appellate Authority, Patna and letter no.2672 dated 04.04.2016, the claim of petitioner was dismissed by the Block Development Officer-cum-Member Secretary, Block Employment Committee, Bihta that though petitioner is trained and visually disable person but he is not holding T.E.T. degree and after 15.03.2015 persons who are not trained/T.E.T. pass will not be appointed/selected on the post of teacher. Thereafter, the petitioner moved before the District Teacher Appellate Authority vide Appeal Case No.18/2017 and the learned Chairperson of the District Appellate Authority treated the case no.18/2017 as contempt case and on 17.09.2017 after hearing both sides directed the respondent authorities to appoint/select the petitioner on the post of Block Teacher on visually disabled category.

6. Thereafter, the respondent Block Development Officer-cum-Member Secretary, Block Teacher Employment Unit and B.E.E.O., Bihta moved before State Appellate Tribunal, Patna vide Appeal No.340/2018 which was allowed by Chairperson of Appellate Tribunal and the order dated 13.09.2017 passed in Appeal No.18/17 by the District Teacher Appellate Authority was set aside on the ground that learned District Authority has erred in considering the claim of appellant for employment in the year 2017 on the basis of his application submitted in the year 2006.

7. Learned counsel for the petitioner submits that order dated 14.12.2018 is

passed in routine manner without appreciating the fact that case of petitioner was pending since 2007 to 2015 before the Lokayukta Bihar and as such his case was rightly considered by the District Teacher Appellate Authority and there was no illegality in order passed in Appeal Case No.18/2017. The respondent no.6 (B.D.O., Bihta) appeared in case no.18/17 before the District Teacher Appellate Authority, Patna and admitted that petitioner is visually disabled person and if he is appointed the person namely Shiv Nandan who was selected and placed at serial no.39 in seventh list below the petitioner will have to be removed by suppressing the fact that Shiv Nandan had resigned the service in the year 2012 and as such, the post is still vacant. During pendency of the Case No.555/07 before Lokayukta, Bihar till 2015, no order was passed by the respondent regarding claim of petitioner and as such petitioner had not raised his claim before the District Teacher Appellate Authority, Patna and as soon as the matter was disposed by Lokayukta Bihar, Patna, petitioner moved before the District Appellate Authority, Patna vide case No.05/2015 and this fact was not considered while passing the order in Appeal No.340/18 by the State Appellate Authority.

8. A counter-affidavit is filed on behalf of the respondent nos.4 and 5, sworn by the District Programme Officer (Establishment), Patna, whereby it is stated that the State Appellate Authority has rightly passed the order because there was a delay in filing of the appeal before the District Teacher Appellate Authority.

9. Considering the argument of the parties , on perusal of the record and on going through the order dated 14.12.2018 passed by the State Appellate Authority, it is a fact that, the respondent was not selected and employed in the year, 2006. The process of 1st phase of Teacher's Employment was conducted and closed in the year, 2007 and no employment in the name of 1st phase of Teacher's employment could be made after 2007. Under rule 18 of the Employment Rules, 2006, the Deputy Development Commissioner (DDC) was competent to hear and decide complaints related to employment Block teacher but no appeal/complaint was filed before DDC, who was vested with the powers to take decision on complaint regarding employment of Block Teachers. The petitioner filed a complaint before Lokayukta, Bihar, after about a year from the date of employment of Shiv Nandan in visually disabled category. Lokayukta, Bihar was not the appropriate competent authority under the Employment Rules, 2006 to hear and decide complaints related to employment of Block Teachers. Therefore, filing of complaint before Lokayukta, Bihar in the year 2008, was of no consequence, under the Employment Rules, 2006, as amended in the year 2008 and 2009. The rule 18 of the Employment Rules, 2006 was amended by notification no.3148 dated 25.08.2008, by which, the DDC was replaced by a District Level Authority, consisting of one or more members appointed by the State Government, vested with the power to hear and decide appeals related to employment of Block Teachers but the petitioner did not file any appeal before the District Appellate Authority in the year 2008. He filed appeal before the Authority only in the year, 2015, i.e. 8 years after the completion of the 1st phase of Teachers' Employment, against which the respondent has claimed

employment.

10. The State Appellate Authority further held that all the previous vacancies were carried forward and merged with the vacancies for the 2nd and 3rd phase of employment, no vacancies of the year, 2006, remained available. The vacancy caused by the resignation of Shiv Nandan in the year 2012, could not be considered a vacancy of the year, 2006. This vacancy could be considered for the 3rd phase of employment which has also been completed. The petitioner has submitted application for employment under Employment Rules, 2006, which was replaced by the Employment Rules, 2012, in which, the norms, criteria and procedure for employment has been changed. Passing TET has been made compulsory for employment of Block Teachers. Therefore, the claim of the petitioner for his employment as Block Teacher in the year, 2017, on the basis of his application submitted in the year, 2006, under the Employment Rules, 2006 is not justified and is fit to be rejected.

11. Considering the aforesaid facts and circumstances, I do not find any illegality in the order passed by the State Appellate Authority.

12. Accordingly, this writ application is dismissed.