

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15231 of 2013

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1. Dayanand Singh Son Of Late Ravindra Singh R/O Village- Baghi Ekdara, P.O.- Baghi, P.S.- Samastipur (Mufassil) District- Samastipur

.... Petitioner/s

Versus

1. The State Of Bihar Through The Principal Secretary Education Department, Government Of Bihar, Patna
2. The Director, Primary Education, Government Of Bihar, Patna
3. The District Magistrate, Samastipur, District- Samastipur
4. The District Education Officer, Samastipur, District- Samastipur
5. The Civil Surgeon Cum Chief Medical Officer, Samastipur, District- Samastipur
6. The Block Development Officer Ujiyarpur, District- Samastipur
7. The Block Education Officer, Ujiyarpur, District- Samastipur
8. The Panchayat Secretary, Gram Panchayat Raj- Chaita North, Block-Ujiyarpur, District- Samastipur
9. The Mukhiya Gram Panchayat Raj- Chaita North, Block-Ujiyarpur, District- Samastipur
10. Kundan Kumar Son Of Sri Baliram Sharma R/O At + P.O.- Gohi, P.S. Warishanagar, District- Samastipur, At Present Working As Panchayat Teacher, New Primary School, Simara Mushhar Kahar Tol, At Gram Panchayat Raj Chaita North, Block- Sarairanjan, District- Samastipur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Mrityunjay Kumar, Advocate.

For the Respondent/s : Mr. Kuber Pathak, AC to SC 14.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 05-04-2016

Heard learned counsel for the petitioner and learned counsel for the State.

In the present writ petition, petitioner is challenging the order dated 14.6.2013 passed by the Member, District Teacher, Employment Appellate Authority, Samastipur by which his

appeal has been rejected on the ground the Appellate tribunal has no power to review his own order.

In the present case notices were served upon private respondent no.10. He has appeared through an Advocate but today no one is present to press this application on his behalf.

Respondent no.10 has been appointed as disabled person. The Tribunal on different occasions directed for his appearance before him to verify the allegation made by the petitioner that respondent no.10 is not disabled person and has wrongly been accommodated in the service. Even after repeated request respondent no.10 did not co-operate and so much so he has also not presented himself to the Medical Board for his physical verification.

The Tribunal has rejected the case on the ground having no power of review. There is no quarrel on the proposition that the Tribunal does not have jurisdiction to review of his own order but the fact of the present case remains that earlier the petitioner has not moved before the Tribunal against the appointment of respondent no.10 but the claim was made that he was not being called for his counseling. Respondent no.10 informed the Tribunal that his counseling was conducted and his

name was standing in the merit list whereas petitioner was not appointed then he has challenged the appointment of respondent no.10 vide Appeal No.710 of 2009.

It is unfortunate that the appointing unit as per the allegation made by the petitioner has not appointed disabled person nor roster point was fixed for the appointment of disabled person. The Tribunal repeatedly asked for his appearance but always avoided to appear before the Tribunal nor he has appeared before the Medical Board.

Counsel for respondent no.10 is not also present nor filed any counter affidavit though this Court has directed for filing of the counter affidavit.

In this view of the matter, this Court has no option but to set aside the order dated 14.6.2013 passed by the Tribunal in Appeal No.710 of 2009 and matter is remanded back to the Tribunal who will decide the case on its own merit. Respondent 10 is directed to present himself before the Tribunal for his physical verification and Tribunal would give direction to the Civil Surgeon-cum-Chief Medical Officer, Samastipur for constitution of the Medical Board for examination of respondent no.1 as after receipt of report of Medical Board Tribunal will decide the

case on its merit.

With the aforesaid observation and direction this writ
petition is allowed.

(Shivaji Pandey, J)

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