

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.1820 of 2013**

- =====
1. Meena Devi D/o Mewa Lal Rajak Village- Shastri Nagar, P.O. Sonauli, P.S. Kadwa, District- Katihar
  2. Pawan Paswan S/o Ramanand Paswan Village- Kajlamani, P.O. Kishanganj, P.S. Kishanganj, District- Kishanganj
  3. Md. Anzar Alam S/o Nazeeruddin Village- Dudhaunti, P.O. Jirangachh, P.S. Thakurganj, Distt.- Kishanganj
  4. Vijaya Rani Sinha D/o Dewanand Sinha Village- Fandar Basti, Ward No. 04, P.O. + P.S. Thakurganj, Distt.- Kishanganj
  5. Tarak Nath Pandey S/o Shashank Jhakhar Pandey Village- Bhatdhala, P.O. + P.S. Thakurganj, Dist.- Kishanganj
  6. Pradipta Datta S/o Pronabesh Datta New Colony Thakurganj, P.O. + P.S. Thakurganj, Distt.- Kishanganj
  7. Shakuntala Kumari D/o Mahabir Sah at- Ashram Para, P.O. + P.S. Thakurganj, Distt.- Kishanganj
  8. Sharda Bharti D/o Basudev Prasad Village- Kathaldangi, P.O. Gunjan Bari, P.S. Thakurganj, Distt.- Kishanganj

.... .... Petitioner/s

Versus

1. The State of Bihar
2. The District Teachers Appointment Appellate Tribunal, Kishanganj through its Chairman
3. The Chairman, District Teachers Appointment Appellate Tribunal, Kishanganj
4. The District Superintendent of Education-cum-Sub Divisional Education Officer, Kishanganj
5. The Block Education Extension Officer, Thakurganj, District- Kishanganj
6. The Mukhiya, Dudhauti Gram Panchayat, Block- Thakurganj, District- Kishanganj
7. The Panchayat Secretary, Dudhauti Gram Panchayat, Block- Thakurganj, District- Kishanganj
8. Pankaj Kumar Pravin S/O Sri Kanti Kumar Verma Village- Bangaon South, P.O. Bangaon South, Distt.- Saharsa
9. The Block Development Officer, Thakurganj, District- Kishanganj
10. Md. Nadeem Akhtar S/O Md. Shabbir Alam Vill.- Bhauradah, P.O.- Bhauradah, P.S.- Bhadurganj, Dist.- Kishanganj

.... .... Respondent/s

=====

**Appearance:**

For the Petitioner/s : Mr. Rajeev Kumar Singh  
Mr. Nirala Kumar Singh  
For the State : Mr. Rakesh Prabhat, A.C. to SC-21  
For the respondent no. 8 : Mr. Nawal Kishore Singh  
Mr. Jitendra Nath Tiwary  
For the respondent no. 10: Mr. Mukesh Kumar Jha  
For the respondent no. 6 & 7 : Mr. Bhola Prasad

=====

**CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN**

**ORAL JUDGMENT**

**Date: 24-11-2016**



Heard Mr. Rajendra Prasad Singh, learned senior counsel appearing for the petitioner, Mr. Rakesh Prabhat, Assisting Counsel to SC-21 for the State, Mr. Nawal Kishore Singh for the respondent no. 8, Mr. Bhola Prasad for the Mukhiya and Panchayat Secretary and Mr. Mukesh Kumar Jha for respondent no. 10.

The eight petitioners herein are aggrieved by the order of the District Teachers Appointment Appellate Authority, Kishanganj bearing No. 431 dated 29.11.2012 whereby and whereunder the appellate authority even while upholding the claim of the appellant in Appeal No. 191 of 2009 who is the respondent no. 8 herein and having issued appropriate directions to the concerned respondent authorities for making payment of his honorarium / salary admissible to him vide paragraph-4 of the decision, by the same order has found irregularities in the appointment process insofar as the present petitioners are concerned and has directed the appointment committee including Panchayat Secretary and Mukhiya of Gram Panchayat Dudhauti in the District of Kishanganj to make fresh appointments against two unreserved post of Panchayat Teacher, one post of women in unreserved category, one post of women in Backward Category and one post of women in Extremely Backward Category; one post in the Scheduled Caste quota; one post of women in Scheduled Caste quota and one post of Urdu Teacher in the Backward Category, in total eight posts. It is following the order passed by the appellate authority



impugned at Annexure-1 that the services of these petitioners have been terminated vide order bearing Memo No. 6 dated 17.12.2012, a copy of which has been placed on record vide Annexure-18 to I.A. No. 4503 of 2014 and the prayer of the petitioners seeking permission to question the consequential termination order has since been allowed by this Court in the order dated 10.11.2016. The petitioners feeling aggrieved are before this Court.

