
Shobha Kumari Vs The State of Bihar and Others

CWJC No. 5979 of 2008

Court: Patna High Court

Date of Decision: Sept. 27, 2011

Acts Referred:

Bihar Panchayat Prarambhik Shikshak (Niyojan Avam Seva Sart) Niyamavali, 2006 â€” Rule 9(vi)

Citation: (2012) 3 PLJR 697

Hon'ble Judges: J.N. Singh, J

Bench: Single Bench

Advocate: Kamal Nayan Choubey, Umesh Narayan Dubey, Ranjeet Choubey, for the Appellant; Yogesh Chandra Verma, Rajni Kant Singh for the Respondent No. 11 and Mr. Shailendra Jha for the State, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

J.N. Singh, J.

Petitioner has filed this writ application for quashing the selection/appointment of respondent no. 11 made on the post of

Panchayat Shikshak in Amiyawar Panchayat within the district of Rohtas. She has further prayed for a direction to the respondents to

select/appoint her on the post of Panchayat Shikshak on the basis of documents submitted by her, as she is more meritorious than respondent no.

11. A further prayer has been made to direct the authorities to make enquiry regarding illegal selection/appointment on the post of Panchayat

Shiksha Mitra in the Panchayat in question made by respondent nos. 8 and 10 and further direct to the authorities concerned to do the needful, as

prescribed by law. Short facts, as per her case is that, in the said Panchayat there were eight vacancies for Shiksha Mitra, out of them four were

for male candidates and four were for female candidates. Out of the eight, four were to be filled up by general category candidates and rest four

were to be filled up by reserved category candidates. Accordingly, an advertisement was published and petitioner applied for selection and

appointment. Selection Committee held meeting and considered the applications and a merit/gradation list was published on 17.5.2005. Petitioner

was fourth in the merit list of female candidates. The candidate at the first position was overage and the second and third were general category

candidates. Hence, petitioner was the first female candidate under reserved category. She had secured 15 points with higher percentage of

69.78% marks in Intermediate. However, respondent No. 11, with only 62.78% marks in Intermediate, was selected and appointed under the

backward category. Petitioner came to know about this appointment of respondent no. 11 in the month of November, 2005. Accordingly, she

submitted an application to the Block Development Officer, Nasriganj on 18.8.2006 (Annexure-3) raising an objection. A copy of the said

application was also sent to the District Magistrate, Rohtas by registered post on 24.8.2006 (Annexure-4). Since she did not come to know about

any action taken on her application, she submitted another application to the District Magistrate on 19.9.2007 (Annexure-5). She also filed an

application under Right to Information Act before respondent no. 7 with required fee seeking information as to on what basis she had not been

selected. In response, she was supplied with only the proceeding of the Selection Committee, the marks sheet and the admit card of respondent

no. 11 of Intermediate Examination (Annexure-6 series). But till now no decision has been taken by the respondents on her applications/objections.

2. The submission of the learned Senior Counsel for the petitioner was that the petitioner, having higher percentage of marks in the Intermediate

vis-a-vis respondent no. 11, had a right to be selected and appointed in place of respondent no. 11 as a backward category female candidate.

Hence, she is entitled for the reliefs prayed for in this writ application. He cited the following judgments for consideration by this Court:--

(1) L. Hirday Narain Vs. Income Tax Officer, Bareilly,

(2) 1991 (2) PLJR 513 (Prem Nath Singh vs. The State of Bihar)

(3) Purnea Zila Mazdoor Union Vs. State of Bihar and Others,

(4) 1976 BBCJ 1 (Lowa Tanti @ Loba Tanti vs. The State of Bihar)

3. A counter affidavit has been filed on behalf of respondent nos. 1 to 7, sworn by respondent no. 7. It is stated that on the application of the

petitioner, enquiries were made and records with regard to entire selection were called for from the concerned Panchayat, but the same has not

been received as yet. Hence no action could be taken in the matter so far.

4. Respondent No. 11 has also appeared and filed her counter affidavit. Her stand is that she had also secured 15 points, as all candidates having

60% to 75% marks in Intermediate had to be allotted 15 points uniformly. But she was older in age to the petitioner. Hence, in terms of the Rule

9(vi) of Bihar Panchayat Prarambhik Shikshak (Niyojan Avam Seva Sart) Niyamavali, 2006 (as amended by Amendment Act, 2008), an elder

candidate had to be preferred to the younger one for appointment. It is stated that, in view of Resolution Nos. 1548 dated 11.8.2004 and 1748

dated 2.9.2005, an objection, by any aggrieved party, had to be filed before the District Magistrate within 30 days, who was authorized to enquire

and cancel the appoint, if found irregularly made. Respondent completed her first term of 11 months and her term was renewed thereafter, but

petitioner did not file her objection within the prescribed time. She only filed her objection, Annexure-3, after the 2006 Rules came into force and

when she came to know that the contractual appointments of Shiksha Mitras have been converted into a regular appointment with tenure of service

and with higher remuneration and a new designation of "Panchayat Shikshak".

5. Learned Senior Counsel appearing on behalf of respondent no. 11 submitted that the application/objection of petitioner being time barred, could

not be considered by the respondents. He cited the following two judgments for consideration by this Court:--

(1) Kanhaiya Kumar Mishra and Others Vs. The State of Bihar and Others,

(2) Alok Kumar Singh Vs. The State of Bihar and Others,

6. Having considered the facts and circumstances of the case and the stand of the parties, this Court is of the opinion that it is not required to

decide the matter on merits. This Court has failed to appreciate as to in what manner the judgments relied upon by learned Senior Counsel for the

petitioner, as listed above, is relevant for the case of petitioner. The first case cited by him is of Income Tax Act; the second is of Medicinal and

Toilet Preparations (Excise Duties) Act; the third one is of Minimum Wages Act and the fourth one is Essential Commodities Act. On the other

hand, the judgments relied upon by the learned Senior Counsel for respondent no. 11 clearly establish that no application/objection, not filed within

30 days, and filed for the first time after 2006 Rules came into force, for enquiry into the appointments of Shiksha Mitras made prior to it, or for

consideration of a claim for appointment on the basis of an application submitted earlier for appointment as Shiksha Mitra, is maintainable after the

Rules have come into force. The writ application is dismissed.