

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11653 of 2010

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1. Ramesh Kumar Sah S/O Sri Asharphi Sah R/O Vill Sadiaha, P.S. Bhagwanpur, Distt-Siwan

.... Petitioner

Versus

1. The State Of Bihar through the District Magistrate Siwan
2. The District Superintendent of Education Distt-Siwan
3. The Block Development Officer Bhagwanpur, Distt-Siwan
4. The Block Education Extension Officer Bhagwanpur Block, Distt-Siwan
5. The Mukhiya , Gram Panchayat Raj Mora Khas, Block-Bhagwanpur Hatt, Distt-Siwan
6. The Panchayat Secretary, Gram Panchayat Raj More Khas, Block-Bhagwanpur Hatt , Distt-Siwan
7. The Members, District Teachers Employment Appellate Tribunal Authority Siwan
8. Dhananjay Kumar Singh S/O Not Known R/O Vill Mora, P.S. Bhawhanpur Hatt, Distt-Siwan

.... Respondents

with

Civil Writ Jurisdiction Case No.4764 of 2012

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1. Dhananjay Singh @ Dhananjay Kumar Singh S/O Shyam Narayan Singh Resident Of Village- Mora, P.S- Bhagwanpur, District- Siwan.

.... Petitioner

Versus

1. The State Of Bihar
2. The Principal Secretary, Department Of Human Resources, New Secretariat, Bihar, Patna.
3. The Director, Primary Education, New Secretariat, Bihar, Patna.
4. The District Superintendent of Education, Siwan.
5. The Block Education Extension Officer, Bhagwanpur Hat, Siwan.
6. Gram Panchayat Raj Mora, Bhagwanpur Hat, Siwan, Through Its Secretary.
7. The Mukhiya, Gram Panchayat Raj Mora, Bhagwanpur Hat, Siwan.
8. The Panchayat Secretary, Gram Panchayat Raj Mora, Bhagwanpur Hat, Siwan.
9. Dhananjay Kumar Singh S/O Sheo Pujan Singh Resident Of Village Mora, P.S- Bhagwanpur Hat, Siwan.

.... Respondent/s

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Appearance :

(In CWJC No.11653 of 2010)

For the Petitioner : Mr. Ravindra Nath Dubey, Advocate

For the State : Mr. AC to GA III

For the Pvt. Respondent: Mr. Awadhesh Kumar Singh, Advocate

(In CWJC No.4764 of 2012)

For the Petitioner : Mr. Sanjay Kumar

For the State : Mr. AC to SC 4

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH
ORAL ORDER

4 28-11-2014

I have learned counsel for the parties at length.

To begin with, I consider it appropriate to record the purpose behind hearing of these two writ applications together and the manner in which a dispute relating to appointment to the post of Panchayat Teacher under Bihar Panchayat Elementary Teachers (Appointment and Service Conditions) Rules, 2006 (hereinafter referred to as the Rules) has traveled to this court.

An order dated 02.07.2010 passed by the District Teachers Appointment Appellate Authority, Siwan issued vide memo No. 718 is under challenge in CWJC No. 11653 of 2010. An appeal before the Appellate Authority leading to issuance of the impugned order dated 02.07.2010 was filed by Shri Dhananjay Kumar Singh. One Dhananjay Kumar Singh has been impleaded as party respondent No. 8 in the writ application with the description "son of not known to the petitioner". By an order dated 18.03.2011 notice was issued to respondent No.8, who has entered appearance through learned counsel and filed counter affidavit. Respondent No.8 has described himself to be son of Shri Sheo Pujan Singh. Though, no parentage of the appellant Dhananjay

Kumar Singh is given in the impugned order dated 02.07.2010, there appears to be no doubt that Dhananjay Kumar Singh son of Sheo Pujan Singh had preferred appeal before the Appellate Authority, who has been impleaded as respondent No.8 and has opposed the prayer made in the writ application.

