
(2021) 11 PAT CK 0039

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 5365, 5562, 6167, 7147 Of 2019

Md. Arshad Hussain

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 23-11-2021

Acts Referred:

Citation : (2021) 11 PAT CK 0039

Hon'ble Judges : Ashutosh Kumar, J

Bench : Single Bench

Advocate : S.B.K. Manglam, Jai Prabhat Kishore, Shambhu Sharan Kumar, Madhaw Prasad Yadaw, Rajesh Kumar Sinha, Madanjeet Kumar, Rajeev Kumar Singh, Priya Ranjan Singh

Final Decision : Dismissed/Allowed/Dismissed/Allowed

Judgement

1. Heard Mr. S.B.K. Manglam, the learned Advocate for the petitioners in C.W.J.C. No. 6167 of 2019 (Md. Arshad Hussain Vs. The State of Bihar & Ors.) and in C.W.J.C. No. 5365 of 2019 (Md. Fazlur Rahman Vs. The State of Bihar & Ors.); Mr. Shambhu Sharan Kumar, the learned Advocate in C.W.J.C. No. 5562 of 2019 (Md. Saddam Hussain & Anr. Vs. The State of Bihar & Ors.); and Mr. Rajeev Kumar Singh, the learned Advocate in C.W.J.C. No. 7147 of 2019 (Abuzar Siddiquee & Ors. Vs. The State of Bihar & Ors.). Mr. Shambhu Sharan Kumar, the learned Advocate has appeared for the private respondent Nos. 10 & 11 and 12 & 13 in C.W.J.C. No. 6167 of 2019 and C.W.J.C. No. 5365 of 2019 as also in C.W.J.C. No. 7147 of 2019 respectively. The State is represented by Mr. Jai Prabhat Kishore, learned A.C. to S.C. 13, Mr. Madhaw Prasad Yadav, learned G.P. 23, Mr. Madanjeet Kumar, learned G.P. 20 and Mr. S.C. Mishra, learned S.C. 16 in all the writ petitions respectively.

2. The order passed by the State Appellate Authority dated 15.02.2019 is in question in all the writ petitions.

3. On behalf of the writ-petitioners in C.W.J.C. No. 6167 of 2019 and C.W.J.C.

No. 5365 of 2019, Mr. S.B.K. Manglam, the learned Advocate has submitted that the District Teachers Appellate Authority in its order dated 27.02.2018 as also the State Appellate Authority in its order dated 15.02.2019 have erred in facts and law.

4. The afore-noted petitioners were selected as Panchayat Elementary School Teachers in the discipline of Urdu in a camp interview which was held on 18.11.2016. Their appointments were challenged by the private respondent Nos. 10 and 11 and private respondent Nos. 12 and 13 in respective writ petitions, referred to above, before the concerned authority specifically alleging that their names were arbitrarily not called out during the process of selection. When no action was taken on such complaints, they preferred an application before the District Teachers Appellate Authority, which, by its order impugned in the present two writ petitions (C.W.J.C. No. 6167 of 2019 and C.W.J.C. No. 5365 of 2019) held that the interview/selection process was not conducted fairly.

5. The challenge to the aforesaid order by the petitioners before the State Appellate Authority could not succeed.

6. It has been urged on behalf of the petitioners (C.W.J.C. No. 6167 of 2019 and C.W.J.C. No. 5365 of 2019) by Mr. Manglam that in camp interview, the procedure adopted was that the name of the candidates was called out thrice. When such candidate did not show-up, the authorities were required to proceed ahead and call out another name. He submits that the whole purpose of conducting camp interview was to shorten the process of selection/appointment and also to look for desirous candidates having eligibility to be appointed as teachers in specific subjects. It matters not, Mr. Manglam adds, that any person has higher marks. What is necessary for being selected is the eligibility of the candidate and his appearance before the authorities at the time of call of his name.

