

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13835 of 2012

Pravin Kumar Pravin, S/O Late Viranchi Mandal, R/O Village- Caltaul Sukhsena, P.O. Ladugarh, Panchayat- Sukhsena, P.S. Barlaha Kothi, District Purnia.

.... Petitioner/s

Versus

1. The State of Bihar through the Commissioner cum Principal Secretary, Department of Education/Human Resources Development, Govt. of Bihar, Vikas Bhawan, New Secretariat, Patna.
2. The Director, Primary Education, Govt. of Bihar, Patna.
3. The District Education Officer cum District Programme Coordinator, Purnia.
4. The Range Education Officer, Banmankhi, Purnia.
5. The Block Education Extension Officer, Barhara Kothi, Purnia.
6. The Mukhia, Gram Panchayat Sukhsena, Purnia.
7. The Panchayat Secretary, Gram Panchayat, Sukhsena, Block Barhara Kothi, Purnia.
8. The Head Master, Primary School, Adivasi Jaungi, Block Barhara Kothi, District Purnia.
9. Shiv Narayan Mandal, S/O Late Mangal Mandal Village, Block Barhara Kothi, District Purnia.

.... Respondent/s

With

Civil Writ Jurisdiction Case No. 16353 of 2012

Dilip Paswan, S/O: Shiv Balak Paswan, R/O: Village- Mainihari, P.O.- Sukhasan Chakala, P.S. & District- Madhepura

.... Petitioner/s

Versus

1. The State of Bihar through the Commissioner-cum-Principal Secretary, Department of Education/ Human Resources Development, Govt. of Bihar, Vikas Bhawan, New Secretariat, Patna.
2. The Director, Primary Education, Govt. of Bihar, Patna.
3. The District Education Officer -cum- District Programme Coordinator, Purnia.
4. The Range Education Officer, Banmankhi, Purnia.
5. The Block Education Extension Officer, Barhara Kothi, Purnia.
6. The Mukhia, Gram Panchayat, Sukhsena, Purnia.
7. The Panchayat Secretary, Gram Panchayat Sukhsena, Block: Barhara Kothi, Purnia.
8. The Head Master, Primary School, Sabhagachhi, Block- Barhara Kothi, District- Purnia

.... Respondent/s

With

Civil Writ Jurisdiction Case No. 10622 of 2013

Smt. Gyan Mala Bharti, W/O Shri Rajendra Kumar, R/O Village- Mahikhanda, P.O- Lakshimpur Vishariya, Panchayat- Sukhsena, P.S- Barlaha Kothi., District- Purnia.

.... Petitioner/s

Versus

1. The State of Bihar through the Commissioner -cum- Principal Secretary,

Department of Education/ Human Resources Development Govt. of Bihar,
Vikas Bhawan, New Secretariat, Patna.

2. The Director, Primary Education, Govt. of Bihar, Patna.
3. The District Education Officer -cum- District- Programme Coordinator, Purnia.
4. The Range Education Officer, Banmankhi, Purnia.
5. The Block Education Extension Officer, Barhara Kothi, Purnia.
6. The Mukhia, Gram Panchayat Sukhsena, Purnia.
7. The Panchayat Secretary, Gram Panchayat, Sukhsena, Block, Barhara Kothi, Purnia.
8. The Head Master, Primary School, Sabhagachhi, Block- Barhara Kothi, District- Purnia.

.... Respondent/s

With

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Civil Writ Jurisdiction Case No. 5337 of 2014

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Jay Prakash Sharma, S/O Late Bhuneshwar Sharma, R/O Village and P.O. and P.S.
Barhara Kothi, District – Purnia.

