

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8423 of 2011

- =====
1. Praveen Kumar S/O Rajendra Prasad Yadav Resident of Village-Pipra Nanhakar, P.O.-Shambhuchak, P.S. + Block-Kalyanpur, District-East Champaran At Motihari.
 2. Tarun Kumar S/O Sri Kanhaiya Lal Prasad R/O Village-Pratap Patti, P.O.-Karnaul, P.S. + Block-Sahebganj, District-Muzaffarpur.
 3. Harendra Prasad Shah S/O Late Ayodhya Shah Resident Of Village + P.O.-Brindavan, Mirchaiya, P.S. + Block-Kalyanpur, District-East Champaran At Motihari.
 4. Neha Kumari D/O Sri Parmanand Prasad Shrivastava R/O Village-Bhagyanagar, P.S. + Block-Kalyanpur, District-East Champaran at Motihari.
 5. Pankaj Kumar Keshri S/O Ravindra Tiwari R/O Village-Kaithwalia, P.O.-Darmaha, P.S. + Block-Kalyanpur, District-East Champaran at Motihari.
 6. Pusplata Kumari D/O Bhola Mishra R/O Village + P.O.-Ahiman Chapra, P.S. + Block-Kalyanpur, District-East Champaran.

.... Petitioners

Versus

1. The State Of Bihar.
2. The Principal Secretary, Human Resources Development Department, Govt. of Bihar, Patna.
3. The Director, Primary Education, Human Resources Development Department, Govt. of Bihar, Patna.
4. The District Magistrate, East Champaran at Motihari.
5. The District Teacher Employment Appellate Authority, East Champaran at Motihari through Its Member.
6. The Member, District Teacher Employment Appellate Authority, East Champaran at Motihari.
7. The District Superintendent of Education, East Champaran.
8. The Block Development Officer, Kalyanpur Block, District-East Champaran.
9. The Block Education Extension Officer, Block-Kalyanpur, Distt.-East Champaran.
10. The Mukhiya, Gram Panchayat Raj Pakri Dixit, Block-Kalyanpur, Distt.-East Champaran.
11. The Panchayat Secretary, Gram Panchayat Raj Pakri Dixit, Block-Kalyanpur, Distt.-East Champaran.
12. Randhir Kumar Singh S/O Sri Sheopujan Singh Resident Of Village-Math Govardhan, P.S.-Kalyanpur, Distt. East Champaran at Motihari.
13. Rustam Ali S/O Md. Asgar Ali Resident Of Village-Nahakar, Chapravali, P.S.-Kalyanpur, Distt.-East Champaran At Motihari.
14. Devendra Kumar S/O Jai Narayan Mahto R/O Village + P.O.-Kayala Belwa, P.S.-Chakiya. Distt.-East Champaran at Motihari.
15. Neetu Kumari W/O Gajendra Kumar Singh R/O Village-Darmaha Tola Bhusaulwa, P.O.-Rajpur, P.S.-Kesharia, District-East Champaran At Motihari.
16. Brajkishore Kumar S/O Harishchandra Kumar R/O Vill. + P.O.-Dilawarpur, P.S.-Kesharia, Distt.-East Champaran at Motihari.

.... Respondents

=====

Appearance :

For the Petitioners : Mr. Rajendra Prasad Singh, Sr. Advocate
Mr. Onkar Kumar, Advocate
For the Respondents: Mr. Subhash Pd. Singh, GA7

=====

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH
CAV JUDGMENT
Date: 22 -06-2015

1. The dispute in the present writ application arises out of selection and appointment to the post of Panchayat Teachers in Gram Panchayat Raj Pakri Dixit of East Champaran district under Bihar Panchayat Elementary Teachers (Appointment and Service Conditions) Rules, 2006. The rule came into effect from 01.07.2006. Rule 18 of the said Rules provides for appeal in the matters of appointment and service condition of Panchayat Teachers under the Rules. Earlier the Block Development Officer happened to be the Appellate Authority, the competent authority to entertain such grievances. However, Rule 18 came to be subsequently amended with effect from 03.07.2009 and District Teachers Appointment Appellate Authorities have been constituted to consider such grievances.

