

Prawesh Kumar Das Vs. the State of Bihar

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Court : Patna

Decided On : May-16-2014

Judge : Mihir Kumar Jha

Appeal No. : Civil Writ Jurisdiction Case No. 14980 of 2012

Appellant : Prawesh Kumar Das

Respondent : The State of Bihar

Judgement :

1. Heard learned counsel for the parties.

2. In this writ application, the petitioner has assailed the order dated 8.8.2011 passed by the District Teachers Employment Appellate Authority, Kisanganj (hereinafter to be referred to as the Tribunal) in Case No. 367 of 2011 and 368 of 2011, whereby and whereunder, while the complaint of the petitioner has been rejected on the ground of delay whereas the case of the respondent no.11, who had filed his separate case no. 368 of 2011, has been allowed by way of direction for appointment the respondent no.11 on the vacancy caused on account of termination of the service of Md. Matlub Alam.

3. Learned counsel for the petitioner has submitted that the view taken by the Tribunal as with regard to filling up of the vacancy on the post of Panchayat Teacher due to termination of the service of Md. Matlub Alam could not have enured only to the benefit of respondent no.11 but all other eligible candidates

including the petitioner who admittedly had filed their applications for appointment on the post of Panchayat Teacher. According to him, the direction of the Tribunal to appoint the respondent no.11 having much lesser marks (60.33% as against the petitioner having 63% marks) cannot be upheld either on fact or in law.

4. On the other hand, the respondent no.11 and respondent no.8 having filed their separate counter affidavits have sought to support the impugned order passed by the Tribunal by raising a plea that the petitioner in fact came to claim the post of Md. Mister Alam only when his appointment was set aside by the Tribunal by an order dated 30.6.2011 in Case No. 780 of 2009 filed by one Md. Mister Alam and others and, as such, he could not have been considered for appointment on the vacancy caused on account of removal of Md. Matlub Alam.

5. Learned counsel for the State appearing on behalf of the respondent no.8 had also supported the impugned order passed by the Tribunal in favour of the respondent no.11.

6. In the considered opinion of this Court, the Tribunal has obviously committed an error in rejecting the case of the petitioner only on the ground of delay. Admittedly, the vacancy on the post of Teacher on account of removal of the Md. Matlub Alam had taken place only in view of the same impugned order dated 8.8.2011 because Md. Md. Matlub Alam till then was claiming his post despite an earlier order of termination of his service dated 25.2.2009 passed by the Tribunal on a complaint filed by Md. Shoaib Alam. It is not in doubt that the aforesaid order dated 25.2.2009 was made subject matter of CWJC No. 10456 of 2009 and this Court had remitted the matter back to the Tribunal, whereafter, the impugned order dated 8.8.2011 was passed in Case No. 328 of 2011 wherein the appointment of Md. Matlub Alam had been cancelled by recording the following findings:-

(LANGUAGE)

7. It would thus become clear that now when the question arose for filling up the vacancy on account of cancellation of the appointment of Md. Matlub Alam, all other candidates who had been applicant, were to be considered afresh including the petitioner and the respondent no.11, who had also filed their separate cases.

There could be no question of the petitioner being non-suited only on the ground of alleged delay in challenging the appointment of Md. Matlub Alam, inasmuch as, his appointment had already stood cancelled on 25.2.2009 but, was restored by way of his case being remitted back to the Tribunal under the order of this Court in CWJC No. 10456 of 2009. Therefore, the Tribunal, in all fairness, while considering the case of the petitioner as also respondent no.11, who had also filed their separate case being Case No. 367 of 2011 and 368 of 2011 respectively was required to direct the recruiting unit i.e. the Panchayat to consider not only the case of the petitioner and respondent no.11 but also all other candidates who were applicants and whose names were included in the merit list. This Court in fact is not aware as to whether there is any other candidate having higher marks to the petitioner securing 63% marks and the respondent no.11 having 60.33% marks and infact the Tribunal also has not gone into this aspect.

8. The only plea of the respondent no.8 and 11 that the petitioner had taken chance after his earlier appointment on the post of Panchayat Teacher in Gram Panchayat Satkauo was cancelled will also be of no avail, inasmuch as, in the counter affidavit filed by the respondent no.9, it has been admitted that the petitioner had filed an application before the Tribunal on 14.6.2011, the same day on which the respondent no.9 himself had filed his complaint before the Tribunal being Case No. 367 of 2011 and 368 of 2011 respectively. Thus, the view taken by the Tribunal that for filling up the vacancy of the post of Md. Matlub Alam whose appointment also was cancelled on the same day and by the same order i.e. the impugned order dated 8.8.2011 by allowing only the case of the respondent no.11 cannot be approved specially when he has got lesser marks than the petitioner. In fact, on 14.6.2011, the order of the Tribunal as with regard to his termination of service in Case No. 780 of 2009 as with regard to his earlier appointment as a Panchayat Teacher in Gram Panchayat Satkauo was not in existence and in fact, such order was passed only on 30.6.2011.

9. The question in fact which ought to have been gone into by the Tribunal as on 8.8.2011, was as to whether the petitioner could be non-suited only on account of his cancellation of the appointment on 30.6.2011 as a Panchayat Teacher in Taluka Block specially when he had a better claim of his being considered for

appointment on the post of Panchayat Teacher in Gram Panchayat Motihara Taluka Block. Merely because the appointment of the petitioner as a Panchayat Teacher was cancelled in Satkauro Gram Panchayat will not mean that his claim on account of emergence of vacancy due to cancellation of the appointment of Md. Matlub Alam in Motihara Gram Panchayat will also come to an end, inasmuch as, even if he had not filed the application, the resultant vacancy on account of the same impugned order of the Tribunal dated 8.8.2011 had to be filled up by appointing the best candidate available on merit.

10. It is, however, not known to this Court as to whether the petitioner and the respondent no.11 are the only two available candidates or there are better candidates than both of them who in fact would be entitled for being appointed on account of the termination of the services of Md. Matlub Alam on 8.8.2011 and as such, this Court would quash the impugned order as also the consequential appointment of the respondent no.11 dated 11.11.2011 as contained in Annexure-6 to the counter affidavit of the respondent no.11 and remit the matter back to the Tribunal to decide both the complaint case no. 367 of 2011 and 368 of 2011 afresh by specifically addressing to the aspect as to who is the best candidate to be appointed on the vacancy caused by removal of Md. Matlub Alam. This exercise, however, must be completed by the Tribunal within a period of six months from the date of receipt of this order.

11. With the aforementioned observations, this application is allowed only to the extent indicated above.

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