7. Taking the argument further, Mr. Manglam states that there was nothing on record before the District Teachers Appellate Authority or the State Appellate Authority to have come to a definite finding that the private respondent Nos. 10 and 11 and the private respondent Nos. 12 and 13 respectively were present at the time when the interview was being conducted. He further submits that the District Teachers Appellate Authority drew a presumption against the petitioners only on the ground that there were eight hundred twenty five (825) applicants registered for the purposes of selection, but only ten had shown-up on that day, which, in the opinion of the District Teachers Appellate Authority, made the entire selection process highly suspicious. Apart from this, what weighed with the District Teachers Appellate Authority was not borne out by records. The authority in question took note of the simultaneous complaints of the respondents against the authorities conducting the process. The claim of the respective respondents that the matter was reported to all the functionaries, is not correct and some of the functionaries were even present in the camp during the process of selection.

8. In that fact scenario, it is difficult to believe, Mr. Manglam asserts, that the pandemonium would have been allowed to be continued any further.

9. It has also been submitted that notwithstanding the fact that the respective respondents in each of the writ petitions may have higher marks but in the absence of any proof of the fact that they were present during the process, the District Teachers Appellate Authority ought not to have ordered for annulling the appointment of the petitioners and asking the authorities in question to induct the respective respondents in their places.

10. Lastly, Mr. Manglam has also raised his grievance with respect to only part implementation of the order passed by the State Appellate Authority in as much as, the direction of the State Appellate Authority for conducting a fresh process for appointing/selecting teachers has not been complied with and the respondents have been allowed to continue on their respective posts as if their appointments were declared to be final and without any blemish with respect to the selection process.

11. As opposed to the aforesaid contentions, Mr. Shambhu Sharan Kumar, the learned Advocate for the private respondent Nos. 10 and 11 (C.W.J.C. No. 6167 of 2019), the private respondent Nos. 12 and 13 (in C.W.J.C. No. 7147 of 2019) and for the petitioner in C.W.J.C. No. 5365 of 2019 respectively has submitted that shortly after their names were not called out in the process, they made a complaint before the B.D.O. regarding the irregularity committed during during the selection process. Such complaint was immediately taken note of and the B.D.O. informed the District Education Officer, who, in turn, apprised the Sub-Divisional Officer of the happenings at the camp site. There were other complaints also which were filed later and were taken into account by the Sub-Divisional Officer, who, on finding the process adopted to be absolutely amiss and in flagrant violation of the rules, stayed the final selection.

12. Notwithstanding the aforesaid order of stay, the petitioners were provided employment letters.

13. The other argument advanced on behalf of the private respondents is that the District Teachers Appellate Authority as also the State Appellate Authority found that the claim of the respondents were by-passed and wrongly, with mala fide motives, the petitioners were selected to be appointed as teachers. The State Appellate Authority concurred with the findings of the District Teachers Appellate Authority, but without there being any basis, strayed beyond the lis and directed for conducting fresh round of selection by way of abundant precaution.

14. Mr. Kumar submits that the State Appellate Authority traversed beyond the mandate given to it. There was no dispute with respect to the process which was to be followed in such camp interviews. Out of ten persons who were shown to have been present in such interview, six were appointed. The appointment process with respect to only two of the candidates, who are the petitioners in

C.W.J.C. No. 6167 of 2019 and C.W.J.C. No. 5365 of 2019 was under cloud. That complaint having been found to be genuine, the District Teachers Appellate Authority had passed an order directing the annulment of the appointment of the petitioners and inducting the respondents in their places. When there was no difference in the findings by the State Appellate Authority, there was no reason for him to have directed for a fresh round of selection process. He further submits that no purpose can be said to be served if such part of the order of the State Appellate Authority would be implemented.

15. In support of the aforesaid contention, Mr. Kumar has drawn the attention of this Court to a decision reported in (2017) 2 PLJR 125, in which, this Court has held that any complaint before the District Teachers Appellate Authority or the State Appellate Authority is only an invocation of their powers to look into the correctness of the appointment process or any other grievance. The jurisdiction of the Tribunals is limited to the complaints. The mandate of the Tribunals could not have been expanded by taking a general view of the matter, namely, that for any decision to be above board and beyond any circumspection, it would be appropriate if a fresh round of interview is conducted.