The same order dated 02.07.2010 appears to have been challenged by one Dhananjay Kumar Singh son of Shyam Narayan Singh in CWJC No. 16531 of 2011 in which Dhananjay Kumar Singh son of Sheo Pujan Singh (respondent No.8 of CWJC No. 11653 of 2010) was impleaded as respondent No.9. He took a plea that, in the facts and circumstances of the case, the Teachers Appointment Committee should not have been given direction by the Appellate Authority to appoint Dhananjay Kumar Singh son of Sheo Pujan Singh against the post of Panchayat Teacher and contended that it was Dhananjay Singh @ Dhananjay Kumar Singh son of Shyam Narayan Singh who was entitled to be appointed as Panchayat Teacher on the basis of respective weightage points. This court disposed of CWJC No. 16531 of 2011 in following terms:-

“It is relevant to state that present petitioner Dhananjay Kumar Singh did not participate while the proceeding was pending before the Appellate Authority though he filed one application dated 25.7.2011 before the Appellate Authority, has drawn the attention about the factual mistake committed by the said Authority but the Appellate Authority rightly did not take cognizance as this application has been filed after the disposal of appeal.

It has been brought to the notice of this Court Ramesh Kumar Sah has also challenged the order passed by the Appellate Authority i.e. annexure-2 in C.W.J.C. No. 11653/2010 which is pending for consideration before this Court.

It is not possible for this Court to adjudicate the fact, as to who is the real Dhananjay Kumar Singh who participated in the counselling and whose name is at Sl. No. 15 in the final selection list. These are questions of facts it is not possible for the Writ Court to adjudicate this questions of fact.


This Court gives a liberty to the present petitioner to file his independent case before the Appellate Authority bringing those facts which he has stated in the writ petition arraying Dhananjay Kumar Singh son of Shivpujan Singh and Ramesh Kumar Singh including the authority of the Panchayat. The Appellate Authority will go into the question of facts which would be raised by the writ petitioner and decide the same."

Thereafter the said Dhananjay Singh @ Dhananjay Kumar Singh filed an appeal No. 697 of 2011 before the District Teachers Appointment Appellate Authority, Siwan in the light of this court's order dated 26.09.2011 passed in CWJC No. 16531 of 2011 (supra). The Appellate Authority by an order dated 26.12.2011 dismissed the appeal preferred by Dhananjay Singh @ Dhananjay Kumar Singh son of Shyam Narayan Singh and reiterated the earlier direction issued vide memo No. 718 dated 02.07.2010 for appointment of Dhananjay Kumar Singh son of Sheo Pujan Singh. The order of the Appellate Authority dated 26.12.2011 passed in Appeal No. 697 of 2011 is under challenge in CWJC No. 4764 of 2012. This is the backgrounds in which both the cases have been heard together and are being disposed of by

the present common order.

Coming to the merits of the case, there are certain facts which are not in dispute. Respondent No. 8 of CWJC No. 11653 of 2010 and respondent No. 9 of CWJC No. 4764 of 2012 is the same person and is son of Sheo Pujan Singh and for the purpose of present order he is being described as private respondent as he is only private respondent in both cases.

This is not in dispute that petitioner of CWJC Nos. 11653 of 2010 and 4764 of 2012 and the private respondent were applicants for the post of Panchayat Teacher in Gram Panchayat Raj Mora under the district of Siwan. Under the Rules, candidates' relative score at Intermediate level was the criteria for preparation of merit list. This is also not in dispute that petitioner of CWJC No. 11653 of 2010 was appointed as Panchayat Teacher on the basis of recommendation of Teachers Appointment Committee of the Gram Panchayat against unreserved post. This is also not in dispute that petitioner of CWJC No. 11653 of 2010 had 56.89% of marks in Intermediate level whereas the petitioner of CWJC No. 4764 of 2012 had 68.33% marks at that level. The private respondent had admittedly 69.77 % marks at the Intermediate level. The private respondent preferred an appeal under Rule 18 of the Rules challenging the appointment of the petitioner of CWJC




No. 11653 of 2010. The private respondent took a plea before the Appellate Authority that petitioner of CWJC No. 11653 of 2010 by interpolating records and by producing forged document at the time of selection obtained appointment as Panchayat Teacher, showing himself to have scored 70.22% marks at the Intermediate examination. He claimed before the Appellate Authority that though he had more marks than petitioner of CWJC No. 11653 of 2010, he was denied appointment as the selection committee relied upon the forged marks sheet submitted by him. Accepting the stand, the Appellate Authority allowed the appeal vide order dated 02.07.2010 and set aside the appointment of petitioner of CWJC No. 11653 of 2010 and directed the appointment unit of Gram Panchayat Raj Mora to appoint private respondent as Panchayat Teacher. The Appellate Authority also directed the Teachers Appointment Committee of the said Gram Panchayat to report compliance as regards implementation of the order. This is the order dated 02.07.2010, which is under challenge in CWJC No. 11653 of 2010.

