

(2024) 02 PAT CK 0043

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1048, 1124, 2767 Of 2019

Kuber Kumar Ram

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 16-02-2024

Acts Referred:

Indian Penal Code, 1860 — Section 409, 420, 467, 468, 471

Citation : (2024) 02 PAT CK 0043

Hon'ble Judges : Anil Kumar Sinha, J

Bench : Single Bench

Advocate : Baxi S. R. P. Sinha, Brajesh Prasad Gupta, Hitesh Suman, Vinod Kumar Kanth, Anju Mishra, Dr. Chandra Shekhar Azad

Final Decision : Allowed

Judgement

1. Since common question of law as well as facts are involved in this batch of cases, all these three writ applications have been heard together and are being disposed by this common order.

2. The petitioner, in CWJC No. 1124 of 2019, has filed the present writ application for quashing the order, dated 26.06.2018, passed, by the State Appellate Authority, in Appeal No. 250 of 2017, whereby the State Appellate Authority has affirmed the order, dated 04.11.2011, passed by the District Appellate Authority, Bhojpur, Ara, in Appeal Case No. 129 of 2010, whereby the District Appellate Authority has rejected the claim of the petitioner for being appointed as Panchayat Teacher on the ground that he had not appeared in the counselling held on 28.02.2009.

3. The case of the petitioner, in CWJC No. 1124 of 2019, is that the petitioner applied for the post of Panchayat Teacher, under Extremely Backward Class Category, in Gram Panchayati Raj Thakuri. The date of counselling was fixed on 27.01.2009, but no counselling was held on that very date. Thereafter, a merit list was published on 19.02.2009, which includes the name of the petitioner and

the date of counselling was fixed on 28.02.2009, but again, no counselling was held on 28.02.2009, and thereafter, the Panchayat Secretary and the Mukhiya, in connivance with each other, appointed the son of the Mukhiya, i.e. respondent no. 11, namely, Pramod Kumar, on the post of Panchayat Teacher on the basis of counselling allegedly held on 27.01.2009.

4. On the direction of the District Public Grievance Cell, the First Information Report has been lodged against the concerned Panchayat Secretary and the Mukhiya, bearing Charpokhari Police Station Case No. 127 of 2011, for the offences punishable under Sections 409/420/467/468/471 of the Indian Penal Code.

5. The petitioner filed an appeal before the District Appellate Authority, Bhojpur, Ara, bearing Appeal Case No. 129 of 2010 and the District Appellate Authority, vide its order, dated 04.11.2011, dismissed the appeal of the petitioner on the ground that the petitioner has not appeared in the counselling held on 28.02.2009, as no signature of the petitioner was found in the counselling register. The State Appellate Authority, vide its order, dated 26.06.2018, passed in Appeal No. 250 of 2017, has upheld the order, passed by the District Appellate Authority, Bhojpur, Ara.

6. The petitioner, in CWJC No. 1048 of 2019, has filed the present writ application for quashing the order, dated 26.06.2018, passed, by the State Appellate Authority, in Appeal No. 234 of 2017, whereby the State Appellate Authority has affirmed the order, dated 04.11.2011, passed by the District Appellate Authority, Bhojpur, Ara, in Appeal Case No. 176 of 2010, whereby the District Appellate Authority has rejected the claim of the petitioner for being appointed as Panchayat Teacher on the ground that he had not appeared in the counselling held on 28.02.2009.

7. The case of the petitioner, in CWJC No. 1048 of 2019, is that the petitioner applied for the post of Panchayat Teacher, under Schedule Castes Category, in Gram Panchayati Raj Thakuri. The date of counselling was fixed on 27.01.2009, but no counselling was held on that very date. Thereafter, a merit list was published on 19.02.2009, which includes the name of the petitioner and the date of counselling was fixed on 28.02.2009, but again, no counselling was held on 28.02.2009, and thereafter, the Panchayat Secretary and the Mukhiya, in connivance with each other, appointed the respondent no. 11, namely, Rama Shankar Ram, along with the son of the Mukhiya, on the post of Panchayat Teacher on the basis of counselling allegedly held on 27.01.2009.

