

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10349 of 2015

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Md. Ehtesham, Son of Md. Hashim, Resident of village- Rampur North Ward No.- 12, P.S.- Forbesganj, District- Araria.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Bihar Patna.
2. The Director, Primary Education, Bihar, Patna.
3. The District Teachers Appointment Appellate Authority, Araria.
4. The District Education Officer, Araria.
5. The District Programme Officer (Estb.) Araria.
6. The Panchayat Secretary, Gram Panchayat Raj, Rampur North, District- Araria.
7. The Mukhiya, Gram Panchayat Raj, Rampur North, District- Araria.
8. Mahatab Alam, son of Late Md. Wasi, R/o Gajvi Shankarpur, P.S. Bhargama, District- Araria.
9. Md. Mukhtar Alam, S/o Md. Sohrab Alam, R/o Village- Jhiruwa Purwari, P.O. Simraha, P.S.- Forbesganj, District- Araria.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rajendra Prasad Singh, Sr. Advocate Mr. Rajeev Kumar Singh, Advocate
For the State	:	Mr. Prabhat Kumar, AC to GA-11
For Respondent No.6 &7	:	Mr. Mukesh Kumar Singh, Advocate
For Respondent No.8	:	Mr. Ziaul Quamar
For Respondent No.9	:	Mr. Ashok Kumar Singh

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 16-08-2016

Heard Mr. Rajendra Prasad Singh, learned senior counsel appearing for the petitioner, Mr. Prabhat Kumar, learned A.C. to G.A.-11, for the State, Mr. Ziaul Quamar, learned counsel for respondent no.8, Mr. Ashok Kumar Singh, learned counsel for respondent no.9 and Mr. Mukesh Kumar, learned counsel for respondent no.6 and 7.

In the nature of the order which this Court proposes to pass, I would not be required to delve into the merits of the case.

The petitioner is aggrieved by the order dated 12.6.2015



passed by the Presiding Officer, District Panchayat Teachers Appointment Appellate Authority, Araria whereby the appointment of the petitioner has been set aside. Amongst many issues raised by Mr. Singh, learned senior counsel appearing for the petitioner, the issue which drives home the relief prayed in this writ petition, is that even when the complaint filed by the respondent no.8 before the appellate authority was directed against the respondent no.9 yet the appellate authority has by exercising supervisory jurisdiction proceeded to examine the selection process as a whole and to set aside the appointment of the petitioner *inter alia* on grounds that the experience certificate, on the basis of which the petitioner was awarded 20 marks, was illegal. He thus submits that the order passed by the appellate authority is behind the back of the petitioner with no opportunity of hearing and even the relief prayed by the petitioner before the appellate authority was directed against the respondent no.9 and not the present petitioner.

Mr. Kumar, learned counsel appearing for the respondent no.9 on the other hand submits that the relief prayed by the petitioner is also not directed against him although he was added as a party.

Facts of the case briefly stated is that the respondent no.8 not being successful in the selection process which resulted in the appointment of respondent no.8 and the petitioner herein, came before this Court in CWJC No.22505 of 2013 and by the judgment



dated 3.12.2014 the writ petition was disposed of relegating the petitioner to the forum of appeal before the appellate authority. The Division Bench while remitting the matter for adjudication before the appellate authority has directed for disposal of the matter on merits and not to dismiss the same on grounds of delay. The appellate authority proceeding in the light of the order of remand passed by the Bench of this Court in CWJC No. 22505 of 2013 and upon examination of the records of the selection process has found that the petitioner herein who was put on top of the merit list with 91% marks, had been given 20 % marks on experience, which according to the appellate authority was invalid and illegal.

Forming such opinion the appellate authority set aside the appointment of the petitioner with a direction to the Appointment Committee to issue the appointment order in favour of respondent no.8. Undisputedly, no notice was issued to the writ petitioner, nor he was impleaded as a party.

As I have observed above Mr. Rajendra Prasad Singh, learned senior counsel for the petitioner while questioning the order on merits as well as on limitation, has submitted that neither the respondent no.8 had added this petitioner a party to CWJC No.22505 of 2013 nor he was arraigned as a party before the appellate authority and thus the order is unsustainable on this single objection. This position is not contested rather is admitted.

Though Mr. Quamar, learned counsel for respondent no.8

has endeavored to question the entitlement of the petitioner on merits but considering that the order passed by the appellate authority is in absence of representation and without opportunity of hearing to the writ petitioner, the order is unsustainable.

In the undisputed circumstances noted above the order dated 12.6.2015 passed by the Presiding Officer, District Teachers Appointment Appellate Authority, Araria in Case No.20 of 2015 circulated vide memo no.178 dated 15.6.2015 impugned at Annexure-1 cannot be upheld and is set aside.

The matter is remitted back to the appellate authority for reconsideration of the matter and its disposal afresh and in accordance with law.

Considering the nature of contest as noted above, the respondent no.8 would be at liberty to appropriately amend his application and the writ petitioner at the same time would be equally entitled to raise all objections, as raised herein, before the appellate authority.

The writ petition is allowed.

Let the records received from the appellate authority, be returned through special messenger in a sealed cover forthwith.

(Jyoti Saran, J)

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AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	