

GP-13
30/9/12

In the High Court of Judicature at Patna.

(Letters Patent Appellate Jurisdiction)

L.P.A.No. _____ of 2012.

(Arising out of C.W.J.C.No.17362 of 2011 disposed of
on 29.3.2012).

Akhilesh Kumar MehraAppellant

Versus

The State of Bihar and others.....Respondents.

Subject:- L.P.A. Matter.

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L.P.A.No. _____ of 2012.

Akhilesh Kumar Mehta Appellant

Versus

The State of Bihar and others..... Respondents.

-: SYNOPSIS :-

This appeal is directed against order dated 29.3.2012 passed by Hon'ble Mr. Justice Ajay Kumar Tripathi in C.W.J.C.No.17362 of 2011 by which writ petition has been dismissed.

~~PARA-4~~ There was advertisement for appointment of Panchayat Shiksha Mitra
2005

2005 Appellant applied for the said post.

~~PARA-5~~

8.5.05 Appellant was selected for Panchayat Shiksha Mitra.

~~PARA-9~~

19.5.05 Appellant was appointed.

~~PARA-10~~

20.5.05 Appellant joined at Govt. Primary School, Kumarpara, Madhepura.

~~PARA-11~~

28.4.06 Appointment of Appellant has been extended for further 11 months.

~~PARA-14~~

1.7.06 As per new Niyamavali all Panchayat Shiksha Mitra will be made

~~PARA-17~~

as Panchayat Teacher.

~~PARA-18~~ Appellant has become Panchayat Teacher since 1.7.2006.

2009 Bharti Kumari and Kamlesh Kumar Mehra complained that there was

~~PARA-19~~

illegality in appointment of Panchayat Shiksha Mitra.

~~PARA-20~~ Matter has come before Appellate Authority.

27.4.2011 Appellate authority vide enquiry report held that appointment

~~Ann-1~~

~~PARA-23~~ of appellant is illegal.

(ii)

18.8.2011 District Programme Officer directed to remove the appellant.

Ann-2

PARA-25

2011 Appellant filed C.W.J.C.No.17362 of 2011 before Hon'ble

PARA-26

High Court.

29.3.2012 Hon'ble Court dismissed the writ petition.

PARA-26

PARA-42 Action of Respondent authority is arbitrary.

Hence this Letters Patent Appeal.

- /o/-

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BIHAR

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In the High Court of Judicature at Patna.

(Letters Patent Appellate Jurisdiction)

L.P.A.No. _____ of 2012.

(Arising out of C.W.J.C.No.17362 of 2011 disposed
of on 29.3.2012).

In the matter of an
appeal under Clause 10 of
the Letters Patent of the
High Court of Judicature at
Patna.

AND

In the matter of :-

Akhilesh Kumar Mehra Son of Suresh Mehra,
Resident of Village-Kumarpur, Post Office-Manjaura,
Police Station- Behariganj, District-Madhepura

.....Petitioner-Appellant

Versus

1. The State of Bihar.
2. The District Magistrate, Madhepura.
3. The Member, District Teacher Appointment Appellate Authority, Madhepura.
4. The District Programme Officer (Establishment), Madhepura.
5. The District Education Officer, Madhepura.
6. The Block Education Extention Officer, Udakishungan District-Madhepura.
7. The Mukhiya, GramPanchayat Manjaura Block Udakishunganj, District-Madhepura.
8. The Panchayat Sachiv, Gram Panchayat Manjaura, Block-Udakishunganj, District-Madhepura.

..... Respondents-Respondents.

To,

The Hon'ble Ms. Justice Rekha M. Doshit,
the Chief Justice of the High Court of

Judicature at Patna and her Companion
Justices of the said Hon'ble Court.

The humble Memorandum of
appeal on behalf of the
Appellant abovenamed;

Most Respectfully Sheweth :-

1. That this Memorandum of Appeal is directed against order dated 29.3.2012 passed by Hon'ble Mr. Justice Ajay Kumar Tripathi in C.W.J.C. No.17362 of 2011 whereby writ petition~~s~~ filed by the appellant has been dismissed.
2. That the appellant is by caste Kahar comes from Most Backward Class.
3. That the appellant passed Matric Examination in 2nd Division in the year 2002 and he passed I.A in the year 2004 in 2nd Division.
4. That in the year 2005 there was adver-

Advertisement for appointment of Panchayat Shiksha Mitra
in Gram Panchayat Manjaura, Block Udakishunganj, District
Madhepura.

5. That in pursuant to aforesaid advertisement appellant applied for the post of Panchayat Shiksha Mitra from Most Backward Class.
6. That besides appellant two other candidates namely Mukesh Kumar and Alok Kumar also applied from Most Backward Class.
7. That it is submitted that as per roster one post is reserved for Most backward candidate from Male for selection of Panchayat Shiksha Mitra.
8. That it is submitted that all three candidates of Most Backward class obtained 10 Weightage point but appellant obtained highest marks in Intermediate i.e. 452 marks than other two candidates and Mukesh Kumar obtained 445 marks and Alok Kumar obtained 412 marks in Intermediate.