8. The petitioner filed an appeal before the District Appellate Authority, Bhojpur, Ara, bearing Appeal Case No. 176 of 2010 and the District Appellate Authority, vide its order, dated 04.11.2011, dismissed the appeal of the petitioner on the ground that the petitioner has not appeared in the counselling held on 28.02.2009, as no signature of the petitioner was found in the counselling register. The State Appellate Authority, vide its order, dated 26.06.2018, passed

in Appeal No. 237 of 2017, has upheld the order, passed by the District Appellate Authority, Bhojpur, Ara.

9. The case of the petitioner, in CWJC No. 2767 of 2019, has filed the present writ application for quashing the order, dated 03.10.2018, passed, by the State Appellate Authority, in Appeal No. 596 of 2017, whereby the State Appellate Authority has affirmed the order, dated 29.05.2013, passed by the District Appellate Authority, Bhojpur, Ara, in Appeal Case No. 01 of 2013, whereby the District Appellate Authority has rejected the claim of the petitioner for being appointed as Panchayat Teacher on the ground that he had not appeared in the counselling held on 27.01.2009.

10. The case of the petitioner, in CWJC No. 2767 of 2019, is that the petitioner applied for the post of Panchayat Teacher, under Unreserved (Female) Category, in Gram Panchayati Raj Thakuri. The date of counselling was fixed on 27.01.2009, but no counselling was held on that very date. Thereafter, a merit list was published on 19.02.2009, which includes the name of the petitioner and the date of counselling was fixed on 28.02.2009, but again, no counselling was held on 28.02.2009, and thereafter, the Panchayat Secretary and the Mukhiya, in connivance with each other, appointed respondents 11 to 14, along with the son of the Mukhiya, on the post of Panchayat Teacher on the basis of counselling allegedly held on 27.01.2009.

11. Learned Counsel for the petitioner, in CWJC No. 1124 of 2019, argued that the entire selection process has vitiated on the ground that the Mukhiya was the Chairman of the Panchayat Employment Unit/Selection Committee for selection of the Panchayat Teachers and the son of the Mukhiya, namely, Pramod Kumar (respondent no. 11), was selected as Panchayat Teacher.

12. Referring to paragraph 10 of the writ application, learned Counsel argued that the Mukhiya, in connivance with the Panchayat Secretary, selected her own son, namely, Pramod Kumar, on the basis of so-called counselling held on 27.01.2009, including 14 other candidates. He further argued that an enquiry was conducted by the Block Development Officer and Sub Divisional Officer and as per the enquiry report of the Sub Divisional Officer, no counselling was held on 27.01.2009 in the entire block, including Thakuri Gram Panchayat. Specific statement in this regard has been made in paragraph 10 of the writ application and the same has not been denied by respondent no. 11 in the counter affidavit.

13. One aggrieved candidate, namely, Chandeshwar Singh, had also filed an appeal before the District Appellate Authority alleging that appointment of one Deepak Kumar Singh was wrongly made on the basis of the counselling allegedly held on 27.01.2009; whereas no counselling was held on 27.01.2009 in the entire Charpokhari block, in which the concern Thakuri Gram Panchayat is also situated.

14. The District Appellate Authority arrived at the conclusion that gross irregularities and illegalities were committed in the selection process and the

counselling. Accordingly, the District Appellate Authority passed the order, dated 07.12.2010, directing the employment Unit to hold fresh counselling for appointment of Panchayat Teacher in Thakuri Gram Panchayat. The order of the District Appellate Authority was not being complied, which led to filing of the writ application by said Chandeshwar Singh, bearing CWJC No. 11006 of 2011 for compliance of the direction of the District Appellate Authority and this Court, after hearing the parties, by order, dated 13.07.2011, directed the respondents to ensure the implementation of the order passed by the District Appellate Authority, dated 07.12.2010 forthwith. Pursuant thereto, date of fresh counselling was announced on 26.04.2012.