16. Mr. Kumar has further argued that such forays into an uncharted domain so far as the Tribunal is concerned, would not only be self-destructive but would also entail severe expenses on the State exchequer. He has also contended that notwithstanding any other reason in the fact situation brought on record in these writ petitions, there was no justification for suggesting such modification in the order passed by the District Teachers Appellate Authority. If the State Appellate Authority had any doubt about the process having been conducted in a regular manner, the findings of the District Teachers Appellate Authority could have been doubted or reversed. Concurring with the findings of the District Teachers Appellate Authority and then directing for a fresh round of exercise is not justified in the eyes of law and, therefore, is unsustainable.

17. Mr. Rajeev Kumar Singh, the learned Advocate, who has appeared for the petitioners/Abuzar Siddiquee and three others in C.W.J.C. No. 7147 of 2019, has submitted that he is only aggrieved by the afore-noted part of the order of the State Appellate Authority, whereby a direction has been issued for fresh round of interview for selection. The petitioners in C.W.J.C. No. 7147 of 2019 were appointed in the first round without there being any complaint against them and factually speaking, they are having higher marks than any one of the aspirants in the present set of litigation. He has thus limited his argument to questioning the justification of the State Appellate Authority having forayed into a field which was not within its mandate.

18. After having heard the counsel for the parties, this Court finds that the private respondent Nos. 10 and 11 (in C.W.J.C. Nos. 6167 of 2019 and 5365 of 2019) and the private respondent Nos. 12 and 13 (in C.W.J.C. No. 7147 of 2019) have higher percentage of marks than the petitioners in aforesaid two writ petitions, viz., C.W.J.C. No. 6167 of 2019 and C.W.J.C. No. 5365 of 2019 and

that they had raised complaint immediately after their names had been by-passed.

19. This Court also takes notice of the fact that both the authorities, i.e., the District Teachers Appellate Authority and the State Appellate Authority have considered the complaint seriously and came to the conclusion that the process had been muddled by not calling the names of the candidates who had appeared. The authorities dealing with the matter appreciated the fact that after the process was concluded, the Register should have been closed. That not having been done on the day when the interviews were held, the complaint of the Panchayat Secretary that he was made to sign the appointment letters at the behest of the husband of the Mukhiya and other functionaries, appears to be correct.

20. The argument advanced by Mr. S.B.K. Manglam that the S.D.O. is no authority to interfere or to oversee the process of selection is not of any worth for the reason that the S.D.O. is an authority in the hierarchy of officers though not directly concerned with the affairs of the selection/appointment of the teachers in the camp interview, nonetheless, when irregularity on such a scale was being committed and no action was being taken, it was only natural for the respondents to have approach the Sub-Divisional Officer for the needful.

21. I find that the order passed by the District Teachers Appellate Authority and the State Appellate Authority with respect to the process of appointment of the petitioners in C.W.J.C. Nos. 6167 of 2019 and 5365 of 2019 are without any folly. However, I would hasten to add that this Court does not approve of the direction issued by the State Appellate Authority for conducting fresh round of interviews by way of abundant precaution as it was not required in the first instance and it appears to be anomalous in a situation when the facts found by the District Teachers Appellate Authority has been concurred with by the State Appellate Authority.

22. The powers of the State Appellate Authority was invoked to see whether the orders passed by the District Teachers Appellate Authority was correct. If there was any doubt with respect to the correctness of the order of the District Teachers Appellate Authority, the State Appellate Authority had all the jurisdiction to change or differ with such order. Accepting such a finding and then asking the concerned authorities to conduct fresh round of selection process, in the opinion of this Court, is absolutely unwarranted and unjustified.

23. That part of the order of the State Appellate Authority is, therefore, not found to be sustainable and, is, accordingly, set-aside.

24. The upshot of this discussion is that the C.W.J.C. No. 6167 of 2019 and C.W.J.C. No. 5365 of 2019 are dismissed.

25. The C.W.J.C. No. 5562 of 2019 and C.W.J.C. No. 7147 of 2019 are allowed to the extent that the directions passed by the State Appellate Authority for

conducting a fresh round of selection process is set-aside.

26. Both the writ petitions, viz., C.W.J.C. No. 5562 of 2019 and C.W.J.C. No. 7147 of 2019 are thus allowed.