9. That on the basis of highest marks the appellant was selected as Panchayat Shiksha Mitra by the Selection committee in meeting dated 8.5.2005.
10. That the appellant was appointed on the post of Panchayat Shiksha Mitra vide Sankalp dated 19.5.2005 under signature of Mukhiya and Panchayat Sachiv at Government Primary School, Kumarpur.
11. That in pursuant to aforesaid direction appellant submitted his joining on 20.5.2005 at Government Primary School, Kumarpur before Headmaster and his joining has been accepted by the Headmaster.
12. That the appellant got training of Gair Avasiya Prasikshan Charya at Middle School, Manjaura Training Centre from 21.9.2005 to 23.10.2005 and on 23.10.2005 the appellant was relieved from Training Centre.
13. That after getting training the appellant

joined at Government Primary School, Kumarpur on 24.10.2005 and has been discharging his duty to the satisfaction of authority concern.

14. That after completion of eleven month of tenure of service the appointment of the appellant has been extended for further 11 months i.e. from 20.5.2006 to 19.5.2007 vide Letter dated 28.4.2006 under signature of Panchayat Sachiv and Mukhiya.

15. That in pursuant to aforesaid direction the appellant gave his joining on 20.5.2006 before Headmaster, Government Primary School, Kumarpur and his joining has been accepted.

16. That the appellant has been discharging his duty continuously to the satisfaction of authority concern and there is no complain against him.

17. That since 1.7.2006 the Primary Teacher Niyojan Niyamavali 2006 has come as per aforesaid

Niyamavali all Panchayat Shiksha Mitra will be made as Panchayat Teacher w.e.f.1.7.2006.

18. That hence in the light of aforesaid Niyamavali since 1.7.2006 the appellant has become Panchayat Teacher and since 1.7.2006 the appellant has been discharging his duty as Panchayat Teacher.

19. That in the year 2009 one Bharti Kumari wife of Diwakar Ram and Kamlesh Kumar Mehta complained that there was illegality in appointment of Panchayat Shiksha Mitra.

20. That matter has come before District Teacher Appointment Appellate Authority, Madhepura for enquiry.

21. That Appellate Authority has issued Notice to all the parties. Appellant appeared before appellate Authority and gave his reply that his appointment has been made in accordance with law.

22. That Panchayat Secretary gave written statement that aforesaid KamleshKumar Mehta and Bharti Kumari have not submitted their original copy of Educational Certificate on demand in time and in this circumstances their candidature have not been considered and with regard to the appellant he submitted that appellant's appointment has been made in accordance with law from Most Backward category.

23. That learned Appellate authority has not considered the case of the appellant and vide order dated 27.4.2011 gave enquiry report that the appellant's appointment on the post of Shiksha Mitra was not done as per roster, his appointment has been done in illegal manner.

A true copy of enquiry report is annexed herewith and marked as Annexure-'1' to this Appeal.

24. That learned Appellate Authority sent enquiry report vide letter dated 13.5.2011 to District Superintendent of Education, Madhepura for sending to Hon'ble Lokayukt.

25. That then District Programme Officer (Establishment), Madhepura vide Letter dated 18.8.2011 directed the Mukhiya and Panchayat Sachiv to take necessary action for removal of those Shiksha Mitra whose appointment was found illegal in enquiry report of Appellate Authority without considering the order of Hon'ble Lokayukta, in which direction, enquiry may be set up through Appellate authority.

A true copy of Letter
dated 18.8.2011 is annexed
herewith and marked as
Annexure-'2' to this Appeal.

26. That being aggrieved with order of authorities the appellant filed C.W.J.C.No.17362 of

of 2011 before Hon'ble High Court. The Hon'ble Court vide order dated 29.3.2012 has been pleased to dismiss the writ application on the ground that no person can be appointed on the post of Panchayat Shiksha Mitra after 1.7.2006.

27. That Hon'ble Single Judge did not consider the case of the appellant properly and dismissed the writ application.

28. That Hon'ble Single Judge has given wrong finding that no person can be appointed on the post of Panchayat Shiksha Mitra after 1.7.2006, but it is submitted that it is not case of Panchayat Shiksha Mitra, since it is a case of Panchayat Teacher.

29. That Hon'ble Single Judge failed to consider this fact that the appellant's post Panchayat Shiksha Mitra was converted into Panchayat Teacher since 1.7.2006 and he was continuing on the

post of Panchayat Teacher, then aforesaid impugned order has been passed by Respondent authority which is not in accordance with law.