15. The said Chandeshwar Singh was appointed pursuant to the counselling held on 26.04.2012 and the order passed by the District Appellate Authority, in Appeal Case Nos. 16 of 2010, 44 of 2010 and 100 of 2012. The appointed person, Deepak Kumar Singh, challenged the direction of the District Appellate Authority for appointment of Chandeshwar Singh before this Court by filing CWJC No. 19552 of 2013, which was dismissed and the letters patent appeal preferred by him, bearing LPA No. 645 of 2014, also got dismissed by Division Bench of this Court. The Division Bench of this Court, in LPA No. 645 of 2014, has recorded that counselling held on 27.01.2009 is negated by the official communication of the Block Development Officer and the Sub Divisional Officer and the same cannot be doubted, which clearly established that no counselling was held on 27.01.2009.

16. Lastly, it has been argued that the District Appellate Authority, in the case of Chandeshwar Singh, ordered for fresh counselling, vide its order, dated 07.12.2010, arising out of the same transaction, but the case of the present writ petitioners have been dismissed on the ground that the petitioners did not participate in the counselling held on 27.01.2009 and 28.02.2009.

17. On the other hand, learned Counsel appearing on behalf of the private respondents, in all the three cases, argued that they were appointed pursuant to the counselling held on 27.01.2009. The writ petitioners have not disclosed the date of their counselling. As such, their claim for appointment as Panchayat Teachers is fit to be rejected.

18. It has further been argued that there is no embargo in the Act/Rules that son of Mukhiya cannot apply or be selected as Panchayat Teacher. Bias is something, which is to be proved.

19. I have heard learned Counsel for the parties concerned and have gone through the materials available on record.

20. The first dispute is as to whether counselling was actually held on 27.01.2009, pursuant to which private respondents were appointed along with other candidates.

21. The report of the Sub Divisional Officer gave clear finding that no counselling

was held on 27.01.2009 in the entire Charpokhari block, under which Thakuri Gram Panchayat falls.

22. The Division Bench of this Court, in LPA No. 645 of 2014, has also recorded in its order that the fact regarding counselling held on 27.01.2009 is negated by the official communication of the concerned Block Development Officer and the Sub Divisional Officer, which cannot be doubted, and establishes that no such counselling was held on 27.01.2009.

23. Further, the specific plea of the petitioners that the son of the Mukhiya, namely, Pramod Kumar, was appointed pursuant to the alleged counselling held on 27.01.2009, in which the Mukhiya was the Chairman of the Employment Unit/ Selection Committee, has not been denied or controverted by respondent no. 11 of CWJC No. 1124 of 2019.

24. The State Government came out with a press communique fixing the date of counselling on 28.02.2009 instead of 27.01.2009.

25. The fact of these cases discloses a very sorrow state of affairs in the appointment of Panchayat Teacher, in which the son of the Mukhiya was appointed by the Employment Unit, headed by the Mukhiya. It has been established, beyond doubt, that mother of respondent no. 11, in CWJC No. 1124 of 2019, was present in the Selection Committee for appointment of Panchayat Teacher,. The respondent no. 11, namely, Pramod Kumar, did not controvert this fact; rather, argued that there is no bar in the Act/Rules that son of Mukhiya cannot apply or be selected as Panchayat Teacher.

26. The Supreme Court, in paragraph 16 of *Ashok Kumar Yadav and Others v. State of Haryana and Others*, reported in (1985) 4 SCC 417, has held as follows:

16. We agree with the petitioners that it is one of the fundamental principles of our jurisprudence that no man can be a judge in his own cause and that if there is a reasonable likelihood of bias it is "in accordance with natural justice and common sense that the justice likely to be so biased should be incapacitated from sitting". The question is not whether the judge is actually biased or in fact decides partially, but whether there is a real likelihood of bias. What is objectionable in such a case is not that the decision is actually tainted with bias but that the circumstances are such as to create a reasonable apprehension in the mind of others that there is a likelihood of bias affecting the decision. The basic principle underlying this rule is that justice must not only be done but must also appear to be done and this rule has received wide recognition in several decisions of this Court. It is also important to note that this rule is not confined to cases where judicial power *stricto sensu* is exercised. It is appropriately extended to all cases where an independent mind has to be applied to arrive at a fair and just decision between the rival claims of parties. Justice is not the function of the courts alone; it is also the duty of all those who are expected to decide fairly between contending parties. The strict standards applied to authorities exercising judicial power are being increasingly applied to

