

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1852 of 2019

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Sunita Singh D/o Dhruv Narayan, W/o Sunil Kumar Resident of Village-
Zorawarpur, P.O. Baradhih , P.S. Karakat(Gorari), Distt. Sasaram, Rohtas
... .. Petitioner/s

Versus

1. The State Of Bihar through its Principal Secretary, Education Department,
Govt. of Bihar, Patna
 2. The Director, Secondary Education (Madhyamik Shiksha), Govt. of Bihar,
Patna
 3. The Regional Deputy Director of Education Patna Pramandal, Patna
 4. The District Education Officer, Sasaram, Rohtas
 5. The District Programme Officer Establishment, Sasaram, Rohast
 6. The Nagar Executive Officer Cum Secretary Nagar Shikshak Niyojan Samiti
Nagar Parishad, Dehri Dalmianagar, Dehri-on-Sone, Rohtas
 7. The Narayan Pathak S/o late Jay Narayan Pathak Resident of Village and
P.S. Jamira, Distt. Ara, Bhojpur
- Respondent/s
- =====

Appearance :

For the Petitioner/s : Mr.Rama Kant Singh
For the State : Mr.Prabhakar Jha, GP 27
For the Nagar Parishad : Mr. Avinash Kumar
For Respondent No. 7 : Mr. Kishore Kumar Thakur
Mr. Braj Kishore Singh

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

JUDGMENT AND ORDER
C.A.V.

Date : 04-12-2023

The petitioner, by way of present writ application, has challenged her removal from the post of Librarian, in High School, Dalmianagar, Dehri-on-sone, Rohtas, vide Memo No. 2058, dated 07.12.2018 (Annexure 1), issued by the Nagar Executive Officer -cum- Nagar Shikshak Niyojan Samiti, Nagar Parishad, Dehri, Dalmianagar (respondent no. 6).



2. The brief facts, giving rise to the present writ application, is that on 30.11.2008, an advertisement was published in the daily Newspaper for appointment on the posts of Librarian in different High schools in the Nagar Parishad, Dehri, Dalmianagar.

3. Five vacancies of Librarian were available in different High Schools falling within the Nagar Parishad, Dehri, Dalmianagar and as per roaster clearance, three posts were allocated to General Category, one post for Extremely Backward Classes and one post for Schedule Caste category.

4. The petitioner, respondent no. 7 and several others applied, and after completion of process of selection, date of counselling was fixed on 13.07.2015.

5. It is the case of the petitioner that along with her, only two other candidates appeared in counseling process, namely, Sunil Kumar and Puja Kumari Soni, and respondent no. 7, namely, Tej Narayan Pathak did not participate in the counselling process. Appointment letter was accordingly issued to the petitioner, vide Memo No. 411, dated 23/07/2015 (Annexure 3) by respondent no. 6.

6. Vide Memo No. 559, dated 27.08.2015, the petitioner was informed that her appointment has been cancelled due to



clerical mistakes, that the date concerning the employment process was not published over NIC.

7. The petitioner filed an appeal, bearing Appeal No. 14 of 2015, before the District Appellate Authority, Rohtas, Sasaram, which was allowed on 28.01.2016 and the order of cancellation of her selection was set aside and direction was issued to the respondents to reinstate her back on the post of Librarian, observing that her valid selection/appointment cannot be cancelled solely on the ground that the data concerning the employment process could not be uploaded on the NIC website.

8. The Respondent No. 7 challenged the appointment made by the Employment Unit, by filing Appeal No. 03 of 2016 before the District Appellate Authority, in which the petitioner was made Opposite Party No. 2. The said appeal was allowed vide order, dated 15.02.2017, wherein a direction was issued to appoint respondent no. 7 as Librarian on the vacant post. It was observed that two posts are vacant in two different schools, namely, High School, Dalmianagar, and Ramarani Jain girls High School, Dehri. The objection of the petitioner that the appeal filed by the respondent no. 7 is time barred was rejected by the District Appellate Authority and the District Appellate Authority arrived at the conclusion that the respondent no. 7 had participated in the



counselling on 13.07.2015 and obtained 58.91 per cent, due to which he was entitled to be placed at serial no. 2 in the panel.

9. Since the aforesaid order of the District Appellate Authority was not complied, the respondent no. 7 approached this Court, in CWJC No. 7900 of 2017, and a co-ordinate Bench of this Court, vide its order, dated 12.04.2018, directed the respondent no. 6 to implement the order passed in Appeal No. 03 of 2016, by the District Appellate Authority, dated 15.02.2017, within a maximum period of 60 days.

10. It is in this background the appointment of the petitioner was cancelled by the impugned order for appointment of respondent no. 7.

11. Learned Counsel for the petitioner submits that before passing the impugned order of cancellation of the appointment of the petitioner, no show cause or opportunity of hearing was given to her. As such, the same is violative of principle of Natural Justice.

12. He further submits that the order passed by the District Appellate Authority and the High Court could not be read in the manner to cancel the appointment of the petitioner. The petitioner is still working in the school to the satisfaction of her



authorities. Two posts of Librarian is still vacant, in which the respondent no. 7 can be appointed.