31. That in the year 2006 the new Niyamavali of Panchayat Teacher has come in force. As per Government Notification dated 1.7.2006, all Panchayat Shiksha Mitra will be converted in Panchayat Teacher w.e.f. 1.7.2006 and in case of the appellant was also working as Panchayat Shiksha Mitra and as per Government Notification dated 1.7.2006 the petitioner's post into Panchayat Teacher and since then he was working as Panchayat Teacher in the year 2009 a frivolous and false time barred complaint has been filed.

32. That learned Appellate authority has given enquiry report on wrong finding without considering the case of the Appellant.

33. That the District Teacher Employment Appellate Authority vide impugned order dated 27.4.2011

submitted enquiry report before Hon'ble Lokayukt but under Rule 18 of the Bihar Panchayat Teacher (Appointment and Service Condition) Rules, 2006 the District Teacher Employment Appellate Authority has not been given any power to conduct any enquiry in the matter of illegal appointment of Panchayat Teacher.

34. That under the Act the District Teacher Employment Appellate Authority is empowered to adjudicate in case any appeal/complaint is filed before by any aggrieved person regarding the appointment of Panchayat Teacher.

35. That the appellant's appointment was done from the category of Most Backward Class, Male candidate on the basis of highest marks among the aforesaid category and he is highest in age other than candidates.

36. That Bharti Kumar and Kamlesh Kumar Mehta have complained that appointment of Shiksha

Mitra was not done as per roster and done in illegal manner.

37. That the appellant has been working since 20.5.2005 as Panchayat Shiksha Mitra and there after his service has been extended for further 11 months and thereafter since 1.7.2006 appellant has made Panchayat Teacher and since then he has been working as Panchayat Teacher till date.

38. That appointment has been done in the year 2005 but complain has been filed in the year 2009 after more than four years which is time barred.

39. That there are several Judgement pronounced by the Hon'ble HighCourt and Apex Court that those Panchayat Teacher who converted into Panchayat Teacher their appointment can not be challenged in belated stage.

40. That by effect from same impugned order of Appellate Tribunal and District Programme Officer

one Savitri Kumari filed C.W.J.C.No.15726 of 2011 before Hon'ble Court and after hearing the parties in I.A.No.8035 of 2001 the Hon'ble Court vide order dated 25.11.2011 has been pleased to stay the impugned enquiry report dated 27.4.2011 and order dated 18.9.2011 of District Programme Officer and case of the Appellant is fully covered with aforesaid decision and order of the Single Judge has been shown/produced before Hon'ble Single Judge at the time of hearing of the case but no any effectual steps have been taken by Hon'ble Single Judge.

A true copy of order dated 25.11.2011 is annexed herewith and marked as Annexure-3 to this Appeal.

41. That the Appellant passed Elementary Teacher's Evaluation Examination, 2010 conducted by State Council of Educational Research and Training, Bihar.

42. That the action of Respondent authority is arbitrary, malafide and illegal and there is violation of Article 14,16 and 21 of Constitution of India.

43. That the Appellant has no any other alternative and efficacious remedy then than by way of this Appeal.

44. That the Appellant has not moved earlier before Hon'ble High Court in the instant matter.

Being aggrieved and dissatisfied with order dated 29.3.2012 passed by Hon'ble Mr.Justice Ajay Kumar Tripathi in C.W.J.C.No.17362 of 2011, the appellant begs to move this Hon'ble Court in Letters Patent Appeal on amongst others, the following

GROUNDS:-

(i) For that the impugned order passed by

Hon'ble Single Judge is bad in law as well as on facts of the case.

- (ii) For that all the facts produced by the Appellant has not been properly considered by the Hon'ble Single judge and passed impugned order.
- (iii) For that Hon'ble Single Judge has wrongly held that no person can be appointed on the post of Panchayat Shiksha Mitra after 1.7.2006.
- (iv) For that appellant was working as Panchayat Teacher, not as Panchayat Shiksha Mitra.
- (v) For that as per Government Notification dated 1.7.2006 the appellant's post was converted as Panchayat Teacher and since then he was working as Panchayat Teacher, then in the year 2009 a false complaint has been filed.

- (vi) For that under Rule 18 of Bihar Panchayat Teacher (Appointment and service condition) Rules 2006 the Appellate Authority has not been given power to conduct any enquiry in the matter of illegal appointment.
- (vii) For that appointment has been done in year 2005 but complaint has been filed in the year 2009 which is time barred.
- (viii) For that in similar matter Hon'ble Single Judge in C.W.J.C.No.15726 of 2011 has been pleased to stay the impugned order vide order dated 25.11.2011 and the case of the Appellant is fully covered with aforesaid decision.
- (ix) For that in the facts and circumstances of the case the impugned order is bad in law and fit to be set aside.

-18-

It is, therefore, prayed that your Lordships may graciously be pleased to admit this appeal, issue Notice to Respondents and after hearing the parties be pleased to allow this appeal and set aside the order dated 29.3.2012 passed by Hon'ble Mr. Justice Ajay Kumar Tripathi in C.W.J. C. No. 17362 of 2011

And/Or

Pass such other order or orders as your Lordships may deem fit and proper.

