

(2017) 10 PAT CK 0028

In the Patna High Court

Case No : 313 of 2015

Kanchana Kumari, W/O Vinay Kumar

APPELLANT

Vs

The State Of Bihar

RESPONDENT

Date of Decision : 18-10-2017

Acts Referred:

[Bihar Panchayat Primary Teachers \(Employment and Service Conditions\) Rules, 2006](#), Rule 18

Citation : (2017) 10 PAT CK 0028

Hon'ble Judges : Ajay Kumar Tripathi, Rajeev Ranjan Prasad

Bench : DIVISION BENCH

Advocate : Durga Nand Jha, N.Hoda Khan, Babita Kumar, Ajay Kumar Thakur, Avinash Kumar

Final Decision : Dismissed

Judgement

1. Heard the parties.

2. The present Letters Patent Appeal arises out of an order dated 08.01.2015 passed by a learned Single Judge of this Court in CWJC No.18222 of 2010 by which the learned Single Judge has been pleased to dismiss the writ application filed by the present appellant challenging the order dated 28.06.2010 passed by the District Teachers' Employment Appellate Authority, Khagaria (in short "the Appellate Authority") in Appeal Case No.89-01/09 (Annexure-1 to the writ application). The Appellate Authority rejected the application of the writ petitioner-appellant and upheld the appointment of Anuja Kumari (respondent no.9 in the writ

application) holding that her appointment was in accordance with the provisions of the Bihar Panchayat Primary Teachers (Employment and Service Conditions) Rules, 2006.

3. The present appellant and the respondent no.9

belong to the Scheduled Castes (Women) category who applied for their appointment as Panchayat Teacher under the provisions of the Bihar Panchayat Primary Teachers (Employment and Service Conditions) Rules, 2006 (hereinafter referred to as the "Rule") in Gram Panchayat Raj, Bachhauta in the District of Khagaria. The grievance of the writ petitioner-appellant was that the respondent no.9 has been appointed wrongly at roster point no.940 which was reserved for Scheduled Castes (Women) category because the said respondent no.9 had obtained only 47.22% marks which was far less than the marks obtained by the writ petitioner-appellant being 54%. The submission of the writ petitioner was that even though her name came to be considered against the said roster point no.940 and was selected in the 6th merit/select list, but she was not informed about giving her consent. It was, therefore, submission of the writ petitioner-appellant that the selection of respondent no.9 in the 7 th merit/select list against the roster point no.940 was not correct, hence the same is liable to be set aside.

4. The Appellate Authority came to be constituted by a Notification No.07 dated 25.08.2008 issued by the Human Resources Development Department, Government of Bihar for entertaining the complaints relating to the illegality in the matter of teachers employment and thereafter the writ petitioner-appellant filed the present appeal being Case No.89-01/09. The Appellate Authority went through the records produced before it by the Panchayat Secretary of Gram Panchayat Raj, Bachhauta relating to the appointment of the Panchayat Teachers, heard the parties and

thereafter recorded a finding that an information was sent to the writ petitioner-appellant Under Certificate of Posting (UPC) and the information was also pasted on the notice board of the gram panchayat, but she did not submit her consent and because she did not turn up, the Panchayat went for another list namely 7 th merit/select list in which against the roster point no.940 the respondent no.9 came to be appointed. The Appellate Authority, therefore, held that there was no illegality in the appointment of the respondent no.9. The appeal preferred by the present appellant was rejected.

5. The learned Single Judge of this Court while considering the writ application against the order of the Appellate Authority took note of the submissions of the parties wherein it transpires that 10 vacancies were available in the Panchayat for appointment as Primary Teacher out of which roster point no.934 was earmarked for SC category (Male/Female) and roster point no.940 was earmarked for SC category (Female). Up to the 5th merit list the post in question remained unfilled, therefore the selection committee drew up the 6th list in which the petitioner figured, but she did not appear to give her consent, whereafter the selection committee drew up the 7th merit list which included the respondent no.9 who submitted her consent as required under the Rules and got appointment.

6. The learned Single Judge also took note of the fact that in the original Niyamavali as framed in 2006 the Block Development Officer was the competent authority to enquire into such allegation/grievance which after amendment in the Niyamavali got vested in Authority by virtue of the amendment of Rule 18 of the Niyamavali. In the writ petition there was no statement that any such grievance was raised before the Block Development Officer who was the competent authority at the relevant time to enquiry into such allegation. There was no order passed by the Block Development

Officer providing a cause of action to the petitioner to approach the authority (Appellate Authority in the present case) belatedly. The authority thus could not have entertained her application filed at least two years after such selection and appointment.

