
(2019) 08 PAT CK 0118

In the Patna High Court

Case No : Letters Patent Appeal No. 886 Of 2019 In Civil Writ Jurisdiction Case
No. 4593 Of 2018

Gulam Ram @ Gulzari Ram

APPELLANT

Vs

State Of Bihar Through The Principal And Ors

RESPONDENT

Date of Decision : 28-08-2019

Acts Referred:

Citation : (2019) 4 PLJR 648

Hon'ble Judges : Amreshwar Pratap Sahi, CJ; Anjana Mishra, J

Bench : Division Bench

Advocate : Siya Ram Sahi, Sunil Kumar, Indu Bhushan, Dilip Kumar, Ashutosh
Ranjan Pandey

Final Decision : Dismissed

Judgement

Heard learned counsel for the appellant.

This appeal assails the judgement of the learned Single Judge dated 22nd of July, 2019, whereby the learned Single Judge has upheld the order of the

State Appellate Authority with regard to an appointment on the post of an Assistant Teacher in a Secondary School in the subject of Hindi.

The respondent No. 10, Uma Shankar Rajak was also an applicant for the said post. His name appeared in the provisional list but was not in the final

list of the candidates who were to be called for counseling. According to the appellant, the date of counseling was 20th of May, 2010 and, accordingly,

the candidates who did appear in the counseling were considered and since the respondent no. 10 had not appeared in the counseling, his candidature

was not considered at all.

The respondent Uma Shankar Rajak, aggrieved by the same, filed an appeal before the District Teachers Employment Appellate Authority which was

dismissed on 19th of May, 2010 after recording that in spite of several dates fixed in the appeal he did not appear whereas the District Education

Officer himself appeared in the proceedings and informed the Appellate Authority that Mr. Uma Shankar Rajak had not participated in the counseling

and a list of 13 such candidates was given who did not participate in the counseling.

The respondent Uma Shankar Rajak filed C.W.J.C. No.12078 of 2011 before this Court and the same was ultimately disposed off with the

observation that the petitioner had the remedy of approaching the State Appellate Authority by way of filing an appeal and if such an appeal is filed

the same shall be disposed off within four months. In compliance of the said judgement, the respondent Mr. Uma Shankar Rajak filed an appeal

before the State Appellate Authority that was ultimately allowed on 8th of February, 2018 holding that there was no evidence indicating any issuance

of notice of counseling to the appellant or its service on him. The State Appellate Authority came to the conclusion that the counseling was held

surreptitiously and even the District Programme Officer in his affidavit also did not bring forth any evidence to substantiate the issuance of notices for

counseling that was required under the procedure prescribed and, thus, the entire selection proceedings had been carried out in a manner so as to

exclude the respondent herein who admittedly had higher marks than all the selected candidates. It may be mentioned that the respondent Mr. Uma

Shankar Rajak had 58.31 marks to his credit and his name appeared in the tentative list.

Assailing the order of the State Appellate Authority, the appellant filed the writ petition giving rise to this appeal and the learned Single Judge has

dismissed the same upholding the order of the State Appellate Authority. The learned Single Judge has further taken notice of the supplementary

affidavit filed by the appellant before the Writ Court and has observed that the same was a complete afterthought and was designed only to fill up

lacunae in the case.

Learned counsel for the appellant has urged that there was no reason for the respondent not to have appeared in the counseling when there was a

publication and it was not only the respondent Uma Shankar Rajak, but there were 12 others who, in spite of such notice, had not appeared in the

counseling. This fact could not be successfully controverted and, as a matter of fact, in the order dated 19th of May, 2010 the said fact having been recorded it clearly establishes that the respondent Uma Shankar Rajak had failed to appear in the counseling and, therefore, the conclusion drawn was correct.

It is also the contention of the learned counsel that before the Appellate Authority the respondent failed to appear despite several dates having been fixed. Thus, there was no evidence to disbelieve the evidence given by the District Programme Officer and contrary to the same the State Appellate Authority, without having any access to the records pertaining to the issuance of notice or otherwise, has recorded a finding of non-service of notice on the respondent which is based on no evidence. It is, therefore, contended that the order of the State Appellate Authority reversing the order of the District Appellate Authority is clearly erroneous as it is not based on appreciation of any evidence. For the same reason also the learned Single Judge has not appreciated the evidence and has erroneously castigated the filing of the supplementary affidavit as being an afterthought. It is, therefore, submitted that non-appearance of the respondent Uma Shankar Rajak in the counseling having been established, there was no reason for reversal of the selections.

It is also submitted that in this background, even if the matter has been remitted to the State Appellate Authority, this examination of fact of issuance of notice or its service on the concerned 13 persons, including the respondent, should be allowed to be investigated.

We have heard the learned counsel for the State of Bihar as well and on a perusal of the record the first thing that strikes at the very outset is the elimination of the name of the respondent No.10 from the final list. The name of the said respondent had appeared in the tentative list and there is no explanation, whatsoever, as to why his name was excluded from the final list. We are unable to comprehend that if his name was not in the final list, then there is no scope for an argument that he had been issued a notice. A notice has to be issued only to those persons whose names have been placed in the final list which obviously omitted the name of the respondent No.10 who had admittedly higher marks than those who have been selected.

The second aspect with regard to investigation as pleaded by the learned counsel about these facts being taken into account, on a perusal of records, we find that the State Appellate Authority has taken notice of the affidavit filed by the District Programme Officer and has also recorded a pleading to the effect that no notice was served on the respondent No.10. Learned counsel for the appellant has been unable to provide any assistance on this question of fact on the basis of any pleading or material on record so as to establish that any notice of counseling was ever issued, particularly to the respondent No.10. In the absence of any such material to contradict the same, we are unable to accept the contentions so raised on behalf of the appellant.

Coming to the issue of judgement of the Appellate Authority on 19th of May, 2010 and the recording of the statement of the District Education Officer concerned, it appears that only a list of alleged absentees was provided, without any evidence to support the issuance of notice or service on such applicants who are alleged to have not participated in the counseling. The same is therefore perverse and not supported by evidence.

The order passed by the State Appellate Authority on 8.2.2018 has taken notice of the entire facts and has recorded its findings on the basis of the material that was adduced before it, including that by the contesting parties.

The learned Single Judge, therefore, has not committed any error in upholding the order of the State Appellate Authority.

The appeal lacks merit and is, consequently, dismissed.