

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5966 of 2015

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1. Manoj Kumar son of Deo Narayan Kapri, resident of village- Mathurapur , P.O. - Ahiro, Dhoraiya, District- Banka. At present Posted as Panchayat Teacher at N.P.S. , Katoriya, Gram Panchayat Shobhanpur, Block - Amarpur, District- Banka.
 2. Kumari Nishu wife of Chakradhar Mandal resident of village- Sovanpur, P.S.- Amarpur, District- Banka. At present Posted as Panchayat Teacher at N.P.S., Kisanpur, Gram Panchayat Shobhanpur, Block- Amarpur, District- Banka.
 3. Seema Kumari Gupta wife of Arun Gupta resident of village- Chiraiya , P.S. - Amarpur, District- Banka, At present Posted as Panchayat Teacher at N.P.S. , Sovanpur (Harijan) , Gram Panchayat Shobhanpur, , Block- Amarpur, District- Banka.
 4. Arbind Kumar son of Ramchandra Thakur resident of village- Sovanpur, P.S.- Amarpur, District- Banka. At present Posted as Panchayat Teacher at N.P.S., Kisanpur (Urdu), Gram Panchayat Shobhanpur, Block- Amarpur, District- Banka.
 5. Rupesh Ranjan son of Ghanshyam Prasad , resident of village- Beldiha, P.O.- Ahiro Dhoraiya, Banka. At present Posted as Panchayat Teacher at N.P.S. , Sovanpur (Harijan) , Gram Panchayat Shobhanpur, , Block- Amarpur, District- Banka.
 6. Rambha Kumari wife of Manoj Kumar resident of village- Ballikita, P.O.- Koshalpur, Amarpur, District- Banka. At present Posted as Panchayat Teacher at N.P.S. , Kisanpur , Gram Panchayat Shobhanpur, , Block- Amarpur, District- Banka.
 7. Pinku Kumari wife of Sanjeev Kumar resident of village- Bandarchua, P.O.- Ahiro , Dhoraiya, District- Banka. At present Posted as Panchayat Teacher at N.P.S. , Janakpur (Mondal Tola) , Gram Panchayat Shobhanpur, , Block- Amarpur, District- Banka.
 8. Kumar Gaurab son of Sitaram Panjiyara resident of village- Mojahidpur, Amarpur, District- Banka, At present Posted as Panchayat Teacher at U.M.S. , Dodra Janjampur , Gram Panchayat Shobhanpur, Block- Amarpur, District- Banka.
 9. Shailesh Kumar son of Sri Saru Das, resident of village- Bishanpur Jichho, Lodipur, District- Bhagalpur, At present Posted as Panchayat Teacher at N.P.S. , Dhanai , Gram Panchayat Shobhanpur, , Block- Amarpur, District- Banka.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Director, Primary Education, Govt. of Bihar, Patna.
3. The District Magistrate, Banka.
4. The District Education Officer, Banka
5. The District Programme officer, (Establishment), Banka.
6. The Block Development officer, Amarpur, District- Banka.
7. Block Education Extension Officer, Amarpur, Banka.
8. The Mukhiya, Gram Panchayat Raj, Shobhanpur, Block- Amarpur, District- Banka.
9. The Panchayat Secretary, Gram Panchayat Raj, Shobhanpur, Block- Amarpur, District- Banka.
10. Putul Kumari, Daughter of Ambika Paswan, resident of village- Kasaub, Shambhuganj, District- Banka.
11. Pramila Kumari Daughter of Rajendra Prasad Singh, resident of village- Momhammadpur Bhagalpur, District- Munger.
12. Bhawesh Kumar son of Karu Lal Bhagat, resident of village- Karsuni, Police Station- Rajaun, District- Banka.
13. Sanjay Kumar son of Sitaram Thakur Bihari, resident of village- Majhgayan,



P.O.- Sangrampur, District- Munger.

14. Parmanand Sharma son of Govind Prasad Sharma, resident of village-
Majhayan, P.O.- Sangrampur, District- Munger.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Tej Bahadur Singh, Sr. Adv.

Mr. Shashi Priya Pathak, Adv.