.... Petitioner/s

Versus

1. The State of Bihar, through the Commissioner -cum- Principal Secretary, Department of Education/Human Resources Development, Government of Bihar, Vikas Bhawan, New Secretariat, Patna.
2. The Director, Primary Education, Govt. of Bihar, Patna.
3. The District Education Officer - cum - District Programme Coordinator, Purnia
4. The Range Education Officer, Banmankhi, Purnia.
5. The Block Education Extension Officer, Barhara Kothi, Purnia.
6. The Mukhia, Gram Panchayat- Sukhsena, Purnia.
7. The Panchayat Secretary, Gram Panchayat, Sukhsena, Block: Barhara Kothi, Purnia.
8. The Head Master, Primary School, Adivasi Jaungi, Block - Barhara Kothi, District – Purnia.
9. Shiv Narayan Mandal, S/O Late Mangal Mandal, Resident of: Village- Kailu Tola Sukhsena, Block - Barhara Kothi, District – Purnia.
10. Santosh Kumar, S/O Shri Sumarit Thakur, Resident of Village - Gulela Bitta, Block and P.S. Barhara Kothi, District – Purnia.
11. Pawan Kumar Thakur, Son of Shri Sumarit Thakur, Resident of Village - Gulela Bitta, Block and P.S. Barhara Kothi, District – Purnia.

.... Respondent/s

With

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Civil Writ Jurisdiction Case No. 6407 of 2014

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Mithun Kumar Mani, S/O Late Jagadev Mandal, R/O Village- Caltaul, P.O-
Ladugarh, P.S and District- Purnia.

.... Petitioner/s

Versus

1. The State of Bihar through, the Commissioner -cum- Principal Secretary, Department of Education/ Human Resources Development, Govt. of Bihar, Vikas Bhawan, New Secretariat, Patna.
2. The Director, Primary Education, Govt. of Bihar, Patna.
3. The District Education Officer -cum- District Programme Coordinator, Purnia.
4. The Range Education Officer, Banmankhi, Purnia.
5. The Block Education Extension Officer, Barhara Kothi, Purnia.

6. The Mukhia, Gram Panchayat, Sukhsena, Barhara Kothi, Purnia.
7. The Panchayat Secretary, Gram Panchayat Sukhsena, Block Barlaha Kothi, Purnia.
8. The Head Master, Primary School Adivasi Jhaungi, Block- Barhara Kothi, District- Purnia.
9. Shiv Narayan Mandal, son of late Mangal Mandal, resident of Village- Kailu Tol, Sukhsena, Block- Barhara Kothi, District- Purnia.
10. Santosh Kumar, son of Shri Sumarit Thakur, resident of Village- Gulela Bitta, Block and P.S.- Barhara Kothi, District- Purnia.
11. Pawan Kumar Thakur, son of Shri Sumari Thakur, resident of Village- Gulela Bitta, Block & P.S.- Barhara Kothi, District- Purnia.

.... Respondent/s

With

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Civil Writ Jurisdiction Case No. 5012 of 2014

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Rekha Kumari, D/O: Shri Sahdeo Prasad Sah, R/O: Village + P.O.: Ladugarh, P.S. - Jankinagar, District – Purnia.

.... Petitioner/s

Versus

1. The State of Bihar through the Commissioner -cum- Principal Secretary, Department of Education/ Human Resources Development, Govt. of Bihar, Vikas Bhawan, New Secretariat, Patna.
2. The Director, Primary Education, Govt. of Bihar, Patna.
3. The District Education Officer -cum- District Programme Coordinator, Purnia.
4. The Range Education Officer, Banmankhi, Purnia.
5. The Block Education Extension Officer, Barhara Kothi, Purnia.
6. The Mukhia, Gram Panchayat Sukhsena, Purnia.
7. The Panchayat Secretary, Gram Panchayat Sukhsena, Block: Barlaha Kothi, Purnia.
8. The Head Master, Primary School Adivasi Jhaungi, Block - Barhara Kothi, District – Purnia.
9. Shiv Narayan Mandal, S/O: Late Mangal Mandal, Resident of Village : Kailu Tol, Sukhsena, Block - Barhara Kothi, District – Purnia.
10. Santosh Kumar, S/O: Shri Sumarit Thakur, Resident of Village: Gulela Bitta, Block and P.S. - Barhara Kothi, District – Purnia.
11. Pawan Kumar Thakur, son of : Shri Sumarit Thakur, Resident of Village: Gulela Bitta, Block and P.S. - Barhara Kothi, District – Purnia.