And for this, the Appellant shall ever pray.

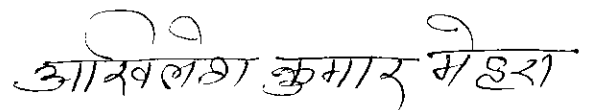
AFFIDAVIT.

I, Akhilesh Kumar Mehta, aged about 28 years, Son of Suresh Mehra, Resident of Village-Kumarpur, Post Office-Manjaura, Police Station-Behariganj, District-Madhe ura, do hereby solemnly affirm and state as follows :-

1. That I am Appellant in this Case and as such am well acquainted with the facts and circumstances of the case.
2. That the contents of the appeal have been read over and explained to me in Hindi which I have fully understood the same and the statements of facts made in Paragraph Nos.

_____ are true to my knowledge and those made in Paragraph Nos. _____ are based upon informations derived from the records of the case which I believe to be true and the rest are by way of submissions to this Hon'ble Court.

3. That the Annexures are true/photostat copies of their respective originals.


आखिलेश कुमार मेहरा

CERTIFICATE.

It is certified that ground set forth above are good grounds for Letters Patent Appeal.

It is my instruction that the Appellant has not moved earlier in this Hon'ble Court against the impugned Judgement/order.

In my opinion no notice either to the Attorney General of India or Advocate General of Bihar under Order-XXVII-A Rule-1 of the Code of Civil Procedure is necessary.

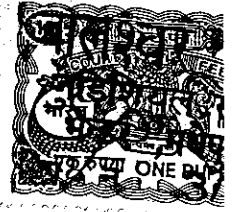
Advocate for Appellant

Dated:-

A11

Annexure-10

21



जिला शिक्षक नियोजन अपीलीय प्राधिकार, मधेपुरा

अपील वाद संख्या :- 58/2009

भारती कुमारी एवं कमलेश कुमार मेहता

अपीलकर्ता

बनाम

मंझोरा पंचायत के मुखिया, पंचायत सचिव एवं अन्य

प्रतिवादीगण

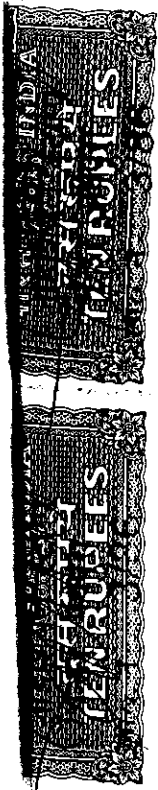
जांच प्रतिवेदन

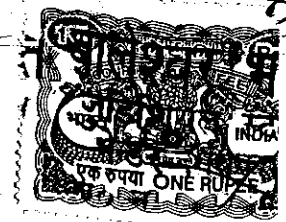
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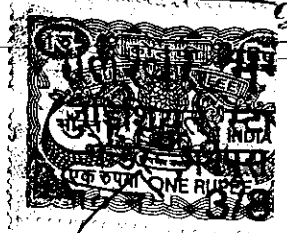
1. जिला शिक्षा अधीक्षक मधेपुरा ने पत्रांक 385 दिनांक 3 मार्च 2011 के द्वारा सूचित किया कि भारती कुमारी एवं कमलेश कुमार मेहता का परिवार पत्र की जांच प्राधिकार द्वारा किया जा रहा है एवं यह मामला माननीय लोक आयुक्त बिहार, पटना से सम्बन्धित है अतः शीघ्र जांच कर जांच प्रतिवेदन शीघ्र भेजा जाय ताकि माननीय लोक आयुक्त बिहार पटना को भेजी जा सके। उक्त पत्र के आलोक में यह जांच प्रतिवेदन आदेश हेतु माननीय लोक आयुक्त बिहार पटना को भेजने हेतु जिला शिक्षा अधीक्षक को भेजा जा रही है।

2. दिनांक 15.06.2009 का प्राधिकार के यहाँ भारती कुमारी पति दिवाकर राम ने इस आशय का आवेदन दिया कि शिक्षा मित्र में नियोजन हेतु ये मंझोरा पंचायत अंचल उदाकिशुनगंज जिला मधेपुरा में आवेदन दी थी। इनका चयन क्रमांक 8 था और इनको दस वैसेज प्राप्त था। इनका आरोप है कि मंझोरा पंचायत नियोजन इकाई ने नियोजन की पूरी कार्यवाही एक ही दिन में दिनांक 08.05.2005 को किया जो दर्शाता है कि नियोजन में गड़बड़ी की गई है। इनका यह भी आरोप है कि आरक्षण सेक्टर का अनुपालन नियोजन में नहीं किया गया तथा आते पिछड़ा वर्ग में एक सीट पुरुष के लिए आवंटित था और दो सीट महिला के लिए आवंटित था लेकिन चयन समिति ने तीनों सीट पर पुरुष अभ्यर्थियों का नियोजन किया है। इसी तरह पिछड़े वर्ग में एक सीट पुरुष और दो सीट महिला के लिए आवंटित था पर तीनों सीट पर महिला का नियोजन किया गया है जो गलत है।





