

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 5570 of 2011

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Shahda Parween, daughter of Md. Hussain Haider, wife of Md. Wasi Ahmad,
resident of Village and P.O. Mohini, P.S. Asthawan, District – Nalanda.

.... Petitioner

Versus

1. The State of Bihar
2. The Principal Secretary, Department of Human Resources, Government of Bihar, Patna.
3. The Principal Secretary, Department of Panchayati Raj, Government of Bihar, Patna.
4. The District Magistrate-cum-Collector, Nalanda at Bihar Sharif.
5. The District Panchayati Raj Padathikari, Nalanda at Bihar Sharif.
6. The District Superintendent of Education, Nalanda.
7. The Block Education Extension Officer, Sarmera Block in the district of Nalanda.
8. The Mukhia of Gram Panchayat Raj, Sarmera, Block – Sarmera, in the district of Nalanda.
9. The Panchayat Secretary, Gram Panchayat Raj, Sarmera, Block – Sarmera, in the district of Nalanda.
10. Md. Mokil Alam, son of Abdur Rajjak, resident of Village & P.O. Ramjanpur, P.S. Barbiga, District – Sheikhpura.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar
For the Respondent/s : AC to Addl. Advocate General 4
Mr. Raj Kishore Prasad

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 11-04-2016

Today again, a prayer is being made on behalf of respondent no. 10 for granting further time for filing counter affidavit.

Earlier on number of occasions, the case was adjourned for the said purpose, however; till date no counter affidavit has been filed on behalf of respondent no. 10.

2. The prayer for adjournment stands refused.

3. By order dated 17-01-2012, notice was directed to be

issued to respondent no. 8, 9 and 10 i.e. Mukhiya, Panchayat Secretary and Md. Mokil Alam respectively. In favour of respondent no. 10, order under challenged was passed by the District Teachers Employment Appellate Authority, Gaya (hereinafter referred to as “Appellate Authority”) in Case No. 1172 of 2009.

4. It is case of the petitioner that after completion of counselling, she was appointed as Panchayat Teacher and posted in Urdu Kanya Prathamik School, Sarmera, under the Sarmera Block in the district of Nalanda, vide order dated 14-08-2010. The petitioner while started functioning, one Md. Imteyaz Alam had assailed the selection process by filing a case, vide Case No. 335 of 2009 before the Appellate Authority. However, the said Appeal Case No. 335 of 2009 stood dismissed. Thereafter, the respondent no. 10 filed a separate case, vide Case No. 1172 of 2009 questioning the correctness of the selection process. Thereafter, vide impugned order i.e. order dated 04-02-2011, the Appellate Authority allowed the case and directed the employment unit to appoint respondent no. 10, who had filed the case before the Appellate Authority. The petitioner had claimed that she was not paid salary, however; in the meanwhile, in purported compliance of the order of the Appellate Authority, the Panchayat Secretary i.e. respondent no. 9 has cancelled the appointment of the petitioner and in her place, direction was issued to

appoint the respondent no. 10.

5. After the order was passed by the Panchayat Secretary, the petitioner filed an interlocutory application, vide I.A. No. 788 of 2012 with a prayer to quash the order dated 16-01-2012 passed by the Panchayat Secretary, which was brought on record as **Annexure – I/1** to the interlocutory application. This Court by order dated 23-11-2015 directed to treat the interlocutory application as part of the writ petition.

6. It is also evident that notice on respondent no. 9 and 10 was validly served in the year 2012 itself and thereafter, vakalatnama was filed on behalf of respondent no. 10 on 2nd March, 2012, however; till date, one way or the other, the disposal of the present writ petition was delayed without any fault of the petitioner. No counter affidavit has been filed on behalf of respondent/Panchayat Secretary or respondent no. 10.

7. A plea has been taken on behalf of the petitioner that the Appellate Authority has passed the impugned order behind back of the petitioner. It has been argued that petitioner was never noticed by the Appellate Authority to appear in the case and as such, a prayer has been made to set aside the order on the ground of violation of principle of natural justice.

8. Since there is no refusal to the point as to whether the

petitioner was noticed or heard by the Appellate Authority, the Court is of the opinion that such order, which is passed affecting the right of the petitioner without affording any opportunity of hearing, is liable to be set aside.

9. Accordingly, impugned order dated 4-2-2011 (Annexure 1 to the writ petition) of the Appellate Authority is set aside and the consequential order i.e. order dated 16-01-2012 passed by the Panchayat Secretary/respondent no. 9 is also hereby set aside, with a direction to restore the position of the petitioner, which was prevailing prior to order dated 4-2-2011 of the Appellate Authority as well as order of the Panchayat Secretary.

10. The respondents i.e. respondent nos. 7, 8 and 9 are directed to immediately allow the petitioner to function in the same capacity i.e. as Panchayat Teacher and without any hindrance the respondent shall pay salary to the petitioner.

11. So far as the order of the Appellate Authority is concerned, since it was passed in contravention of principle of natural justice, after setting aside the same, the matter is remitted back to the Appellate Authority to pass order afresh after hearing all the concerned including the petitioner. Till final order is passed by the Appellate Authority and no adverse order is passed against the petitioner, the petitioner shall continue in the same capacity i.e. as

Panchayat Teacher, as she was continuing since earlier. The joining of the petitioner must be accepted within six weeks from the date of receipt/production of a copy of this order.

12. Regarding the claim of salary, during which the petitioner was restrained from discharging duty, it can be raised by the petitioner before the “Appellate Authority”.

13. The writ petition stands allowed.

(Rakesh Kumar, J.)

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