
(2014) 08 PAT CK 0044

In the Patna High Court

Case No : LPA No. 592 of 2012 in CWJC No. 4026 of 2012 and I.A. No. 2915 of 2012 in LPA No. 592 of 2012

Sunita Kumari

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 25-08-2014

Acts Referred:

Citation : (2015) 3 PLJR 10

Hon'ble Judges : R.M. Doshit, C.J.; Ashwani Kumar Singh, J

Bench : Division Bench

Advocate : Rajeev Kumar Singh, Binay Kumar Singh and Manoj Kumar, Advocate for the Appellant; Amaresh Kumar Sinha, Advocate for the Respondent;

Judgement

R.M. Doshit, C.J.

1. This Appeal under clause 10 of the Letters Patent has been preferred by the writ petitioner in CWJC No. 4026 of 2012 against the order dated 12th March, 2012 made by the learned Single Judge. The matter at dispute is the appointment of Panchayat Teacher in the respondent-Gram Panchayat Raj, Muraripur, Block-Sikti, District-Araria. The appointment of the Panchayat Teacher made pursuant to the 2006 recruitment process was questioned by the respondent No. 9 Lakhendra Prasad Mandal before the District Teachers Employment Appellate Authority, Araria in Case No. 68 of 2009. Respondent No. 9 also challenged the appointment of some other Panchayat Teachers. In respect of the appellant, the Appellate Authority held that she was appointed on a post reserved for Extremely Backward Class candidate. The respondent No. 9 was an Extremely Backward Class candidate and had higher merit than the appellant. The Appellate Authority, therefore, under its order dated 27th January, 2012, held that appointment of the appellant was void ab initio and terminated her service from the date of the interim order made by the Appellate Authority and directed that the respondent No. 9 Lakhendra Prasad Mandal be appointed as Panchayat Teacher in place of the appellant.

2. The challenge to the said order in above CWJC No. 4026 of 2012 has failed before the learned Single Judge. Therefore, this Appeal.

3. Learned advocate Mr. Rajeev Kumar Singh has appeared for the appellant. He has submitted that the Appellate Authority has committed grave error in holding that the appellant was appointed on a post reserved for Extremely Backward Class candidate. He has submitted that it was the case of the appellant from the beginning that she was appointed as a female candidate on a post reserved for female candidate in unreserved category. He has submitted that the Appellate Authority as well as the learned Single Judge has erred in holding that the appellant was appointed as an Extremely Backward Class candidate.

4. Learned advocate Mr. Pawan Kumar has appeared for the Gram Panchayat. He has relied upon the counter affidavit made by the concerned Panchayat Secretary. He has pointed out the roster approval granted by the State Government and number of posts reserved in various categories of candidates. He has submitted that against the two posts reserved for Extremely Backward Class candidate, the Panchayat had appointed one Rajendra Kumar Mandal and one Sunder Lal Mandal. Both of them had marks higher than the respondent No. 9. He has also submitted that one post was reserved for female candidate in non-reserved category. That was the post on which the appellant was appointed. He has submitted that the entire exercise by the Appellate Authority is based on erroneous assumption of facts.

5. Learned advocate Mr. Dharendra Kumar Jha has appeared for the respondent No. 9. He has contested the Appeal. He has tried to expand the scope of enquiry in this Appeal. He has submitted that if the appellant were appointed as a female candidate in unreserved category, there were three other female candidates who had better marks than the appellant. Such plea was not raised either before the Appellate Authority or before the learned Single Judge. The plea is not supported by the pleadings. Such plea cannot be entertained. Mr. Jha has supported the judgment passed by the Appellate Authority and the order of the learned Single Judge.

6. In view of the statements made in the counter affidavit filed by the Panchayat Secretary and the documentary evidence produced in the record, there is no gainsaying that appointment of the appellant was made on a post reserved for female candidate in unreserved category. The approach of the Appellate Authority on the premise that the appellant had been appointed as Extremely Backward Class candidate is not sustainable. The Appellate Authority has proceeded on presumption and assumption not supported by the documents on record.

7. For the aforesaid reasons, this Appeal is allowed. The impugned order dated 12th March, 2012 made by the learned Single Judge in CWJC No. 4026 of 2012 is set aside. CWJC No. 4026 of 2012 is allowed. The judgment and order dated 27th January, 2012 passed by the District Teachers Employment Appellate

Authority, Araria in Case No. 68 of 2009 in so far as the appointment of the appellant Sunita Kumari has been held to be bad and illegal; is quashed and the direction is issued to appoint the respondent No. 9 Lakhendra Prasad Mandal in place of the appellant Sunita Kumari is quashed and set aside. The Case No. 68 of 2009 in so far as it challenges the appointment of the appellant Sunita Kumari is dismissed.

8. Interlocutory Application stands disposed of.

9. We are informed at the Bar that the service of the appellant has been terminated pursuant to the aforesaid order dated 27th January, 2012 made by the Appellate Authority. The respondents, particularly the respondent Nos. 4 and 7 are directed to reinstate the appellant Sunita Kumari as Panchayat Teacher under the Gram Panchayat Raj Muraripur, Block-Sikti, District-Araria within four weeks from today with continuity in service. In the event the appellant is not reinstated as Panchayat Teacher within four weeks as directed, on and from 22nd September, 2014 the appellant will be entitled to receive monthly salary/honorarium regularly. The appellant will not be entitled to receive salary/honorarium from the date of termination of her service till she is reinstated in service or till 21st September, 2014, whichever be the earlier. The service of the appellant will be treated continuous for other service benefits. Registry will send copy of this order to the respondent Nos. 2, 4 and 7 forthwith.