

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2197 of 2014

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1. Krishnadeo Prasad Yadav, Son of Sri Ram Prakash Yadav, Resident of Village Narkatia, P.S. Sonbarsa, District- Sitamarhi.
 2. Amjadi Khatoon, Daughter of Md. Khurshid Alam, Resident of Village Andauli, P.S. Parihar, District-Sitamarhi.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Director, Primary Education, Government of Bihar, Patna.
3. The District Magistrate, Sitamarhi.
4. The District Education Officer, Sitamarhi.
5. The D.S.E., Sitamarhi.
6. The Appellate Tribunal, District Teacher Employment through its Member, District Sitamarhi.
7. The Mukhiya, namely Dinesh Purvey Son of Shri Mahendra Purvey Resident of Village Jagadar, P.S. Parihar, District- Sitamarhi.
8. The Block Education Extension Officer, Parihar, District- Sitamarhi
9. The Panchayat Secretary, Gram Panchayat Raj, Jagadar, Prakhand- Parihar, District-Sitamarhi.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ramchandra Sahni
For the Respondent/s : Mr. Ajay, GA-5
Mr. Ashish Kumar Lal, AC to GA-5

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 31-08-2016

Heard Mr. Ramchandra Sahni, learned counsel appearing for the petitioners and Mr. Ajay, learned G.A.-5 for the State who appears along with Mr. Ashish Kumar Lal, learned A.C. to G.A.-5.

With the consent of the parties, this matter has been considered with a view to final disposal at the stage of admission itself.

The two petitioners herein are aggrieved by the order dated 3.10.2013 passed by the District Teachers Employment Appellate Authority, Sitamarhi (hereinafter referred to as the

‘Appellate Authority’) in Case No.1 of 2013, whereby the appointment of the Panchayat Teachers have been set aside and fresh counselling has been directed. A copy of such order is impugned at Annexure-6 to the writ petition.

The facts of the case briefly stated is that following initiation of selection process the petitioners herein along with some others were appointed as Panchayat Teachers on the approval of the Appointment Committee and their appointment orders are placed at Annexures-1 and 2 respectively to the writ petition. Since the petitioners were not being paid their salary that they approached this Court in CWJC No.7317 of 2009 and which was disposed on 22.04.2013 with a liberty to approach the ‘Appellate Authority’ constituted under the Bihar Panchayat Teachers (Appointment and Service Conditions) Rules, 2006 (hereinafter referred to as ‘the Rules’) as amended from time to time. In between the petitioners approached the District Superintendent of Education, Sitamarhi and who issued appropriate direction for payment of salary. However, yet the payments were not made forcing the petitioner to take recourse to appellate remedy before the ‘Appellate Authority’ in Appeal No.65 of 2011 and wherein directions were issued for payment of salary on 18.6.2011, a copy of which is placed at Annexure-4.

While the matter rested at such stage that the appeal in

question was filed by the present Mukhiya who alongwith the *Panchayat Sachiv* raised issues of irregularity in the selection process which led to the appointment of these petitioners. The 'Appellate Authority' accepting the complaint has proceeded to cancel the appointment of the petitioners and directed for fresh counselling. The petitioners feeling aggrieved are before this Court.

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

While it is the argument of Mr. Sahni, learned counsel appearing for the petitioner that there was no irregularity in so far as the eligibility of the petitioners to hold the post is concerned, Mr. Ajay, learned Government Advocate-5 with reference to the documents which have been produced following the direction of this Court submits that there was large scale irregularity in the selection process and the 'Appellate Authority' upon examination of the records has opined as such, which opinion of the 'Appellate Authority' would warrant no indulgence. He submits that a large number of persons have filed their applications for the post but the appointment was done in a hush-hush manner without following the regular procedure and which has prompted the present Mukhiya to file the complaint which has been upheld.

Learned counsel in order to support his argument has relied upon an F.I.R. instituted by the Panchayat Secretary against



the then Mukhiya who was the architect of the appointment giving rise to Parihar P.S. Case No.17 of 2007 and which is pending before the competent court below. He also refers to the proceedings of the Appointment Committee, a copy of which is placed at Annexure-C to the supplementary counter affidavit filed on behalf of Respondent No.3 to submit that since the present Mukhiya was satisfied that the appointment was marred with large scale irregularities that he took a decision for the cancellation of appointments and has also issued an order to that effect on 16.10.2007 vide Annexure-D which was communicated to the schools where these teachers were posted. However these teachers have managed to continue despite this position.

In substance, the argument of Mr. Ajay, learned G.A.-5 is that since the petitioners herein are product of an infracted selection process and are beneficiaries thereof, their appointments have rightfully been interfered.