Facts of the case briefly stated is that while the petitioner nos. 1 to 3 were appointed as Panchayat Teachers on 28.9.2007, the petitioner no. 4 was appointed on 29.10.2007, the petitioner nos. 5 to 8 were appointed on 30.11.2007 and the respondent no. 8 was appointed on 12.1.2008. Interestingly since no salary was being paid to the respondent no. 8 that he filed an appeal before the Tribunal constituted under the amendment incorporated in the Bihar Panchayat Elementary Teachers (Employment and Service Conditions) Rules, 2006 (hereinafter referred to as the 'Rules') vide amendment dated 25.8.2008 for payment of salary giving rise to Case No. 191 of 2009. The tribunal while examining the claim of the respondent no. 8 on the issue of non-payment of salary exceeded its jurisdiction to examine the other appointments as well and vide order passed on 26.5.2009, held them illegal which was inclusive of these petitioners present at Annexure-16 series at page 85 of the present proceedings. The eight petitioners herein approached this Court in CWJC No. 10570 of 2009.



On the other hand respondent no. 8 filed two writ petitions bearing CWJC No. 9097 of 2009 and CWJC No. 5233 of 2009, questioning the order of the tribunal. A Bench of this Court vide judgment and order passed on 09.5.2012 in consideration of the matter in contest while quashing the order of the tribunal and remitting the matter for fresh consideration, directed the tribunal to examine the entire appointments inclusive of the present petitioners as well as the respondent no. 8. The judgment and order of the Bench in the batch of writ petitions has been placed on record vide Annexure-16 to the writ petition.

The petitioners herein feeling aggrieved by the order of remand which also accompanied an order for examination of the appointment process, moved in Letters Patent Appeal giving rise to LPA No. 1881 of 2012. While the appeal remained pending for consideration that the impugned order herein, was passed by the tribunal reiterating the earlier position and as a consequence the Letters Patent Appeal was disposed of by the Division Bench taking note of the fact that these petitioners had already in the meanwhile filed the present writ petition.

Learned counsel for the petitioners have questioned the order of the tribunal on grounds of lack of jurisdiction. According to learned counsel these appointments were made in the year 2007, when appellate jurisdiction was vested in the Block Development Officer, to



examine any infirmity in the selection process. According to learned counsel no issues were raised by any of the applicants questioning the appointment of these petitioners at the relevant time. It is submitted that even the present contest does not question the appointment of the petitioners rather the prayer made by the respondent no. 8 before the tribunal was only for payment of salary. It is with reference to the notification dated 25.8.2008 of the Human Resources Development Department whereunder the tribunal was constituted, submitted with particular reference to paragraph 2(iii) thereof that it is only the appeals pending before the appellate authority i.e. the Block Development Officer, which were to be transferred for consideration by the tribunal and the tribunal had no jurisdiction to entertain cases which related to the period prior to its constitution. According to learned counsel the tribunal was vested with jurisdiction only to consider the old cases which were pending for consideration before the predecessor appellate authority i.e. Block Development Officer or to consider the fresh cases in which cause of action arose subsequent to its constitution but it could not assume original jurisdiction of an appointment process which took place prior to its constitution especially where the said appointment process was not put to challenge before the predecessor appellate authority. According to learned counsel the power of tribunal to adjudicate on the matters is only in respect of cases, the cause of action for which arose after its



constitution or in respect of cases which remained pending for adjudication before the predecessor appellate authority, being the Block Development Officer.

The second argument advanced is that since no complaint was made questioning the appointment of these petitioners, the appeal preferred by the respondent no. 8 could not have been enlarged on its scope.

In support of the submissions, learned counsel has referred to a judgment of this Court reported in **2016(2) PLJR 474 (Manohar Prasad vs. The State of Bihar & Ors.)** and with particular reference to the opinion of the Division Bench, it is submitted that clearly the tribunal has exceeded its jurisdiction.