The petitioner of CWJC No. 11653 of 2010 Ramesh Kumar Sah seeks to challenge the order of the Appellate Authority on the ground that one Dhananjay Kumar Singh did not appear for counseling and, therefore, with 56.89% of marks, he was

appointed. It has also been asserted that the private respondent did not raise any objection within 30 days of petitioner's selection and objection was being raised after much delay when the petitioner had worked for three years.

Mr. Ravindra Nath Dubely, learned counsel for the petitioner in CWJC No. 11653 of 2010 has vehemently submitted that private respondent was not appointed because he did not participate in counseling and in his absence the petitioner was appointed. He has, however, not disputed the fact that the petitioner's score at Intermediate level is 56.89%. He has also contended that the petitioner never claimed his appointment as Panchayat Teacher on the ground that he had 70.22% marks at Intermediate level. He has also submitted that the private respondent raised a false plea that on the basis of a forged and fabricated document before the Appellate Authority that the petitioner secured appointment as Panchayat Teacher on the basis that he secured 70.22% marks at Intermediate level. He has submitted that the Appellate Authority wrongly allowed the appeal preferred by the private respondent.

Per contra, Mr. Awadhesh Kumar Singh, learned counsel appearing on behalf of private respondent, has taken me to the counter affidavit filed by him and submitted that the petitioner



claimed to have 690 marks out of 900 at Intermediate level at the time of preparation of merit list by procuring a forged marks sheet in order to defeat the claim of private respondent. He has drawn my attention to annexure-E to the counter affidavit which, according to him, is the Xerox copy of self attested copy of marks sheet submitted before the Panchayat Secretary of the concerned Gram Panchayat by the petitioner Ramesh Kumar Sah. He has, accordingly, submitted that the Appellate Authority rightly passed the order dated 02.07.2010 issued vide memo No. 718.

It is specific averment in the counter affidavit filed by the private respondent that the marks sheet submitted by petitioner for the purpose of selection was forged by him and the private respondent obtained its copy under Right to Information Act from which it would appear that the petitioner claimed to have scored 690 marks (70.22%) though he had only 570 (56.89%) marks at Intermediate level.

Mr. Dubey, learned counsel for the petitioner, opposing such submission has contended that annexure-E to the counter affidavit, which is alleged to be copy of self attested copy of marks sheet of the petitioner with respect to Intermediate examination, is a document which has been forged by the private respondent.


On the basis of pleadings and rival submissions, this becomes an admitted fact that private respondent has better merit points than the petitioner for the purpose of appointment as Panchayat Teacher. Disputes on facts have been, however, raised on two counts, namely:-

(a) Whether the private respondent participated at all in counseling for appointment. It is the plea of the petitioner that he did not participate in counseling, therefore, the petitioner was appointed though he had less marks than the private respondent.

(b) Whether appointment of petitioner of CWJC No. 11653 of 2010 is because of his misrepresentation before the selection committee that he had 690 out of 900 (70.22%) marks at the Intermediate level or he was appointed as the private respondent failed to participate in the counseling.

These are two disputed questions of facts on the basis of pleadings and submissions in CWJC No. 11653 of 2010.

In CWJC No. 4764 of 2012, Dhananjay Singh @ Dhananjay Kumar Singh, as noted above, had earlier come to this court challenging the order of the Appellate Authority dated 02.07.2010 mainly on the basis that he had better merit points than petitioner of CWJC No. 11653 of 2010 and because the private respondent did not appear in the counseling, he should have been



ordered to be appointed by the District Teachers Appointment Appellate Authority, Siwan. It is his plea that if claim of private respondent for his appointment as Panchayat Teacher is fit to be rejected on the sole ground that he did not participate in counseling and the petitioner of CWJC No. 4764 of 2012 shall have better claim than petitioner of CWJC No. 11653 of 2010 to be appointed as Panchayat Teacher .

On the other had, the stand of the private respondent is that he had participated in the counseling and because of the forged certificate submitted by the petitioner of CWJC No. 11653 of 2010, his better claim to be appointed was denied.

The scope of jurisdiction of this court of judicial review under Article 226 of the Constitution of India has its own limitations and it is guided by well settled principles of judicial restraint which the High Courts exercise while considering legality of an order passed by a statutory quasi judicial authority. This court interferes with such orders if the findings recorded by such quasi judicial authorities are patently perverse and without any evidence. If there is manifest error on the part of such quasi judicial authority, while passing the order or where there is non application of mind by such authority is writ large, this court may exercise its discretion to interfere with the findings of facts arrived

at by the quasi judicial authority.