2. The petitioners, six in numbers, have challenged, in the present application, an order dated 07.04.2011 passed by the Member, District Teachers Appointment Appellate Authority, East Champaran, Motihari (the Appellate Authority) in Appeal Case No. 610 of 2010 whereby, the Appellate Authority has cancelled the appointment of these petitioners as Panchayat Teachers. They have also sought for quashing of memo No. 86 dated 09.03.2007, letter No. 344 dated 18.08.2007 and memo No. 101 dated 25.02.2008 all issued by the Block Development Officer, Kalyanpur whereby, he had directed the

appointment unit of the concerned Gram Panchayat to appoint the private respondents as Panchayat Teachers.

3. It is the petitioners' case that only seven posts of Panchayat Teachers were advertised in the year 2006 for the Gram Panchayat Raj, Pakri Dixit which was subsequently enhanced to 17. It has been asserted that the petitioners fulfilled the eligibility criteria and had applied for the said posts along with others. It is asserted in the writ application that, upon scrutinizing applications so received, counseling of candidates was held by the Panchayat Selection Committee from 07.10.2006 to 12.10.2006. It is the petitioners' case is that they participated in the counseling whereas respondents Nos. 12 to 16 did not participate in the counseling. It is not in dispute that respondents Nos. 12 to 16 had more merit points than petitioners and the petitioners do not dispute this fact. Merit list was, accordingly, prepared on 10.11.2006 giving one week time to the aspirants to file objection, if any, to the said merit list. According to the petitioners, it was decided to hold counseling on 30.11.2006, after meeting the objections raised by the candidates, if any. It is the petitioners' case that on 30.11.2006 they appeared in the counseling and thereafter they were given appointment letters after obtaining their consent on 30.11.2006. The petitioners claimed that they thereafter joined in the year 2006 in their respective schools.

4. It is the case of the petitioners that the Block



Development Officer, Kalyanpur without making any enquiry and verifying the documents vide memo dated 09.03.2007 (annexure-2) issued a list and directed the Panchayat Secretary to appoint respondents Nos. 12 to 16 in place of the petitioners. The case of the petitioners is that before issuance of annexure-2 no notice or opportunity of hearing was provided to them. Subsequently, by a letter dated 18.08.2007 (annexure-3), the Block Development Officer again wrote to the Mukhiya/ Panchayat Secretary of the Gram Panchayat to appoint respondents Nos. 12 to 16 in place of the petitioners. The Panchayat Selection Committee is said to have held a meeting on 29.08.2007 and despite there being order passed by the Block Development Officer, they decided that the appointments were made in accordance with the merit and roster point and, therefore, no change was required. The petitioners filed a writ application before this court being CWJC No. No. 12199 of 2007, challenging the said order of the Block Development Officer dated 18.08.2007 whereby the Mukhiya and Panchayat Secretary of the concerned Gram Panchayat were directed to make certain amendments in the list of appointed candidates and had directed to appoint respondents Nos. 12 to 16 in place of the petitioners. The fact remains that the Panchayat Selection Committee did not abide by the order of the Block Development Officer for quite long. A letter dated 22.09.2007 has been brought on record by way of annexure-R/1 to supplementary