Insofar as the appeal preferred by the respondent no. 10 is concerned, learned counsel has referred to an order of the appellate authority enclosed at Annexure-17 to the writ petition to submit that such grievance was already raised by the respondent no. 10 before the appellate authority i.e. the Block Development Officer, Thakurganj but which grievance of the respondent no. 10 did not find favour with the appellate authority rather his appeal was rejected in Case No. 21 of 2007-08 and which order dated 20.11.2007 of the Block Development Officer, Thakurganj as an appellate authority under the Rules in force in the year 2007, was never questioned by the respondent no. 10 before any forum and thus has attained finality.



According to learned counsel in the circumstances, the Second Appeal preferred by the respondent no. 10 was barred by res judicata.

It is in consideration of the submissions which stand noted in the order of this Court passed on 10.11.2016 that learned counsel for the State and Mr. Nawal Kishore Singh, representing the respondent no. 08 as well as Mr. Jha who is representing the respondent no. 10 were required to address the Court on the issue and when the parties have been heard at length. While learned counsel for the State does not dispute the legal position reflecting from the judgment passed by this Court taken note of hereinabove, Mr. Nawal Kishore Singh, learned counsel appearing for the respondent no. 8 very fairly concedes that the appeal filed by the respondent no. 8 in Appeal No. 191 of 2009 was simply for payment of salary and nothing further. He also concedes that the appointment of these petitioners were never put to question by the respondent no. 8 in the appeal so filed by him before the appellate authority. Mr. Jha, learned counsel appearing for the respondent no. 10 also does not dispute the factual position reflecting from the order present at Annexure-17 and he accepts that though the respondent no. 10 had raised a grievance before the Block Development Officer, Thakurganj in 2007 but the same was rejected and the order of the Block Development Officer as the appellate authority under the Rules was not put to question by the respondent no. 10 before any superior forum.



I have heard learned counsel for the parties and I have perused the records.

In the nature of the contest that stands noted hereinabove, I do not need to delve very deep into the issues in consideration in view of the undisputed facts noted hereinbelow.

- (a) The appointments of these petitioners were made in the year 2007 and when the power of appellate authority was vested in the Block Development Officer;
- (b) The appointment of these petitioners was not questioned by any of the candidates to the appointment process;
- (c) No appeal was filed before the Block Development Officer to question the appointment of these petitioners;
- (d) The Rules were amended under the notification of the Human Resources Development Department bearing notification no. 3148 dated 25.8.2008 whereby and whereunder the appellate powers was vested in an appellate authority to be constituted thereunder. A plain reading of the notification bearing No. 3153 dated 25.8.2008 of the Human Resources Development Department under which the appellate authority was constituted, in its paragraph-2 discusses the jurisdiction vested in the appellate authority to examine the matter and which reads under:

**“2. अधिकार का कार्य:-**

- (i) पंचायत शिक्षक / प्रखण्ड शिक्षक / नगर शिक्षक / जिला परिषद एवं नगर निकाय माध्यमिक शिक्षक / उच्चतर माध्यमिक शिक्षक एवं नगर निकाय



माध्यमिक / उच्चतर माध्यमिक शिक्षक के नियोजन से सम्बन्धित अपील की सुनवाई कर निर्णय लेना।

- (ii) सामान्य 30 दिनों के अन्दर अपील पर निर्णय लेना विशेष मामलों में अधिकतम 90 दिनों में निर्णय लेना।
- (iii) पूर्व के अपीलीय प्राधिकार / शिकायत प्राधिकार द्वारा स्थानान्तरित मामले पर 60 दिनों के अन्दर निर्णय लेना। ”
- (e) The respondent no. 8 preferred Appeal No. 191 of 2007 for payment of salary before the tribunal so constituted and had not questioned the appointment of these petitioners.

It is clear from a plain reading of paragraph-2 of the notification vesting jurisdiction in the appellate authority that it is only the pending cases which are to be transferred to the tribunal for adjudication and the tribunal was not vested with jurisdiction to examine any appointment that took place prior to its constitution on the original side. The jurisdiction is set out well and clear. In view of the circumstances taken note of above, it does not require too many words to hold that the tribunal had clearly exceeded its jurisdiction to examine the appointments of the petitioners which even otherwise, was never put to question in the appeals filed by the respondent no. 8. The tribunal thus could not have assumed jurisdiction to examine the selection process while examining the claim of the respondent no. 8 which was only for payment of salary and did not question the appointment of these petitioners. The jurisdiction so clearly delineated in the notification of the Human Resources Department bearing No. 3153 dated 25.8.2008, the tribunal in absence of any pending



challenge to appointment of these petitioners, could not examine the selection process and the exercise was wholly without jurisdiction.