3. कमलेश कुमार मेहता का आवेदन माननीय मुख्यमंत्री बिहार सरकार पटना कोड संख्या 00008/1306091319 के द्वारा उचित माध्यम से प्राधिकार को प्राप्त हुआ। इसने आरोप लगाया है कि ये शिक्षा मित्र नियोजन वर्ष 2005 में शिक्षा मित्र में नियोजन हेतु मंझौरा पंचायत में आवेदन दिया था। इनका नाम मेघा सूची में क्रमांक 7 पर था लेकिन नियोजन इकाई ने इनको नियोजन सम्बन्धी सूचना नहीं दिया है। इनका यह भी आरोप है कि एक ही तिथि को पूरा नियोजन की कार्रवाई कर गलत ढंग से नियोजन किया है। आरक्षण रोस्टर के बारे में इनका भी यह आरोप है कि अति पिछड़े वर्ग कोटि के पुरुष के लिए एक पद एवं महिला के लिए दो पद आवंटित था लेकिन नियोजन समिति ने तीनों पद पर पुरुष अभ्यर्थी का नियोजन किया है जो गलत है। इसी तरह पिछड़े वर्ग कोटि में एक पुरुष एवं दो पद महिला के लिए आवंटित था लेकिन नियोजन इकाई ने तीनों पद पर महिला का नियोजन किया है जो गलत है। जिला शिक्षा अधीक्षक ने जांच कर गलत रूप से नियोजित सुमन कुमार सिंह को हटाने का आदेश दिया लेकिन पंचायत ने इसका अनुपालन नहीं किया। दिनांक 26.11.2009 को मुख्यमंत्री को दिए गए आवेदन की कार्रवाई कर प्रखण्ड विकास पदाधिकारी ने प्रभावित होकर एक पक्षीय जांच प्रतिवेदन दिया है जो गलत है।
4. मंझौरा पंचायत की ओर से पंचायत सचिव एवं मुखिया ने अपना-अपना जबाब दाखिल किया है कि आरक्षण रोस्टर का अनुपालन किया गया है और कमलेश कुमार मेहता एवं भारती कुमारी को शैक्षणिक प्रमाण-पत्र दाखिल करने के लिए नोटिश भेजा परन्तु वे लोग कागजात दाखिल नहीं किए। इसलिए इन दोनों का नियोजन नहीं किया। नियोजित शिक्षकगण भी उपस्थित होकर अपना-अपना जबाब दाखिल किए हैं। इन लोगों का जबाब है कि वे लोग पंचायत द्वारा नियुक्ति पत्र ^{योगदान} सम्बन्ध के आधार पर किए थे।



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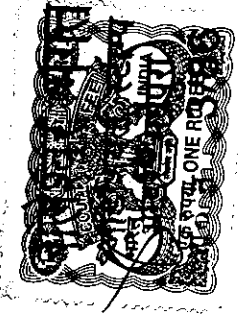


5. सबसे पहला प्रश्न है कि सरकार द्वारा सीधी नियुक्ति में आरक्षण का किस तरह का आदेश जारी किया है। बिहार सरकार कार्मिक एवं प्रशासनिक विभाग पटना द्वारा सीधी भर्ती के लिए 100 बिन्दु का आदेश रोस्टर के अनुसार एवं शिक्षा मित्र में नियोजन के लिए आरक्षण रोस्टर के अनुसार आरक्षण रोस्टर निम्न प्रकार होना चाहिए। इस पंचायत में 18 पद उर्दू शिक्षक को छोड़कर रिक्तियां थी। इसमें 9 पद महिला के लिए आरक्षित था और 9 पद पुरुष के लिए आरक्षित था। उपरोक्त 100 बिन्दु रोस्टर के अनुसार आरक्षण इस प्रकार होना चाहिए। पुरुष वर्ग में 5 पद अनारक्षित कोटि में तथा अति पिछड़ी जाति के लिए 2 पद आरक्षित पिछड़ी जाति के लिए 1 पद आरक्षित एवं अनुसूचित जाति के लिए एक पद आरक्षित था। इसी तरह महिला के लिए 5 पद अनारक्षित कोटि के लिए, दो पद अति पिछड़ी जाति के लिए एक पद पिछड़ी जाति के लिए एवं एक पद अनुसूचित जाति के महिला के लिए आरक्षित था।

6. अब यह देखना आवश्यक है कि पंचायत नियोजन इकाई ने आरक्षण रोस्टर का अनुपालन किया है या नहीं।