counter affidavit filed on behalf of respondents Nos. 12 to 16 which, according to them, was issued cancelling the appointments of the petitioners. On the other hand it is the plea of the petitioners that Panchayat Selection Committee had held a meeting on 20.09.2007 wherein it was decided to seek guidelines from the Block Development Officer, Kalyanpur in view of pendency of said CWJC No. No. 12199 of 2007 (Pravin Kumar & Ors. v. the State of Bihar & Ors.). The petitioners have brought on record yet another proceeding of the meeting of the selection committee of the concerned Gram Panchayat wherein the committee reiterated its earlier decision that the appointments were made as per rules and regulations. The Block Development Officer by another order issued vide memo No. 101 dated 25.02.2008 directed the Panchayat Selection Committee to appoint the respondents. CWJC No. 12199 of 2007 filed by the petitioners was taken up by this court and was dismissed as premature by an order dated 27.02.2009 in view of counter affidavit filed by the Mukhiya of the Gram Panchayat that the petitioners were still working on their posts and had received salary till February, 2009. The fact, thus, remains that the order passed by the Block Development Officer, Kalyanpur remained unaltered. In the meanwhile, the respondents had preferred an appeal/complaint before the District Teachers Appointment Appellate Authority, East Champaran seeking a direction for payment of salary in their favour



as they were continuing as Panchayat Teachers, in the light of order of the Block Development Officer dated 09.03.2007. Though rival claims were made before the Appellate Authority, the Appellate Authority refused to entertain such application on the ground that it was not within the jurisdiction of it to entertain cases relating to payment of salary/ honorarium and such decision can be taken only at the departmental level. He, accordingly, dismissed such application by an order dated 31.03.2009. It is the petitioners' case that on 08.06.2010 a meeting was held of the Selection Committee of the concerned Gram Panchayat in which Block Welfare Officer was also present and it was found that respondents Nos. 12 to 16 had not participated in the counseling. Thereafter the respondents filed again a case before the Appellate Authority on 30.06.2010 seeking direction for payment of salary which gave rise to Appeal Case No. 610 of 2010.

5. The Appellate Authority considered all facts in its entirety and cancelled the appointment of petitioners holding that they were neither duly appointed Panchayat Teachers nor they were entitled for any honorarium. The Appellate Authority subsequently held, on the basis of materials available before it, that the petitioners continued to work as Panchayat Teachers with illegal support of the Mukhiya of the concerned Gram Panchayat. This order of the Appellate Authority is under challenge in the present writ application.



6. The petitioners have filed an amendment petition vide I. A. No. 7267 of 2014 for the purpose of challenging the order dated 22.09.2007 issued by the Panchayat Secretary in compliance of the order of the Block Development Officer dated 18.08.2007 cancelling appointments of these petitioners. It has been stated in the interlocutory application that the said letter dated 22.09.2007 was never communicated and served upon the petitioners. It has, accordingly, been submitted that the letter dated 22.09.2007 said to have been issued by respondent No.11 appears to be doubtful.

7. Counter affidavits have been filed on behalf of the private respondents and concerned official respondents. A counter affidavit has been filed on behalf of respondents Nos. 10 and 11, who are Mukhiya and Panchayat Secretary of the Gram Panchayat. The said counter affidavit has been sworn by one Laxmi Kant Rai, the Panchayat Secretary of the concerned Gram Panchayat. He has stated in paragraph 5 of his counter affidavit that the Panchayat Secretary Kameshwar Prasad, who was posted at the relevant point of time, was put under suspension and thereafter another Panchayat Secretary is came. When the deponent joined, the records relating to the appointments were not handed over to him and he learnt that the then Mukhiya of the Gram Panchayat, Ram Prasad Paswan and the Panchayat Secretary, Kameshwar Prasad had taken away and kept all the records and they did not hand over such records to their



successors. As regards passing of the order dated 09.03.2007 by the Block Development Officer, it has been stated that due notice was given for the purpose of enquiry on various complaints received with respect to appointments made in Pakri Dixit Gram Panchayat for which 29.12.2006 was the date fixed. In the enquiry several irregularities were detected and, accordingly, the Block Development Officer, Kalyanpur, who was the competent authority, vide office order No. 35 dated 31.01.2007 had directed the Gram Panchayat to hold counseling of the objectors and complainants for which last date was fixed as 19.02.2007. The said letter dated 31.01.2007 was issued with respect to 22 Gram Panchayats including the present Pakri Dixit Gram Panchayat. All other Gram Panchayats carried out the said order dated 31.01.2007 (annexure-R-11/2) whereby they were directed to allow them for counseling. However, Pakri Dixit Gram Panchayat did not comply with the said order and did not hold counseling of 34 objectors/ complainants. It was in this background that counseling of 34 objectors was decided to be held at B. R. C. Kalyanpur by block level selection committee and, accordingly, tentative list of candidates to be appointed was prepared and forwarded to Panchayat Secretary Pakri Dixit Gram Panchayat for information and compliance with a further direction to comply it by letter dated 09.03.2007. How the panel was prepared by the Block Development Officer has been explained in paragraph 9 of the said counter affidavit. It has also been