For the Respondent-State : Mr. Sunil Kumar Mandal, S.C.3

Mr. Neelam Kumari, A.C. to S.C.3

Mr. Bipin Kumar, A.C. to S.C.3

For the respondent Nos. 8 and 9: Mr. Brisketu Sharan Pandey, Adv.

For the respondent No. 10 Mr. Surendra Kumar Mishra, Adv.

For the respondent Nos. 11 to 14 :Mr. S.B.K.Mangalam, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 29-11-2016

Heard Mr. Tej Bahadur Singh, learned Senior counsel for the petitioners who appears along with Ms. Shashi Priya Pathak learned counsel, Mr. Sunil Kumar, S.C.3 for the State, Mr. Brisketu Sharan Pandey, appearing for the respondent Nos. 8 and 9 and Mr. Surendra Kumar Mishra for the respondent No.10 and counsel for respondent No.11 to 14.

The petitioners pray for quashing the order dated 2.3.2015 passed by the District Teachers Employment Appellate Authority, Banka (hereinafter referred to as the 'Appellate Authority') in Misc. Case No. 2 of 2015 whereby the appellate authority has been pleased to review and recall its order dated 7.11.2014 passed in Misc. Case No. 1 of 2014, a copy of such order is impugned at Annexure-10 to the writ petition.

This case has its own peculiarity and briefly enumerating the same, it is to be noted that 14 appointments were made against the



post of Panchayat teachers in Gram Panchayat, Sobhanpur, Amarpur Block in the district of Banka in the year 2006. These appointments were questioned by the writ petitioners herein before the Appellate Authority giving rise to Case No. 432 of 2009 and the Appellate Authority by its order bearing Memo No. 643 dated 2.12.2009 held the appointments bad in law in absence of transparency in the selection process and quashed the same.

According to Mr. Tej Bahadur Singh learned Senior counsel, 4 of the 14 appointees questioned the order of the Appellate Authority before this Court in C.W.J.C.No.5214 of 2010 and analogous cases and vide order passed on 8.4.2010 a bench of this Court taking note of the grievance raised by those 4 petitioners that the order was passed by the Appellate Authority without notice and opportunity of hearing to the appointees, passed an order of interim stay of the order of the appellate authority on 8.4.2010, a copy of which interim order is placed at Annexure-2.

The writ petitioners on gathering knowledge of the matter, filed intervention application and which was allowed by the Bench vide order passed on 30.11.2012 and by the same order, the interim order passed on 8.4.2010 was modified to only protect the four writ petitioners. The writ petition was ultimately allowed by the Bench vide judgment and order passed on 17.1.2013, a copy of which is present at Annexure-4 and the order of the Appellate Authority in so



far as it concerned the four writ petitioners, was set aside.

Although the appellate order passed on 2.12.2009 concerned 14 appointees whose appointments was set aside but except for the four writ petitioners in C.W.J.C.No.5214 of 2010 and analogous cases, the remaining 10 appointees did not choose to question the appellate order which attained finality and became binding inter party on those appointees.

Since the order of the writ Court protected only 4 of the 14 appointees that the writ petitioners herein filed a Misc. Application No. 1 of 2013 before the Appellate Authority praying therein to implement its order dated 2.12.2009 present at Annexure-1, in so far as the remaining 10 posts were concerned. The prayer of these petitioners was allowed by the Appellate Authority vide order passed on 7.11.2014 enclosed at Annexure-5 and directions were issued to the appointing authority to ensure compliance of the order circulated vide memo dated 2.12.2009.

Following the order of the Appellate Authority in Misc. Case No. 1 of 2013, the District Programme Officer instructed the Panchayat Secretary as the Secretary of the Appointment Committee to comply with the directions of the Appellate Authority. An advertisement was published notifying the vacancies on 22.1.2015 present at Annexure-7 and these 9 petitioners along with one Bina Kumari was appointed on 9.2.2015 vide order placed at Annexure-8



to the writ petition. The 10 appointees whose services were terminated under the order of the Appellate Authority passed in Case No. 432 of 2009 circulated vide memo No. 643 dated 2.12.2009, neither questioned their respective termination nor questioned the advertisement or the appointment of these petitioners before any forum. The orders thus in so far as it concerned the petitioners herein and the 10 appointees whose services had been terminated vide Annexure-1 had attained finality.

