

(2015) 07 PAT CK 0052

In the Patna High Court

Case No : Letters Patent Appeal No. 218 of 2014 in Civil Writ Jurisdiction Case No. 23251 of 2012

Rani Kumari

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 07-07-2015

Acts Referred:

Citation : (2015) 07 PAT CK 0052

Hon'ble Judges : L. Narasimha Reddy, C.J.;Sudhir Singh, J

Bench : Division Bench

Advocate : Anjani Kumar,, Advocates for the Respondent

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, C.J.

1. The subject matter of this appeal has a fairly large background. The appointment of teachers in primary schools functioning in the Gram Panchayats is governed by the Bihar Panchayat Primary Teachers Employment (Service and Conditions) Rules, 2006. There were 10 vacancies in the post of teachers in the primary schools in the Gram Panchayat Ranjitpur of Sitamarhi District. Out of them, 3 were unreserved, 2 were unreserved (for female) and 1 post each was reserved in favour of EBC, EBC (female), SC and SC (female) and BC (female). The concerned officer in the district published time schedule for filling up those and other posts in the district on 7.10.2006. 963 candidates including the appellant, respondent No. 9 and respondent No. 10 applied for the same. The list of selected candidates was displayed.

2. The appellant was appointed against the seat reserved in favour of BC (female) and the 9th respondent, who too is a BC candidate, was appointed against an unreserved vacancy. It is necessary to note that the selections are on the basis of percentage of marks obtained by the candidates in the qualifying examination. While the appellant secured 50.22% marks, the 9th respondent

secured 61.33% marks, whereas the 10th respondent who belongs to unreserved category was not selected at all, secured 62.77% of marks.

3. Complaining that she was not selected inspite of being meritorious, the 10th respondent i.e. Nitu Kumari, submitted various representations and has also approached the District Teachers Employment Appellate Authority (for short, Appellate Authority).

4. Through its order dated 26.5.2009, the Appellate Authority held that the 9th respondent ought to have been appointed against reserved seat and the 10th respondent, against unreserved vacancy. Aggrieved by that order, the 9th respondent filed CWJC No. 8339 of 2010. The writ petition was allowed and the matter was remanded to the Appellate Authority. Through its order dated 29.9.2010 the Appellate Authority directed that the 10th respondent be appointed duly terminating the appointment of the 9th respondent against the unreserved vacancy. Though the appointment of the 9th respondent against the unreserved seat was set aside, she was entitled to be appointed against a post reserved for BC candidate. That in turn, was to lead to the termination of the service of the appellant herein.

5. CWJC No. 19642 of 2010 was filed by the 9th respondent challenging the order dated 29.9.2010 passed by the Appellate Authority. The writ petition was dismissed on 5.4.2012 holding that the 9th respondent did not suffer any detriment since her appointment was not in peril. Direction was also issued to the effect that in the event of there being any rival claim between the appellant, i.e. Rani Kumari, and the 9th respondent Kiran Yadav, the Tribunal shall deal with the same. LPA No. 884 of 2012 filed by the 9th respondent against the order in CWJC No. 19642 of 2010 was dismissed with certain observations.

6. The matter went before the Appellate Authority as a result of the observations in the writ petition and the LPA. Through its order dated 9.11.2012 the Appellate Authority held that the appellant on the one hand and the 9th respondent on the other hand ought to be considered against the seats reserved in favour of BC (woman) category and since the 9th respondent secured 61.33% marks as against 50.22% of marks secured by the appellant, the former is entitled to be appointed.

7. The appellant herein filed Civil Review No. 283 of 2013 in CWJC No. 19642 of 2012. She has also filed CWJC No. 23251 of 2012 challenging the order dated 9.11.2012 passed by the Appellate Authority.

8. Through common order dated 22.7.2013, the learned Single Judge dismissed CWJC No. 23251 of 2012 and Civil Review No. 283 of 2013 in CWJC No. 19642 of 2010.

9. It is argued on behalf of the appellant to the effect that the 10th respondent did not turn up for the counselling at all and it was only as an after-thought that she made representations. Learned counsel submits that the enquires that were

made at various stages revealed that though intimation was sent to the 10th respondent, she did not attend the counselling and thereby lost her opportunity to be considered for appointment. He further submits that the so-called appeal preferred by the 10th respondent was barred by limitation and none of the important aspects were taken into account by the learned Single Judge.

10. Learned counsel for the 10th respondent, on the other hand, submits that the Panchayat Secretary manipulated with the records in such a way that the 10th respondent does not receive any communication and unqualified candidates are appointed in a surreptitious manner. He contends that when the entire records were verified, it emerged that the Panchayat Secretary has tampered with many of them and thorough enquiry was ordered and the illegalities that were committed in the matter of appointment of teachers were set at naught.

11. Learned Additional Advocate General has also argued at some length, on behalf of the State.

12. Though the facts are elaborate, the controversy lies in a very narrow compass. There existed a vacancy in favour of BC (Woman) category out of the 10 vacancies that were notified in the concerned school. The 9th respondent was also a candidate belonging to BC category and she secured 61.33% of marks. She could have been certainly accommodated against a post which is unreserved, if only there did not exist any candidate who secured more marks than her. It is not in dispute that the 10th respondent, who is an unreserved candidate, secured 62.77% of marks. On the ground that the 10th respondent did not turn up for counselling, the 9th respondent was appointed against any unreserved vacancy. That enabled the appointing authority to appoint the appellant herein against the reserved post.

13. As a result of several rounds of litigation before the Appellate Authority as well as this Court, it ultimately emerged that the Panchayat Secretary manipulated the records, depriving the 10th respondent of her opportunity to appear. Since it was not in dispute that the application of the 10th respondent was in order and all her certificates were found to be true and checked, it was directed that she shall be appointed against the unreserved post duly displacing the 9th respondent.

14. Once the 9th respondent was to be out of the unreserved post, she was entitled to be considered against any reserved vacancy. That however was occupied by the appellant herein. Since the 9th respondent was more meritorious, she had to be appointed in preference to the appellant and ultimately that was done.

15. It is only on account of the illegal denial of employment to the 10th respondent that the appellant got the opportunity. Once the grievance of the 10th respondent was redressed, the 9th respondent had to be shifted to unreserved post which in turn resulted in displacement of the appellant. We have gone through the records meticulously and have come across a finding that the

reasons for non-appearance of the 10th respondent in the counselling was the manipulation on the part of the Panchayat Secretary.

16. We do not find any basis to interfere with the order passed by the learned Single Judge and the petitioner cannot be said to have acquired any right on the basis of any otherwise illegal appointment given to her.

17. The appeal is accordingly dismissed.

18. Interlocutory Application, if any, shall stand disposed of.

19. There shall be no order as to costs.