The issue is whether the exercise can be saved considering that the order was passed in compliance of the orders of this Court, passed in the previous round of litigation.

The law in this regard stands well settled and a statutory body functions within the four corners of the statute under which it is created. It stands confirmed that extra statutory functions cannot be conferred on any statutory body in exercise of jurisdiction under Article 226 of the Constitution of India. In the present case where the statutory instrument itself does not vest the appellate body with a jurisdiction to examine appointments made prior to its constitution except where it is a subject matter of a pending appeal before the predecessor appellate authority i.e. the Block Development Officer, the tribunal could not have suo motu proceeded in the matter.

Reference in this regard is made to the Division Bench pronouncement of this Court reported in **2009 (2) PLJR 189 (State Election Commission vs. Poonam Kumari)**. A similar situation arose in the said case in connection with an election matter and the Division Bench after examining the statutory provisions and the jurisdiction vested in the State Election Commission, had the following words to offer:

“10. As noted above, on the basis of the judgment and



order under appeal the matter has been gone in by the Commission and the Commission has rendered a decision. The question is whether the decision is valid or not. For what we have discussed above it appears to us that the disqualification mentioned in Section 135 of the Act cannot be gone in by the Commission. The Commission being a creature of the Statute can function and discharge its duties within the four corners of the Statute and cannot assume or be vested with any power which has not been vested in it by the Statute. If the Commission had no authority to go into the question, as was decided by it, such authority could not be vested in it by exercising power under Article 226 of the Constitution of India, for the simple reason that the Article 226 authorizes the Court to uphold legal right of a citizen which right stands vested in the citizen and that signifies that the writ court cannot vest any right in a citizen which does not vest in him. That being the situation, the conclusion would be that the decision of Election Commission rendered on the basis of the command of the writ court being a decision rendered by a Forum non-juris, the same is invalid.”

Rightly so, the order of remand was questioned by these petitioners before the Division Bench. However, since in the meantime the order of remand had taken its effect and the order impugned at Annexure-1 had been passed that it was questioned by these petitioners in the present case and in which view of the matter



the Letters Patent Appeal got disposed of. However that would not change the situation for conformingly the tribunal while considering the grievance of the respondent no. 8 for payment of salary could not have exceeded its jurisdiction to examine the selection process as a whole even in absence of any challenge to such effect.

The jurisdiction vested in the appellate tribunal to examine a selection process came up for consideration before the Division Bench in a matter reported in **2016(1) PLJR 836 (Puja vs. The State of Bihar & Ors.)** and the Division Bench has held that except for inter party dispute raised in a particular case, the tribunal is not vested with jurisdiction to examine the selection process as a whole.

For the discussions made hereinabove, the order of the appellate authority impugned in this writ petition at Annexure-1 insofar as it proceeds to comment upon the appointment of these petitioners to term it illegal and insofar as it directs the selection committee to hold fresh process cannot be upheld and to that extent the order passed by the appellate authority holding the appointment of these petitioners illegal, is quashed and set aside and consequentially the orders impugned at Annexure-18 insofar as it concerns the present petitioners is also quashed and set aside. Since in the present case the relief granted to the respondent no. 8 is not put to question, the order passed by the appellate authority would stand modified to the extent it relates to the present petitioners exclusively. As a consequence, the



petitioners stand restored to their post with 50 per cent back wages.

The order passed in Appeal No. 191 of 2009 stands modified to that extent and the appeal preferred by the respondent no. 10 bearing Appeal No. 507 of 2009, in view of the earlier order of the appellate authority present at Annexure-17, is held not maintainable and is accordingly disposed of.

The writ petition is allowed to the extent above.

**(Jyoti Saran, J)**

S.Sb/-

|                   |  |
|-------------------|--|
| AFR               |  |
| CAV DATE          |  |
| Uploading Date    |  |
| Transmission Date |  |

