

(2014) 02 PAT CK 0087
In the Patna High Court
Case No : C.W.J.C. No. 2132 of 2014

Sangeeta Kumari

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 20-02-2014

Acts Referred:

Citation : (2015) 1 PLJR 8

Hon'ble Judges : Mihir Kumar Jha, J

Bench : Single Bench

Advocate : Rajendra Prasad Singh and Rakesh Kumar, Advocates for the Appellant; N. Hoda Khan and Harun Quareshi, Advocates for the Respondent

Judgement

Mihir Kumar Jha, J.—Heard learned counsel for the parties. Assailing the impugned order dated 20.11.2013 passed by the District Teachers Employment Appellate Authority, Katihar (hereinafter referred to as the Tribunal) in Appeal Case No. 3066 of 2012, Mr. Rajendra Prasad Singh, learned senior counsel appearing on behalf of the petitioner submits that the petitioner cannot be held to be at fault for being appointed on the post of Panchayat Teacher on 1.4.2010 because if there was a ban imposed by the State Government for appointment on the post of Panchayat Teacher of the first phase and yet the authorities of the Panchayat including the Panchayat Secretary on account of his being unaware of such ban has appointed the petitioner, her appointment, later on, could not have been disturbed. Mr. Singh, is therefore of the view that the Tribunal has committed an error in rejecting the claim of the petitioner as against the order of her termination of service. The further submission of learned counsel for the petitioner that the petitioner was not at fault in such appointment has to be also noted for its being rejected. Attractive though the aforementioned submissions may be.

2. Law in this regard has already been settled by a Full Bench of this Court in the case of Bijoy Kumar Bharti and Others Vs. State of Bihar and Others, , wherein, the Full Bench had held as follows:-

"Now, if the appointment of persons in the first category is terminated, I am of the view that it would not be unfair to terminate such appointments without hearing the persons affected. The illegality or irregularity is at the level of the administrator/appointing authority. No one has a right to be appointed irregularly. His position is that a person who has no right to the post. There is no stigma attached in the removal. Of course, if the authorities proceed on some wrong factual basis or are actuated by malice, or guided by irrelevant considerations and the like, the order of termination may be open to challenge in a Court of law. It was argued that if an opportunity is given to the persons concerned, they may try to convince the authorities that in their discretion they should not take any action in spite of the infirmity or irregularity in the initial appointment. Here what an aggrieved party can say before the authorities is that although there is infirmity in the appointment yet please do not terminate the appointment as it would lead to hardship. Such a representation is an appeal to mercy. I do not think, therefore, that in such a situation there is anything unfair in taking the decision without hearing the person likely to be effected."

3. The issue remains confined that the Government had sought to make appointment on the post of Panchayat Teacher in different phases. The first phase of appointment in terms of Bihar Panchayat Teacher Appointment Rules, 2006 commenced in the month of October, 2006 and on the basis of the panel prepared by the respective appointing unit i.e. the Panchayat, such appointments were to be made only till 20.3.2008 and i.e. how the State Government had in its phased programme communicated to all the appointing unit not to make any such appointment from the panel of the first phase of teachers by its letter dated 16.4.2009. Admittedly, the vacancy on which the petitioner was appointed had itself emerged on 26.10.2009 by way of resignation of one Puja Priyadarshi and therefore, on this vacancy which had taken place after 20.3.2008, no appointment could have been made from the panel of the first phase much less of the petitioner which was made on 1.4.2010. It is this aspect of the matter which will clinch the issue in hand and would also lead to approving the finding of the Tribunal which for the sake of clarity is quoted hereinbelow:-

4. In the considered opinion of this Court, the Tribunal has correctly gone into the issue and decided the same strictly in accordance with law. Such well considered order of the Tribunal would not require any interference of this Court. That being so, this application is wholly misconceived and is, accordingly, dismissed.