पुरुष वर्ग में नियोजन इस प्रकार किया गया है :-

अनारक्षित पद पर राजेश रंजन वैटेज 22 (2) रमेश कुमार मेहता वैटेज 19 (3) पवन कुमार वैटेज 17 (4) अनील कुमार वैटेज 17 (5) सुमन कुमार सिंह वैटेज 15 का नियोजन किया है। अति पिछड़ी जाती पुरुष वर्ग में दो पद आवंटित था लेकिन नियोजन इकाई ने तीन पुरुष का नियोजन पिछड़ी जाति के पद पर किया है। जिनका नाम इस प्रकार है :- श्री अखलेश कुमार मेहरा वैटेज 10 जन्म तिथि 01.05.1984 (2) मुकेश कुमार वैटेज 10 जन्म तिथि 05.12.1973 (3) आलोक कुमार वैटेज 10 उम्र तिथि 15.08.1985 पिछड़ी जाति सीट पर किसी का नियोजन नहीं किया है। अनुसूचित जाति पद पर श्याम कुमार राम का नियोजन किया है। अधीलकर्ता कमलेश कुमार मेहता



M. Singh

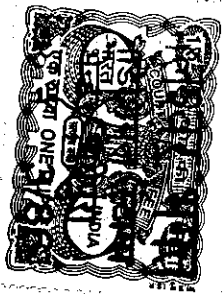
का 22 वॉटेज था इनका नियोजन नहीं करके सुमन कुमार सिंह का नियोजन किया गया है जो गलत है। अति पिछड़ी जाति कोटा में दो पद आवंटित था जिसमें तीन का नियोजन किया गया है। अतः उम्र को देखते हुए अखलेश कुमार मेहता का नियोजन को गलत कहा जा सकता है। पंचायत द्वारा यह कहना कि कमलेश कुमार मेहता को शैक्षणिक प्रमाण पत्र जमा करने के लिए डाक द्वारा नॉटिश भेजा गया है। यह तर्कसंगत नहीं लगता है कि कमलेश कुमार उसी पंचायत के निवासी हैं। इसके अलावे पंचायत की कार्यवाही पुस्तिका में इसका उल्लेख नहीं है। इस संबंध में जिला शिक्षा अधीक्षक, मधेपुरा ने अपने जांच प्रतिवेदन दिनांक 12.10.07 में स्पष्ट रूप से लिखा है कि जांच समीक्षा से यह स्पष्ट हुआ कि पंचायत द्वारा तैयार की गई वरीयता सूची में श्री मेहता का नाम अंकित है। पंचायत द्वारा नियोजन इस आधार पर नहीं किया गया कि इन्होंने मूल प्रमाण-पत्र जमा नहीं किया है। इसी आधार पर इनके स्थान पर श्री सुमन कुमार सिंह का नियोजन किया गया है। श्री कमलेश कुमार मेहता ने अपने परिवाद पत्र में स्पष्ट अंकित किया है कि बिना कारण के इन्हें नियोजन से वंचित रखा गया। इस संबंध में ग्राम पंचायत द्वारा सेन्ट्रल बैंक मंझोरा का एक प्रमाण-पत्र उपलब्ध कराया गया है जिसमें श्री मेहता द्वारा बैंक से ऋण लेने एवं मूल प्रमाण-पत्र बैंक में जमा होने की बात अंकित है। इस सम्बन्ध में श्री मेहता का यह कथन सही लगता है कि ससमय इनको सूचना दी गई होती तो बैंक से प्रमाण-पत्र लाकर सत्यापन कराते। इनको बिना अवसर दिए दूसरे का नियोजन कर दिया गया है। पंचायत द्वारा दिए गए तथ्य को असत्य मानते हुए जिला शिक्षा अधीक्षक ने श्री सुमन कुमार सिंह को कार्य मुक्त करने के लिए आदेश दिया। परन्तु अभी तक उसका अनुपालन नहीं किया गया है।

इस तरह पुरुष वर्ग में श्री सुमन कुमार सिंह एवं अखलेश कुमार मेहता का नियोजन गलत ढंग से किया गया प्रतीत होता है।

