
(2013) 04 PAT CK 0026
In the Patna High Court
Case No : CWJC No. 10246 of 2010

Kavita Kumari

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 17-04-2013

Acts Referred:

Citation : (2013) 3 PLJR 558

Hon'ble Judges : Ajay Kr. Tripathi, J

Bench : Single Bench

Advocate : Rajendra Narayan, Rajiv Kumar Singh and Kamal Kishore Jha, for the Appellant; Manoj Kumar Sinha for the State and Mr. Umesh Kumar Mishra for the Respondent No. 10, for the Respondent

Judgement

Ajay Kr. Tripathi, J.—Petitioner Kavita Kumari has filed the present writ application assailing the order of the District Teachers. Employment Appellate Authority, Banka passed in Case No. 843 of 2009, which is Annexure-14 to the writ application. She was initially selected and appointed as a Panchayat Teacher on 4.12.2006, gave her joining on 12.12.2006 but on a grievance raised by the private respondent No. 10 namely, Renu Kumari, that she had a right of appointment on the post by virtue of being physically handicapped candidate, the Panchayat removed the present petitioner and appointed Renu Kumari. In that background petitioner approached the appellate authority seeking interference with such a decision of the Panchayat. The tribunal has basically gone on the premise that roster point 1550 on which the petitioner was appointed was reserved for physically handicapped category candidate. Since petitioner belongs to EBC she could not be appointed on the roster point 1550. In support thereof the tribunal has also relied on certain findings or observations of the erstwhile Block Development Officer as well as the District Magistrate, Banka.

2. Stand of the learned senior counsel representing the petitioner is otherwise. His contention is that on the date when petitioner was appointed, private respondent was not even an intermediate. She acquired qualification of

intermediate only on 31.5.2007. In addition to that, finding given by the tribunal about reservation for physically handicapped category on roster 1550 is contrary to Government circulars on this matter. Reservation for physically handicapped has been provided for by the State of Bihar in consonance with Disability Act where the circulars and clarifications issued by the Department of Personnel and Administrative Reforms from time to time have clearly indicated that reservation for physically handicapped category candidates is not a vertical reservation but horizontal reservation. Not only this, the reservation for physically handicapped will be available only for such candidates for which roster point is reserved relating to the caste, meaning thereby that if roster point is reserved for backward class and scheduled caste candidates, merely because a person is physically handicapped he will not get appointment or benefit of reservation if that is also earmarked for the caste. Only such candidates who are physically handicapped and belong to same caste will derive benefit of that reservation.

3. Admitted position is that the private respondent belongs to a BC category. Roster 1550 no doubt indicates reservation for physically handicapped as well but for those who belong to EBC, to which present petitioner belongs, though not physically handicapped. If there were no claimants under physically handicapped to be appointed on that roster point, both the District Magistrate and the Block Development Officer as well as the tribunal has committed error by holding that reservation will be available for any caste on the basis of reservation for physically handicapped.

4. The private respondent herself has annexed Annexure-F, which is an earlier notification relating to reservation. Reading of the same also certifies the above position that reservation for physically handicapped will be available to the caste for which roster point has been reserved and cannot be filled up by any other caste merely because he or she is physically handicapped. In the present case that is the patent error which has been committed by the District Teachers Employment Appellate Authority in rejecting the claim of the petitioner and upholding the engagement of the private respondent Renu Kumari.

5. The impugned order, contained in Annexure-14, is quashed. Writ is allowed. Petitioner would be restored back in service forthwith after removing the private respondent, who had been illegally appointed on the basis of a wrong understanding of the principles of reservation relating to physically handicapped.