For no apparent reason that one of the fresh appointees Bina Kumari along with five private respondents herein preferred a Misc. Case No. 2 of 2015 praying for review of the order dated 7.11.2014 passed by the Appellate Authority in Misc. Case No. 1 of 2013(incorrectly mentioned in the impugned order as 1/2014) whereby directions were issued to the appointing authority to comply with the order passed in the appeal and which prayer was allowed. The petitioner feeling aggrieved are before this Court.

I have consciously used the words 'no apparent reason' in so far as the contest relates to Bina Kumari because she was a beneficiary of the order dated 7.11.2014 present at Annexure-5 which was acted upon and led to the appointment order present at Annexure-8 where her name appears at Serial No. 1. On the other hand in so far as the private respondent Nos. 9 to 14 herein are concerned, they had no locus to question the order dated 7.11.2014 passed by the Appellate



Authority in Misc. Case No. 1 of 2013 having not questioned the main order passed by the appellate authority holding their appointments illegal and which had since become final and binding on these parties. The orders of the Appellate Authority holding the appointments of the private respondents illegal on an appeal filed by the present writ petitioners, a copy of which order is enclosed at Annexure-1, was never questioned by the private respondents before any forum and over the period it has attained a finality and becomes binding on them. In fact no sooner that these petitioners along with Bina Kumari were appointed on the 10 vacancies so occurred as a consequence of the order of the Appellate Authority present at Annexure-1, whatsoever contest remained, reached its conclusion and nothing remained for adjudication thereafter. In my opinion, the issues had been set at rest by the appointments of these petitioners vide Annexure-8. Perhaps, the miscellaneous application bearing Misc. Case No 2 of 2015 filed at the instance of these private respondents along with Bina Kumari was an attempt to unsettle the issues which had become final and the appellate authority has committed a serious error of jurisdiction to not only entertain the same but also review its order to set aside the appointment of these petitioners.

Despite repetition, I would again observe that these private respondents not having questioned the order of the Appellate Authority present at Annexure-1 before any forum, they had no right



or locus to question its implementation vide Annexures-5 and 8 respectively. Even if the Appellate Authority has reasons to ensure that its order is implemented, it is not clothed with power of review and thus the order impugned in this writ petition suffers from error of jurisdiction. For the purpose, I am only persuaded to reproduce the observations of a Bench of this Court in a similar matter arising from **C.W.J.C.No.11568 of 2010 (Lata Kumari Vs. State of Bihar)** relied upon by Mr. Singh in support of his contentions which reads as follows:-

“Having considered the submissions made at Bar, in my considered opinion, once the authority decided the matter on the complaint made by the respondent no.11 it becomes functus officio. It is to be borne in mind that the Authority is a statutory quasi judicial functionary. The Rule provisions provide no appeal or review thereagainst. There is no provision in the Rule especially conferring the authority with the power of review. In such view of the matter, the order of the authority would be final subject to the judicial review of this Court and not by any other authority. In this context, this Court may usefully refer to the notification no. 3716 dated 23.10.2008 issued by the government in the Department of Human Resources, Govt. of Bihar, whereby having constituted the Authority the State Government provided for various functions and matters related to the Authority. In Clause- Kh (xv) it is unambiguously pointed out that the order passed by the Authority is final and is not appealable before any superior authority. The Apex Court in the case of **Grindlays Bank Ltd. vs. The Central Government Industrial Tribunal and others** since reported in **AIR 1981 SC 606** held that power of review is a creature of the statute and in absence thereof no such power of review exist with the statutory quasi judicial authority.”



Thus neither on merits was the miscellaneous case entertainable nor the appellate authority was vested with jurisdiction to review its order.

For the reasons aforementioned, the order impugned dated 2.3.2015 passed in Misc. Case No. 2 of 2015 present at Annexure-10 is quashed and is set aside.

It is stated by Mr. Singh learned Senior counsel for the petitioner that although these petitioners since their appointments have been working but are not being paid salary since February, 2015. Let the petitioners raise their grievance before the District Programme Officer and who shall consider the grievance and dispose of the same in accordance with law within four weeks of its receipt.

The writ petition is allowed.

(Jyoti Saran, J)

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AFR	
CAV DATE	
Uploading Date	13.12.16
Transmission Date	