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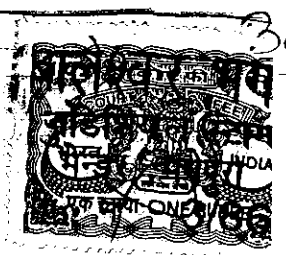
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7. महिला वर्ग में पंचायत ने इस प्रकार नियोजन किया है। अनारक्षित पाँच महिला सीट पर सिर्फ तीन का नियोजन किया है। इस पर पंचायत ने जानबूझकर कम सीट पर नियोजन किया क्योंकि कुल आवंटित सीट का जोड़ पूर्ण है। अति पिछड़ी जाति का दो सीट आरक्षित था लेकिन जानबूझ कर इन सीटों पर नियोजन नहीं किया। पिछड़ी जाति महिला के लिए एक सीट आवंटित था परन्तु नियोजन इकाई ने एक सीट के जगह पर तीन महिला मधुकला कुमारी जन्म तिथि 01.03.1977 वेटेज 10 श्रीमति किरण कुमारी जन्म तिथि 01.01.1976 वेटेज 10 एवं मोती वाला जन्म तिथि 01.03.1975 वेटेज 10 का नियोजन किया है। अतः समान वेटेज होने के कारण जन्म तिथि को अगर चयन का आधार माना जाय तो श्रीमति किरण कुमारी को छोड़कर मधुकला कुमारी एवं मोतीवाला का नियोजन गलत कहा जा सकता है। इस तरह मोतीबाला, मधुकला कुमारी, अखलेश कुमार मेहता का नियोजन रोस्टर का उल्लंघन कर किया गया है। सुमन सिंह का नियोजन कम वेटेज था परन्तु ज्यादा वेटेज प्राप्त कमलेश कुमार मेहता का नियोजन नहीं कर नियोजन इकाई ने गलत नियोजन किया है। भारती कुमारी पिछड़ी जाति के अभ्यर्थी हैं और इनको 10 वेटेज प्राप्त है। इसलिए इनका दावा नहीं बनता है। अनुसूचित जाति महिला के लिए एक सीट आवंटित था लेकिन पंचायत नियोजन इकाई ने दो अभ्यर्थी श्रीमति सुनीता कुमारी वेटेज 10 ^{एवं सावित्री कुमारी वेटेज 10} का नियोजन किया है। इस तरह अनुसूचित जाति सीट पर सावित्री कुमारी का नियोजन गलत ढंग से रोस्टर का उल्लंघन कर किया गया है।

उपरोक्त वर्णित तथ्यों के आधार पर रोस्टर का उल्लंघन कर अति पिछड़ी जाति पुरुष में अखलेश कुमार मेहता एवं वेटेज का उल्लंघन कर सुमन कुमार सिंह एवं महिला पिछड़ी जाति में मधुकला कुमारी एवं मोतीबाला तथा अनुसूचित जाति महिला वर्ग में सावित्री कुमारी का नियोजन गलत ढंग से किया गया है। अतः उन लोगों का नियोजन को गलत कहा जा सकता है।



8. शिक्षा मित्र के पद पर अपीलकर्ता कमलेश कुमार मेहता अथवा भारती कुमारी का नियोजन किया जा सकता है या नहीं। इस सम्बन्ध में मानव संसाधन विकास विभाग, बिहार, पटना के पत्रांक 108 दिनांक 01.02.07 का जिक्र करना आवश्यक है। इस पत्र में दिशा निर्देश दिया गया है कि बिहार प्रारंभिक शिक्षक नियुक्ति नियमावली 2006 के प्रभावी होने की तिथि से पंचायत शिक्षा मित्र में नियोजन से सम्बन्धित पूर्व के सभी नियमावली आदि निरस्त हो गए हैं अतः 01.07.06 के बाद शिक्षा मित्र के रूप में नियोजन संभव नहीं है। अगर किसी पंचायत शिक्षा मित्र से संबंधित शिकायत प्राप्त होते हैं जाँचोपरान्त अवैद्य पाया जाता है तो उन्हें हटाया जा सकता है परन्तु उनके स्थान पर किसी नये शिक्षा मित्र का नियोजन नियमानुकूल नहीं है।

अतः उपरोक्त जाँच प्रतिवेदन माननीय लोक आयुक्त, बिहार, पटना को आदेशार्थ भेजा जाता है।

प्रमाणिकरण शुल्क

27.8.11
तुलन अधिकारी

27.8.11
सदस्य

जिला शिक्षक नियोजन
अपीलीय प्राधिकार, मधेपुरा।

COMPARED BY

Comparing Clerk
27.8.11

Certified to be a true

Head Clerk
U/S 76 Act 1 of 1872
27.8.11

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पत्रांक- 102(नि०)/

प्रकाशक-

जिला कार्यक्रम प्रशाधिकारी (स्थापना)
मधोपुरा।

सेवा में,

पंचायत सचिव
ग्राम पंचायत मीरोरा

विषय-

जिला शिक्षा विभाजन अपीलीय प्राधिकार मधोपुरा का सचिव
प्रतिवेदन के संबंध में।

महोदय,

उपरोक्त विषय के आलोक में सदस्य जिला शिक्षा विभाजन

अपीलीय प्राधिकार मधोपुरा के पत्रांक 140 दिनांक- 13-5-11 के द्वारा

भारती कुमारी एवं कमलेश कुमार मेहता बनाम ग्राम पंचायत मीरोरा के मुद्दा का

एवं सचिव एवं अन्य के संबंध में जांच प्रतिवेदन प्राप्त हुआ है का छापा प्रति एवं पत्र