stated that some discrepancies were detected in the said letter dated 09.03.2007 and, accordingly, the District Magistrate, East Champaran vide letter dated 02.07.2007 directed the Block Development Officer, Kalyanpur to give a re-look. It was in this background that the proposal contained in letter dated 09.03.2007 was revisited and, accordingly, the letter No. 344 dated 18.08.2007 was issued with only change that in place of petitioner No.1 (58.22%) of the Backward Class category at roster point No. 864, name of Manoj Kumar Yadav (66.22%) was recommended, who was earlier appointed against roster point No. 863 of unreserved category. Paragraph 11 of the counter affidavit shows two merit lists, one prepared by Panchayat Selection Committee and other by Block Development Officer with subsequent modification dated 18.08.2007. The averments made in paragraph 11 of the counter affidavit, filed on behalf of respondents Nos. 10 and 11, have not been denied.

8. As has been indicated at the very outset, the only dispute is that as per petitioners' case the respondents had not participated in the counseling whereas it is the case of the respondents that under the orders of Block Development Officer, counseling was required to be held by the selection committee and since they failed to do so, the Block Development Officer himself did the counseling, he being the Appellate Authority.

9. It is not in dispute that the respondents Nos. 12 to 16

have better merit points than the petitioners.

10. Assailing the impugned order passed by the Appellate Authority, Mr. Rajendra Prasad Singh, learned counsel for the petitioners, has submitted that the impugned order amounts to review of the earlier order dated 31.03.2009 passed by the Appellate Authority in case No. 91 of 2008. He submits that no such power of review is vested in the Appellate Authority and, therefore, the Appellate Authority could not have subsequently by its order dated 07.04.2011, impugned in the present writ application, could have passed the said order.

11. This submission is not acceptable to me for the reason that the earlier case No. 91 of 2008 was dismissed by the Appellate Authority on 31.03.2009 as according to him, it was not within its jurisdiction to entertain any application with respect to payment of salary or honorarium. Subsequent to the order of the Appellate Authority, the rules came to be amended and the power to entertain grievances relating to payment of salary to Panchayat Teachers has subsequently been conferred upon the Appellate Authority. The said plea is, accordingly, rejected.

12. Learned senior counsel has further submitted, with specific reference to statements made in the writ application, that respondents Nos. 12 to 16, as a matter of fact, had not participated in the process of counseling and, therefore, their cases could not have



been considered for the purpose of their selection and appointment as Panchayat Teachers. However, from the facts pleaded in the counter affidavit as well as from the order impugned passed by the Appellate Authority, it transpires that the private respondents had approached the competent authority, i.e., the Block Development Officer with a grievance that they were not allowed to participate in the counseling. The Block Development Officer exercising his jurisdiction under the Rules had directed the Panchayat Selection Committee to allow them to participate in the counseling. Despite the order of Block Development Officer, the selection committee did not hold counseling which compelled the Block Development Officer himself to do the counseling and prepare merit list. Despite the order of the Block Development Officer to cancel the appointments of petitioners, the Panchayat Secretary did not cancel the appointment of these petitioners. The order passed by the Block Development Officer 18.08.2007 has so far been remained unaltered.

13. The statements made in the counter affidavit filed on behalf of respondents Nos. 10 and 11 depict the state of affairs in the Panchayat. In my opinion, in the facts and circumstances of the case, the Panchayat Selection Committee was bound by the decision of the Block Development Officer unless changed and altered by a superior competent authority or court.