administrative bodies, for it is vital to the maintenance of the rule of law in a Welfare State where the jurisdiction of administrative bodies is increasing at a rapid pace that the instrumentalities of the State should discharge their functions in a fair and just manner. This was the basis on which the applicability of this rule was extended to the decision-making process of a selection committee constituted for selecting officers to the Indian Forest Service in *A.K. Kraipak v. Union of India* [(1969) 2 SCC 262 : AIR 1970 SC 150 : (1970) 1 SCR 457] . What happened in this case was that one Naqishbund, the acting Chief Conservator of Forests, Jammu and Kashmir was a member of the Selection Board which had been set up to select officers to the Indian Forest Service from those serving in the Forest Department of Jammu and Kashmir. Naqishbund who was a member of the Selection Board was also one of the candidates for selection to the Indian Forest Service. He did not sit on the Selection Board at the time when his name was considered for selection but he did sit on the Selection Board and participated in the deliberations when the names of his rival officers were considered for selection and took part in the deliberations of the Selection Board while preparing the list of the selected candidates in order of preference. This Court held that the presence of Naqishbund vitiated the selection on the ground that there was reasonable likelihood of bias affecting the process of selection. Hegde, J. speaking on behalf of the Court countered the argument that Naqishbund did not take part in the deliberations of the Selection Board when his name was considered, by saying : (SCC p. 270, para 15)

“But then the very fact that he was a member of the Selection Board must have had its own impact on the decision of the Selection Board. Further admittedly he participated in the deliberations of the Selection Board when the claims of his rivals ... was considered. He was also party to the preparation of the list of selected candidates in order of preference. At every stage of his participation in the deliberations of the Selection Board there was a conflict between his interest and duty.... The real question is not whether he was biased. It is difficult to prove the state of mind of a person. Therefore what we have to see is whether there is reasonable ground for believing that he was likely to have been biased....

There must be a reasonable likelihood of bias. In deciding the question of bias we have to take into consideration human probabilities and ordinary course of human conduct.”

This Court emphasised that it was not necessary to establish bias but it was sufficient to invalidate the selection process if it could be shown that there was reasonable likelihood of bias. The likelihood of bias may arise on account of proprietary interest or on account of personal reasons, such as, hostility to one party or personal friendship or family relationship with the other. Where reasonable likelihood of bias is alleged on the ground of relationship, the question would always be as to how close is the degree of relationship or in other words, is the nearness of relationship so great as to give rise to reasonable apprehension of bias on the part of the authority making the selection.”

27. In the present case, the relationship of the selected candidate and the Mukhiya is very close, i.e. mother and son, as such, it is not necessary to establish bias and it is sufficient to invalidate the selection process inasmuch as the nearness of relationship shall give rise to reasonable apprehension of bias on the part of the selection body making the selection.

28. Since the Mukhiya has participated in the selection process, in which her son was selected, as such it is not the fair process of selection. The report of the Sub Divisional Officer and finding arrived at by this Court in LPA No. 645 of 2014, establish that no counselling was held on 27.01.2009.

29. Accordingly, in my opinion, the entire selection/ appointment made on the basis of counselling allegedly held on 27.01.2009, stands vitiated and is hereby quashed.

30. In the result, the impugned order, dated 26.06.2018, passed, by the State Appellate Authority, in Appeal Nos. 250 and 234 of 2017 and the order, dated 03.10.2018, passed by the State Appellate Authority in Appeal No. 596 of 2017 are also set aside as the Appellate Authority did not consider the fact that the mother of one of the selected candidate, namely, Pramod kumar, was the Chairman of the selection body as well as the fact that no counselling was held on 27.01.2009.

31. The respondent-State is directed to fill up the posts, which have fallen vacant, as per Bihar State School Teachers (Appointment, Transfer, Disciplinary Proceedings and Service Conditions) Rules, 2023.

32. In the result, these writ applications are allowed, to the extent indicated above.

33. There shall be no order as to costs.