के साथ संलग्न की जा रही है।

अतः आपको निदिश दीया जाता है कि उक्त सचिव प्रतिवेदन के

आधार पर जिला विभाजन अवेधा पाया गया है की पत्र प्राप्त हो पिन से सेवा

समाप्त की दिशा में आवश्यक कारवाई कली हुए वृत्त कारवाई से अधीस्तकारी

की अवगत करावे।

इसे सर्व प्राथमिकता दे।

विश्वासभाष्यन

अनुलग्नक- पथीवस्त ।

80/- अस्कट

18-5-11

जिला कार्यक्रम प्रशाधिकारी (स्थापना)

मधोपुरा

28

Annexure-'3'

In the High Court of Judicature at Patna.

C.W.J.C.NO.15726 of2011

Savitri Kumari-Versus-The State of Bihar & Ors.

2. 25-11-2011

I.A.No.8035 of 2011.

The interlocutory application has been filed for adding two persons as named in Paragraph 1 of the said application as party Respondent Nos.5 and 6 respectively and also for permission to impugn the Annexure-8 contained in the main writ petition.

In the facts and circumstances of the case, the prayer for impleadment of the complainants before the Appellate Authority, is allowed.

So far as the challenge to Annexure-8 issued by the District Programme (Establishment) Officer, Madhepura is concerned, the same being based upon the impugned order as contained in Annexure-7, the prayer for challenging the same is also allowed.

I.A.No.8035 is, accordingly, disposed of.

Learned counsel for the petitioner submits that on the basis of an enquiry report dated 27.4.2011 passed in Appeal Case No.58 of 2009 submitted by the District Teacher Employment Appellate Authority, Madhepura to the Lokayukta, Bihar in which without hearing the petitioner it was reported that her appointment is illegal, the District Programme (Establishment) Officer, Madhepura by his impugned letter dated 18.8.2011 has directed the Panchayat Secretary of the concerned Gram Panchayat to take action for terminating the services of the petitioner forthwith.

It is submitted that the District Teacher Employment Appellate Authority has not been given any powers under Rule 18 of the Bihar Panchayat Primary Teacher (Appointment and Service Condition) Rules, 2006 to conduct any enquiry in the matter of illegal appointment of Panchayat Teacher, rather it has to adjudicate in case any appeal/complaint is filed before it by any aggrieved person regarding the appointment of Panchayat Teacher and thus on the basis of any such enquiry report no action could have been taken

against the petitioner.

Issue notice to respondent Nos.4 to 6,Requisites both under ordinary process and registered cover with A/D must be filed within one week, failing which the writ application shall stand rejected without further reference to a Bench.

Put up after service of notices in the 'Urgent Matters' list.

As prayed for, four weeks time is allowed to learned counsel for the State to file the counter Affidavit in the matter, which must clearly meet the contention of the petitioner that the District Teacher Employment Appellate Authority could not have filed an enquiry report in an appeal which has been filed before him rather it should have adjudicated the said appeal as a statutory authority.

In the meantime, the impugned enquiry report dated 27.4.2011 and the order dated 18.8.2011 of the District Programme Officer (Establishment) shall remain stayed.

Sd/- Ramesh Kumar Datta, J.

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17362 of 2011

1. Akhilesh Kumar Mehra Son Of Suresh Mehra Resident Of Village -
Kumarpur, Post Office - Manjaura, Police Station - Behananganj, District -
Madhepura.

..... Petitioner/s
Versus

1. The State of Bihar.
2. The District Magistrate, Madhepura.
3. The Member, the District Teacher Appoint Appellate Authority,
Madhepura.
4. The District Programme Officer (Establishment), Madhepura.
5. The District Education Officer, Madhepura.
6. The Block Education Extension Officer, Udakishunganj, District -
Madhepura.
7. The Mukhiya Gram Panchayat Manjaura, Block - Udakishunganj,
District - Madhepura.
8. The Panchayat Sachiv, Gram Panchayat Manjaura, Block -
Udakishunganj, District - Madhepura.

.... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Uday Chand Prasad

For the Respondent/s : Mr. Prahlad Kr. Bhagat GP13

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR
TRIPATHI
ORAL ORDER

2 29-03-2012 The impugned order contained in Annexure-10 does not
require any interference for the simple reason that no person can
be appointed on the post of Panchayat Shiksha Mitra after
1.7.2006. The tribunal has done no wrong by refusing to give any
direction in this regard. Such a view has also been expressed in a
recent decision rendered by the Division Bench in the case of
Renu Kumari Pandey and others v. State of Bihar and others,
2011 (4) PLJR 297.

Writ is dismissed.

R.K.Pathak/-

sd/- (Ajay Kumar Tripathi, J)

CERTIFIED TO BE TRUE PHOTO COPY
[Signature]
For Joint Registrar (J)
Patna High Court

4.4.2012
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