The orders under challenge in the present applications cannot be said to be perverse or without evidence. As I have noted above, certain disputed questions of facts have been raised by the parties. It has been consistent view of the superior courts that the question of facts, which require evidence to be adduced by the parties, should not be entertained in prerogative of writ jurisdiction. Reference may be made in this regards to certain judgements of the Supreme Court.

A Constitution Bench of Supreme Court presided over by five Hon'ble Judges held in case of ***Deep Chand v. the State of Rajsthan reported in AIR 1961 SC 1526*** that proceeding under Article 226 of the Constitution of India would not be appropriate for decision upon disputed questions of facts, when there is a great deal of dispute which would require examination of evidence.

The Supreme Court in the case of ***Natha Singh vs. the Financial Commissioner, Taxation, Punjab & Others*** reported in ***AIR 1976 SC 1053*** held in paragraph 5 as follows:-

“5. With regard to the first contention advanced on behalf of the appellants, it is sufficient to observe that it has been time and again observed by this Court that in dealing with a petition under Article 226 of the Constitution, the High Court cannot exercise the jurisdiction of an appellate court and cannot re-examine or disturb the findings of fact arrived at by an inferior court or a tribunal


in the absence of any error of law.”

The Supreme Court dealt the question of scope of judicial review under Article 226 of the Constitution of India in cases involving disputed questions of facts in case of ***Chairman, Grid Corporation of Orissa Ltd. (GRIDCO) & Ors. V. Sukamaini Das & Ors*** reported in (1997) SCC 298 and held that disputed questions of facts ought not to be entertained under Article 226 of the Constitution of India.

Again in case of ***Food Corporation of India v. Pala Ram*** reported in (2008) 14 SCC 32 the Supreme Court held in paragraph 47 that writ petition was not maintainable as series of disputed questions of facts were raised.

In case of ***Hindustan Coca-Cola Beverages Pvt. Ltd. v. Sangli Miraja Kupwad Municipal Commissioner & Ors*** reported in (2011) 7 SCC 645 the Supreme Court held in paragraph 21 that there being disputed questions of facts, they should not have been gone into by the High Court exercising writ jurisdiction under Article 226 of the Constitution of India.

The law on the scope of jurisdiction of the High Court under Article 226 of the Constitution of India in cases involving disputed questions of facts has been succinctly laid down by the Supreme Court in case of ***Shubhashree Das @ Mili v. the State of***



Orissa & Ors reported in (2012) 9 SCC 729 holding that claims of the appellant under Article 226 of the Constitution of India could not have been determined on the basis of disputed facts. The Supreme Court held that “in a case where the petitioner/ appellant wishes to press his/her claim before a High Court under Article 226 of the Constitution of India, the claim raised by such petitioner/ appellant must be determined on the basis of factual position and acknowledged by the respondent”. The Supreme Court observed that this was so because a High Court in exercise of writ jurisdiction under Article 226 of the Constitution of India, would ordinarily not adjudicate a matter, where foundational facts are disputed.

In view of judicial pronouncements, as noted above, I do not feel inclined to go into the disputed questions of facts raised in the present cases, by the parties, as noted above. Here is a case where the private respondent got the relief from the Appellate Authority on the ground that he had better merit points than the person appointed as Panchayat Teacher (petitioner of CWJC No. 11653 of 2010) and who had procured appointed on the basis of forged marks sheet showing his marks to be 690/900 as against his actual marks of 570/900. The private respondent has brought on record Xerox copy of self attested marks sheet of the petitioner of

CWJC No. 11653 of 2010 in which his score has been shown to be 690 out of 900 (70.22%). The plea of the petitioner on the other hand is that copy of the marks sheet, which has been brought on record by private respondent, has been forged by him and the petitioner was appointed as Panchayat Teacher because private respondent did not participate in the process of counseling.

These are seriously disputed questions of facts beyond the scope of adjudication in a proceeding under Article 226 of the Constitution of India. Adjudication upon these disputed questions of facts will certainly have bearing on the case of petitioner of CWJC No. 4764 of 2012.

In the facts and circumstances of the case, I do not find any reason to entertain these writ applications and the writ applications are, accordingly, dismissed.

(Chakradhari Sharan Singh, J)

BKS/-

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