

Dilip Kumar Vs. the State of Bihar and Others

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Court : Patna

Decided On : May-16-2014

Judge : Mihir Kumar Jha

Appeal No. : Civil Writ Jurisdiction Case No. 12634 of 2013

Appellant : Dilip Kumar

Respondent : The State of Bihar and Others

Judgement :

1. Heard learned counsel for the parties.

2. The prayer of the petitioner in this writ application reads as follows:- œ

1(a) For issuance of appropriate writ in the nature of Mandamus for directing and commanding the concerned respondent authorities to appoint the petitioner a panchayat Teacher by quashing the order passed in memo No.- 738 dated 02.12.2008 passed by the learned BDO, Chhaurahi, under Begusarai District whereby and whereunder the learned BDO-Chhaurahi has found it that the persons who have been appointed as Panchayat Teachers (i.e.- Respondent No.- 11) have less than the present petitioner as- petitioner is having 57.55% marks while Respondent No.-11 Anil has got 54.44% but has refused to appoint the petitioner saying therein that the petitioner could not brought the certificate of the date of Birth even after information, but has not considered this fact that the date of birth of the candidates have already mentioned in the every certificate of

matriculation.

(b) For the issuance of an appropriate order/Direction/Writ commanding the Respondent authorities to take appropriate step/steps against the responsible persons for making such a fake and fraudulent selection, only and only to take the undue advantage of the post and power conferred to them and as the petitioner has been left in lurch and had been deprived from appointment to the post of Panchayat Sikshak due to the dogmatic attitude of the Respondent authorities, the petitioner is facing as yet.

(c) For the issuance of direction to the concerned authorities for initiating a criminal proceeding against the Respondent No.-11 as for the selection he has produced a forged certificate of BC-I although he comes from BC-II.?

3. Learned counsel for the petitioner, in support of the aforesaid prayer, has basically concentrated on the aspect that the petitioners claim for appointment on the post of Panchayat Teacher was wrongfully rejected despite his having higher marks i.e. 57.55% as against the respondent no.11, who had only 54.44% marks and as such, the appointment in the year 2007 was a grave error which ought to have been rectified by the authorities specially when the Block Development Officer, Chhaurahi in his order dated 2.12.2008 had non-suited the petitioner on a wholly irrelevant ground i.e. non-production of his proof of date of birth. According to learned counsel for the petitioner, the proof of date of birth, being already on record by way of his Matriculation certificate, the Block Development Officer was in error in non-suiting the petitioner.

4. Learned counsel for the State, on the other hand, has submitted that the issue relating to appointment of the year 2007 cannot be now raised by the petitioner by filing this belated writ application especially when even before this Court, he has not produced any certificate of his date of birth. He has further submitted that the first order passed by the Block Development Officer on 27.3.2008 being of the competent authority under Rule 18 as it was existing prior to 25.8.2008 of Bihar Panchayat Teacher Rules 2006,, could not have even made subject matter of the District Teachers Employment Appellate Tribunal which had no power to override review or reverse the earlier decision of the prescribed competent authority under

Rule 18 of 2006 Rules.

5. In the considered opinion of this Court, once this aspect becomes clear that the petitioner is assailing the appointment of the respondent no.11, which was made in the year 2007, that by itself would be a good ground to dismiss this writ application due to unexplained delay and laches on his part.

6. That apart, it is not in doubt that when the petitioner had earlier filed his application against the appointment of the respondent no.11 before the Block Development Officer in the year 2007 itself,, the same was disposed of by an order dated 27.8.2008 wherein it was held as follows:-

(LANGUAGE)

7. It is also not in doubt that as on 27.3.2008, the Block Development Officer was the prescribed authority in terms of Rule 18 of 2006 Rules and the Tribunal only came into existence with effect from 25.8.2008 after amendment in Rule 18 of the Panchayat Teachers Appointment Rules, 2006.

8. As a matter of fact, when the petitioner had earlier assailed the aforesaid order dated 25.8.2008 by filing his writ application CWJC No. 702 of 2008, this fact was suppressed that an earlier order had already been passed by the Block Development Officer as has been noted in the subsequent order passed by the Block Development Officer on 2.12.2008. This Court is, therefore, of the view that the order dated 2.12.2008 by itself is not a fresh order to be held without jurisdiction. As on 2.12.2008, the Block Development Officer had been left with no power to decide the matter related to employment on the post of Panchayat Teacher.

9. As a matter of fact, the petitioner had to assail the aforesaid order passed by the Block Development Officer on 27.3.2008 as noted in the subsequent order of the Block Development Officer dated 2.12.2008 before this Court but, somehow the petitioner had again moved the Tribunal by filing the Case No. 819 of 2009 which was not permissible, inasmuch as, the Tribunal which came into existence on 25.8.2008 and had not been vested with any power of hearing any appeal

much less setting aside the earlier order passed by the prescribed authority. To that extent, this Court would find that the order passed by the Tribunal on 25.2.2010 was itself wholly without jurisdiction and no right was vested in the petitioner on the ground of such order passed by the Tribunal wherein the direction was given for affording the petitioner to produce his proof regarding date of birth. In any event, the present writ application filed on 4.7.2013 by way of assailing the order of the Block Development Officer dated 2.12.2008 without assailing the earlier order passed by the Block Development Officer dated 27.03.2008 and seeking implementation of an order of the Tribunal dated 8.2.2010 is wholly belated and the petitioner cannot be allowed to now reopen the old issue after appointment and continuation of the respondent no.10 for a period over six years, inasmuch as, his such appointment was made in the year 2007 and had also been approved under the first order of the Block Development Officer dated 27.03.2008.

10. In that view of the matter, this writ application must fail and is, accordingly, dismissed.

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