

(2011) 02 PAT CK 0014
In the Patna High Court
Case No : CWJC No. 18244 of 2009

Manish Kumar Singh and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 04-02-2011

Acts Referred:

Citation : (2011) 59 BLJR 3281 : (2011) 3 PLJR 251

Hon'ble Judges : Ajay Kr. Tripathi, J

Bench : Single Bench

Advocate : Subodh Kumar Jha and A.K. Singh, for the Appellant; Gyan Prakash and A.C. to G.P. for State, for the Respondent

Final Decision : Dismissed

Judgement

Ajay Kr. Tripathi, J.—This writ application has been filed for quashing of the order dated 3.11.2009 passed by the District Teachers Employment Appellate Authority, Saran at Chapra, which was passed in Case No. 720 of 2009. The matter relates to the appointments of Panchayat Teachers of Gram Panchayat Raj, Kumna under Jalalpur Block, District-Saran at Chapra. Since the impugned order has a fall out on these Petitioners, this writ application has been filed for setting aside the said order on the ground that Petitioners were not given appropriate opportunity or even made a party to the proceeding.

2. When the argument started Learned Counsel representing the Petitioners submitted that the case of Petitioner No. 3 Chunchun Kumari need not be considered and the relief is limited to Petitioner Nos. 1 and 2 alone.

3. After filing of the writ application the matter was heard on 1.2.2010 and based on the assertions made in the writ application as well as Interlocutory Application No. 288 of 2010, notices came to be issued to official Respondents including the private Respondent No. 8, Jitendra Prasad Yadav with an order of stay passed against the impugned order dated 3.11.2009.

4. Private Respondent No. 8 thereafter has appeared and filed Interlocutory

Application No. 7803 of 2010 not only for vacating the order of stay but may be even disposal of the writ application itself on merit, as the writ application has been filed by suppressing many a facts. Counter affidavit on behalf of the State authority has been filed now. Since the pleadings are otherwise complete therefore in-stead of vacating the order of stay the matter has been ordered to be heard for final disposal.

5. It is recorded that I.A. No. 7803 of 2010 is allowed from the point of view that the assertion made therein and the evidence annexed thereto is being treated as a counter affidavit on behalf of private Respondent no: 8.

6. The main contention on behalf of two Petitioners is that the Petitioners ought to have been given reasonable opportunity of hearing before the impugned order dated 3.11.2009 ought to have been passed. The decision rendered therefore suffers from the principle of breach of natural justice.

7. It is long drawn battle with a history which has emerged from the materials brought in the counter affidavit filed on behalf of the State and the so-called interlocutory application filed on behalf of private Respondent No. 8. Private Respondent No. 8 was one of the claimants to the post having highest marks in his category for appointment as Panchayat Teacher of Gram Panchayat Kumna. His claim was ignored by the Mukhiya of the Gram Panchayat who appointed his son namely, Nagendra Kumar Yadav on the post on the basis of a forged intermediate certificate. In addition to that large number of irregularities were committed in the appointment process, not only ignoring the merit and the standing of various candidates but even the roster clearance as such. When the private Respondent did not get any relief at the local level he filed CWJC No. 15392 of 2007. The matter was heard in detail and disposed of on 2.3.2009 which would be evident from Annexure-F to I.A. No. 7803 of 2010. Some of these aspects noticed by this Court above were also taken note of by learned Single Judge, who disposed of the writ application with a direction upon the appellate authority to look into the matter.

8. Based on the direction of the Court, Case No. 720 of 2009 was registered when Nagendra Prasad Yadav alongwith others were made party. The matter was gone into in quite a detail and when uncomfortable materials emerged against the son of the Mukhiya concerned, he ensured that the son tendered his resignation to scuttle closer examination of the issue and the manner in which appointments were made on the post of Panchayat Teachers.

9. A detailed adjudication was required to be made by the appellate authority since its earlier direction issued to Mukhiya to remove the illegality or irregularities was not carried out. The Court also noticed that issue of such appointment was already gone into by the local authority of the district and many infirmities had emerged on scrutiny of the records and the proceedings. Since they were not the competent authority to pass any direction, their findings remained on record and no corrective action could be taken. When the matter

was pursued at the behest of private Respondent No. 8 after the earlier intervention of the High Court, the so-called can of worms have tumbled out.

10. The stand of the private Respondent is that the two Petitioners are clear beneficiaries of wrong doing of Mukhiya. They have been watching the proceeding from close quarter and they never intervened asserting their rights with a clear intent to use it to their advantage at an appropriate time. This deliberate act of Petitioners does not take away the illegality of findings rendered by the appellate authority with regard to the manner in which the appointments came to be made by ignoring the claim of persons including Respondent No. 8 having better merit and in total disregard of the roster clearance and even clear case of nepotism as well as favoritism by appointing the son of Mukhiya on forged intermediate certificate.

11. It is in this background the Court allowed Learned Counsel for the Petitioners to point out the infirmity in the findings based on which appointment of four persons were held to be illegal. With due respect to the counsel for the Petitioners he had no clear answer to the findings, probably due to existence of overwhelming materials which has emerged, not only in the hearing before the appellate authority, which is reflected from the order but other circumstantial supporting evidence like the earlier order of the High Court and the various communications and the enquiry report of the district administration.

12. Since the tribunal has rendered its opinion in the background of the direction of the High Court and the findings reached at have not been established to be erroneous otherwise, this Court does not want to interfere with the order as that will amounts to perpetuating illegality on hyper-technicality. If the two Petitioners would have convinced this Court with regard to merit of their appointments then may be the matter could have been interfered with but since the Petitioners have failed to point out any lacuna with the findings, the net result even if the matter is remanded, would remain the same.

13. By no stretch of imagination persons who have occupied the post in clear breach of rules can be allowed to continue on the post as that will amount to perpetuating illegality and giving a seal of approval to an illegal act of appointing authority, primarily the Mukhiya of the Gram Panchayat.

14. In totality, therefore, the Court in the abovenoted circumstance does not want to interfere with the order in question as the findings are too glaring to be overlooked by this Court.

15. This writ application has therefore no merit and it is dismissed.