13. On the other hand, learned Counsel for the respondent nos. 6 and 7 argued that out of five vacancies advertised, three vacancies were meant for General Category, one for Extremely Backward Class Category and the another one is for Schedule Castes. Against the five posts, four persons, including the petitioner and respondent no. 7, participated in the counselling on the scheduled date, but somehow, the appointment letters were issued only to three candidates, namely, Sunil Kumar, Puja Kumari Soni and Sunita Singh (petitioner) and the respondent no. 7 was left out even after securing higher marks than that of Puja Kumari Soni and Sunita Singh (petitioner). The marks obtained by the four candidates participated in the counselling on 13.07.2015 are given herein below:-

Sl. No.	Name	Father's Name	Marks	%age	Category
1.	Sunil Kumar	Dwarika Singh	122	62.35	BC
2.	Puja Kumari Soni	Vijay Kumar Singh	77	58.07	BC
3.	Sunita Singh	Dhruv Nonia	118	48.27	BC
4.	Tej Narayan Pathak	Jag Nayan Pathak	178	58.91	General

14. The appeal filed by the respondent no. 7 before the District Appellate Authority raising the grievance of his non-selection was allowed and the Appellate Authority, after scrutiny of the materials, come to the conclusion that the respondent no. 7



participated in the counselling and secured higher marks than the petitioner and should have been placed at serial no. 2 in the merit panel. Accordingly, the District Appellate Authority directed for appointment of the respondent no. 7 on the post of Librarian. The petitioner has, admittedly, obtained lesser marks amongst the four candidates, who participated in the counselling process, having 48.27 per cent, as such she should have been placed at serial no. 4 in the merit panel.

15. Since, there was no vacancy, out of five vacancies of Librarian, earmarked for Backward Class Category, the three candidates of Backward Class Category were deemed to be falling under general category. The respondent no. 7, who belongs to general category, for which three vacancies were earmarked.

16. Accordingly, the argument is that the petitioner was wrongly appointed against the third vacancies of general category, despite having least marks amongst the four candidates participated in the counselling process.

17. In the circumstances, the claim of the petitioner of her appointment on the vacant posts of Librarian under the general category is not tenable in law and the respondent no. 7 is having better right to be appointed on the post of Librarian under the general category as per the marks obtained by him.



18. In reply, learned Counsel for the petitioner argued that respondent no. 7 did not appear in the counselling and only three candidates, including herself, has appeared in the counselling and as such, the appointment letter was not issued to the respondent no. 7.

19. Upon hearing learned Counsel for the parties concerned and upon perusal of the materials on record, the factual position that emerges is that out of five vacancies advertised for the post of Librarian, three vacancies were meant for General category, one for Extremely Backward Category and another one is for Schedule Castes category. Since the respondent no. 7 belongs to general category and the petitioner belongs to Backward Class category (for which, no post was earmarked).

20. It is not in dispute that the marks obtained by respondent no. 7 is higher to the marks obtained by the petitioner inasmuch as the petitioner obtained 48.27 per cent; whereas, the respondent no. 7 obtained 58.91 per cent.

21. Since, no candidate of Extremely Backward Class category and Schedule Castes category participated in the counselling process, the two posts of Librarian meant for those two categories were lying vacant. Since, the four candidates have participated in the counselling for three posts of General category,



a merit list was prepared, but the respondent no. 7, who is from General category, was wrongly left out, despite having more marks than the petitioner and one another candidate, namely, Puja Kumari Soni. As per the marks obtained by respondent no. 7, he was to be placed at serial no. 2 in the merit panel as only one candidate, namely, Sunil Kumar, obtained higher marks than the respondent no. 7, having 62.35 per cent.

22. The District Appellate Authority, in the appeal filed by the respondent no. 7, in which the petitioner was Opposite Party No. 2, directed for appointment of respondent no. 7 on the post of Librarian after arriving at the conclusion that the respondent no. 7 had secured more marks than the petitioner.

23. The respondent no. 6 as well as the District Appellate Authority also arrived at the conclusion that the respondent no. 7 had participated in the counselling held on 13.07.2015, as such, the contention of the petitioner that the respondent no. 7 did not participate in the counselling is having no basis.

24. A co-ordinate Bench of this Court, in CWJC No. 7900 of 2017, filed by the respondent no. 7, directed the respondent no. 6 to appoint him as per the order passed by the District Appellate Authority in his favour.



25. It was in this background that the impugned order, dated 07.12.2018, was issued for removal/cancellation of the petitioner's appointment.

26. I find that as per the material available on record, only two posts of Librarian, under the Extremely Backward Class category and Schedule Castes category are vacant, upon which no direction can be issued for appointment of respondent no. 7 and/or petitioner inasmuch as both of them do not fall under those categories.

27. Since the petitioner secured lesser marks than the respondent no. 7 and was appointed, ignoring the claim of respondent no. 7, who is from General category, as such, in my opinion, the petitioner has to give way for appointment of respondent no. 7 on the post of Librarian meant for General Category. The respondent no. 7 has better right of being appointed.

28. In the result, I do not find any infirmity in the impugned order. This writ application is, accordingly, dismissed.

29. There shall be no order as to costs.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

AFR/NAFR	AFR
CAV DATE	12-10-2023
Uploading Date	04-12-2023
Transmission Date	N/A