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

The peculiarity in the contest is that although there were 170 applicants against the post but none has chosen either to question the selection process nor has felt aggrieved by the appointment of these petitioners rather it is after the lapse of more than 7 years since the appointment of these petitioners that in the

year of 2013 the present Mukhiya who becomes the successor in the office of the Mukhiya chooses to review the appointment made by his predecessors.

The person aggrieved herein is the successor in office of Mukhiya and not any applicant to the post. The successor in office approaches the 'Appellate Authority' admitting to the lapse and the 'Appellate Authority' proceeds to cancel the appointments despite the fact that these petitioners have not been found wanting on their eligibility nor their appointments are put to question by any contestant. It is this extraordinary feature of the contest, that this Court proceeded to frame certain issues in its order dated 24.8.2016 which runs as under:

- a) Does the appellate authority possess jurisdiction to enquiry into the selection process?
- b) Whether in absence of any complaint against the appointment, the Mukhiya can be allowed to reverse the selection process by attributing irregularity in the selection process so followed?
- c) Whether after a lapse of 7 years and with no complaint being filed against the petitioner as to their eligibility to hold the post and in absence of any challenge to their appointment by the applicants against the post there was any requirement to interfere with the selection process?
- d) Whether the petitioners fulfilling the eligibility criteria to hold the post any kind of irregularity in

a selection process with no patent illegality the appointments could be interfered with?

e) Whether there are materials to form such basis and whether the Mukhiya is vested with powers to abort a selection process?

f) Whether in absence of any order cancelling the appointment of the petitioners even when a resolution was passed in the year 2007, the appointments can be interfered with?

I would proceed to test the order impugned in this writ petition in the background of the arguments advanced by Mr. Ajay, learned G.A.-5, the statutory provisions under 'the Rules' and the law settled on the issue.

In so far as the jurisdiction exercised by the 'Appellate Authority' on the complaint made by the successor in the office of Mukhiya is concerned, in my opinion the 'Appellate Authority' has travelled beyond jurisdiction to investigate into the selection process. A Division Bench of this Court in a judgment reported in **2016(1) PLJR 836 (Puja vs. State of Bihar)** while examining a similar issue, has held that the 'Appellate Authority' being a creature of statute and exercising powers under rule-18 of 'the Rules', it is not vested with the power of superintendence nor exercise any inherent power, to investigate into a selection process rather the jurisdiction vested is limited to resolve an *inter parte* dispute. There is no contest that there is no *inter parte* dispute in the present case. There is no challenge to the appointment of the

petitioners rather the challenge is to the selection process and as canvassed by Mr. Ajay, learned G.A.-5, the challenge for such adventurous exercise rests on the proceedings of the Appointment Committee, a copy of which is placed at Annexure-C, which at Agenda No.4 merely reflects an *inter parte* dispute between the Mukhiya and the Panchayat Secretary.

It is rather surprising that merely because the Panchayat Secretary charges the Mukhiya of obtaining his signature on the appointments that the Mukhiya decides to cancel the selection process altogether without testing whether the appointment so made at all are invalid warranting such extreme action or the teachers appointed do fulfill the eligibility criteria for such appointment. It is preposterous that an *inter parte* dispute between the Mukhiya and the Panchayat Secretary has resulted in the cancellation of the appointment of these petitioners even though there is no challenge to their qualifications or their eligibility to hold the post.

In the circumstances so discussed above, in my opinion even if there be any irregularity in following a particular procedure for appointment, until such time it is demonstrated that such irregularity has resulted in appointment of persons who are otherwise not eligible to hold the post, a mere procedural lapse would by itself be not sufficient to cancel the appointment altogether. Apparently a personal rivalry has resulted in an

obnoxious situation even in absence of a sound foundation.

In my opinion, in view of the legal position settled in the judgment of this Court rendered in the case of **Puja** (supra), the ‘Appellate Authority’ was not vested with any jurisdiction to examine the selection process in absence of any material which would hold the appointment of these petitioners contrary to the eligibility criteria. Even otherwise, where the appointment of these petitioners was neither obtained by practicing fraud nor do they lack eligibility to hold the post, their appointments could not have been investigated after a lapse of 7 years and in absence of any challenge to their eligibility. Thus neither on merits nor on jurisdiction, the order passed by the ‘Appellate Authority’ impugned at Annexure-6, is capable of being upheld and is accordingly quashed and set aside.

The issues posed are answered accordingly.

The writ petition is allowed.

(Jyoti Saran, J)

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CAV DATE	
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