7. Having considered the rival submissions and upon taking note of the facts and pleadings as appearing from the record, the learned Single Judge held that "Nothing has been stated in the writ petition about filing of any grievance application against such selection and appointment of respondent no.9 before the then Competent Authority i.e. Block Development Officer of the concerned Block." The learned Single Judge accepted the finding of the Appellate Authority that the notice under UPC was sent to the candidates and those were available in the relevant records produced by the concerned Gram Panchayat, further the learned Single Judge found that the notice was also pasted on the board of the Panchayat. The pleadings on record did not disclose that immediately after appointment of the respondent no.9, the writ petitioner raised any grievance before the competent authority. An application dated 04.06.2007 addressed to the D.S.E., Khagaria as well as D.D.C., Khagaria was shown to have been submitted raising the grievance against the appointment of the respondent no.9, but the learned Single Judge was of the view that the said application was not before the competent authority and also that it was not filed immediately after appointment of the respondent no.9 on the post in question. Thus, according to learned Single Judge, the writ petitioner approached the Appellate Authority after much delay and on this count alone the application of the petitioner before the authority was liable to be rejected, still the Appellate Authority considered the case of the petitioner on merit and held that in spite of notice she did not turn up to submit her consent letter within time fixed therefor. It is not in

dispute that the submission of the consent letter was a requirement of law.

8. Learned counsel appearing on behalf of the writ petitioner-appellant once again argued before us that no notice regarding the selection of the writ petitioner in the 6 th merit list was served upon her and, therefore, drawing up the 7 th merit list was in haste. Thus, the appointment of respondent no.9 with lesser marks than the writ petitioner is not just and proper. Learned counsel also submits that writ petitioner had made a representation in this regard to the D.D.C. vide her representation dated 04.06.2007.

9. On the other hand, learned counsel representing the respondent no.9 submits that the Appellate Authority rightly rejected the appeal of the writ petitioner because there were ample evidence on the record produced before the Appellate Authority showing that notices were sent to all the candidates under UPC and the same was also pasted on the notice board of the Gram Panchayat. Learned counsel further submits that the writ petitioner did not file her grievance before the competent authority under the relevant Rule then in existence and only after about two years she directly moved before the Appellate Authority. Submission is that this Court sitting in its appellate jurisdiction need not interfere with the findings of the Appellate Authority duly affirmed by the learned Single Judge in absence of any plea of mala fide or any glaring instance of illegality committed by the selection committee in the matter of appointment of the respondent no.9.

10. We have considered the rival submissions at the bar and in order to satisfy ourselves also called for the original records from the concerned Gram Panchayat which has been made available to us. On perusal, it appears that notices under Certificate of Posting were sent to the two candidates namely Jawahar Kumar who belongs

to SC (Female) category and to this appellant in SC (Female) category on 10.02.2007. There is another Certificate of Posting dated 08.02.2007 showing the name of the appellant. Thereafter, 7th select list was prepared and a Certificate of Posting dated 19.02.2007 shows that information was sent to the respondent no.9 who joined on the same day. A perusal of the original records goes a long way to show that the mode of communication adopted by the Gram Panchayat through Certificate of Posting was not just and proper, there cannot be a presumption of service of a letter dispatched through Certificate of Posting, moreover only after ten days from the date of Certificate of Posting showing dispatch of letter to the present petitioner, 7th merit list was drawn and the information was sent to the respondent no.9 on 19.02.2007 who joined on the same day. We cannot and do not approve this mode of communication as it does not inspire confidence. But having said so, we are not inclined to interfere with the impugned orders after about 11 years of appointment of respondent no.9 in exercise of our appellate power because at least on this score we are convinced that the appellant did not raise her grievance before the competent authority for a considerable period and we accept the finding of the Appellate Authority as well as the learned Single Judge that the appellant moved before the Appellate Authority after about two years from the date of appointment of the respondent no.9. By not raising her grievance before the competent authority for a considerable period and thereby allowing the things to settle down the appellant has made herself disentitled for the reliefs prayed before the Appellate Authority.

11. The learned Single Judge has, in view of the reasons provided in his order, rightly refused to interfere with the order passed by the Appellate Authority. We, therefore, do not find any merit in the appeal calling upon us to interfere with the impugned

orders.

12. The appeal is, accordingly, dismissed. There will be, however, no order as to cost.

13. The original record is handed over to State counsel to be returned to the Appellate Authority.