14. The plea, therefore, to interfere with the order of the

Appellate Authority on the ground that the respondents Nos. 12 to 16 did not participate in the process of counseling is not tenable. The order of the Appellate Authority and the counter affidavit filed on behalf of respondents Nos. 10 and 11, which is supported by the documents, speaks volumes as regard conduct of the Mukhiya and the Panchayat Secretary of the Gram Panchayat.

15. Learned senior counsel appearing on behalf of the petitioners has further asserted that the order dated 09.03.2007 and subsequent order dated 18.08.2007 were passed without giving the petitioners any notice.

16. It has been averred in the counter affidavit filed on behalf of respondents Nos. 10 and 11 that public notice was given on the notice board of the block office/ B.R.C./ concerned Gram Panchayat including the Panchayat Pakri Dixit and the notice board of the concerned school. Specific statement to this effect has been made in paragraph 6 of the counter affidavit to which there is no denial save and except a vague plea that the petitioners were not informed and, therefore, they did not have any notice about the said enquiry. The plea of lack of notice/ information, therefore, cannot be accepted and is, accordingly, rejected.

17. Mr. Singh has lastly submitted that, as a matter of fact, the petitioners were not noticed by the Appellate Authority in the said Appeal No. 610 of 2010 and they *suo motu* appeared before the

Appellate Authority. This cannot be a ground for interfering with the order of the Appellate Authority.

18. The District Teachers Appointment Appellate Authority, East Champaran, Motihari has passed the impugned order dated 07.04.2011 in exercise of its statutory appellate power under Rule 18 of the Bihar Panchayat Elementary Teachers (Appointment and Service Conditions) Rules, 2006. Such power of the Appellate Authority is quasi judicial power.

19. I have perused the order under challenge and I find that the Appellate Authority has taken into account the case of the petitioners and the respondents. He has looked into various documents produced before it and has come to a finding that before preparation of merit list on 30.11.2006 complaints were made to Block Education Extension Officer, Block Development Officer and District Superintendent of Education on 15.11.2006 and 16.11.2006. He has also taken note of the fact that subsequently on 04.12.2006 also the respondents had complained to the Block Development Officer regarding irregularities done in the process of selection and appointment.

20. The plea that complaint made by the respondents before the Block Development Officer was beyond the period of limitation prescribed under the Rules/ notification has rightly been rejected by the Appellate Authority. Similar plea has been raised by

Mr. Singh, learned senior counsel, while making his submissions, which is not acceptable to me.

21. Limitation and scope of judicial review under Article 226 of the Constitution of India over an order passed by a quasi judicial authority are by now well defined. The superior courts exercising writ jurisdiction refrain from interfering with orders of the Tribunals unless such orders or decisions appear to have been passed beyond jurisdiction or in excess of such jurisdiction. Such orders can also be interfered when the Tribunal or the Authority has refused to exercise its jurisdiction without any valid reason. Such order can also be interfered with if the findings are found to be perverse based on no material or such material not relevant for resolution of the dispute.

22. The order under challenge in the writ application, in my opinion, as has been discussed above, cannot be said to be beyond jurisdiction or the finding can be said to be perverse as it was based on cogent material recorded in the order itself.

23. I, therefore, find no material in this writ application. This writ application is, accordingly, dismissed.

24. There shall be no order as to costs.

25. Before I part with, in the facts and circumstances of the case, I consider it appropriate to direct the Principal Secretary, Human Resources Development Department, Government of Bihar, the Director, Primary Education, Human Resources Development

Department, Government of Bihar as well as the Principal Secretary, Panchayat Raj Department, Government of Bihar to ensure that the action initiated against the concerned Mukhiya and Panchayat Secretary of the Gram Panchayat, criminal or civil, is brought to a logical end within a reasonable time, preferably, within a period of six months from the date of receipt/ production of a copy of this order.

(Chakradhari Sharan Singh, J)

BKS/-

U			
---	--	--	--