.... Respondent/s

With

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Civil Writ Jurisdiction Case No. 5941 of 2014

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Ashok Kumar, S/O: Sri Narayan Sah, R/O Village- Caltaul Sukhsena, P.O.: Ladugarh, Panchayat- Sukhsena, P.S. - Barhara Kothi, District- Purnia.

.... Petitioner/s

Versus

1. The State of Bihar through the Commissioner -cum- Principal Secretary, Department of Education/Human Resources Development, Govt. of Bihar, Vikas Bhawan, New Secretariat, Patna.
2. The Director, Primary Education, Govt. of Bihar, Patna.
3. The District Education Officer -cum- District Programme Coordinator, Purnia.
4. The Range Education Officer, Banmankhi, Purnia.
5. The Block Education Extension Officer, Barhara Kothi, Purnia.

6. The Mukhia, Gram Panchayat, Sukhsena, Purnia.
7. The Panchayat Secretary, Gram Panchayat, Sukhsena, Block: Barlaha Kothi, Purnia
8. The Head Master, Primary School, Adivasi Jaungi, Block- Barhara Kothi, District- Purnia.
9. Shiv Narayan Mandal S/O Late Mangal Mandal, Resident of Village: Kailu Tol, Sukhsena, Block and P.S.- Barhara Kothi, District- Purnia.
10. Santosh Kumar, S/O Shri Sumarit Thakur, Resident of Village: Gulela Bitta, Block and P.S.- Barhara Kothi, District- Purnia.
11. Pawan Kumar Thakur, Son of Shri Sumarit Thakur, Resident of Village: Gulela Bitta, Block and P.S.- Barhara Kothi, District- Purnia.

.... Respondent/s

With

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Civil Writ Jurisdiction Case No. 6387 of 2014

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Kumari Rampyari, D/O Sri Jagdish Sah, R/O Village - Milki, P.O. Lalganj, P.S.- K. Hatt, District – Purnia.

.... Petitioner/s

Versus

1. The State of Bihar through the Commissioner -cum - Principal Secretary, Department of Education/ Human Resources Development, Govt. of Bihar, Vikas Bhawan, New Secretariat, Patna.
2. The Director, Primary Education, Govt. of Bihar, Patna.
3. The District Education Officer -cum - District Programme Coordinator, Purnia.
4. The Range Education Officer, Banmankhi, Purnia.
5. The Block Education Extension Officer, Barhara Kothi, Purnia.
6. The Mukhia, Gram Panchayat Sukhsena, Purnia.
7. The Panchayat Secretary, Gram Panchayat Sukhsena, Block : Barhara Kothi, Purnia.
8. The Head Master, Primary School, Sabhagachhi, Block - Barhara Kothi, District – Purnia.
9. Shiv Narayan Mandal, S/O Late Mangal Mandal, Resident of: Village Kailu Tola Sukhsena, Block - Barhara Kothi, District – Purnia.
10. Santosh Kumar, S/O Shri Sumarit Thakur, Resident of Village - Gulela Bitta, Block and P.S. Barhara Kothi, District – Purnia.
11. Pawan Kumar Thakur, Son of Shri Sumarit Thakur, Resident of Village - Gulela Bitta, Block and P.S. Barhara Kothi, District – Purnia.

.... Respondent/s

With

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Civil Writ Jurisdiction Case No. 5843 of 2014

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Suman Kumari, D/O: Shri Chandrashekhar Mandal, R/O: Village - Calutaul Sukhsena, P.O.: - Ladugarh, P.S. and District – Purnia.

.... Petitioner/s

Versus

1. The State of Bihar through the Commissioner -cum- Principal Secretary, Department of Education/Human Resources Development, Govt. of Bihar, Vikas Bhawan, New Secretariat, Patna.
2. The Director, Primary Education, Govt. of Bihar, Patna.
3. The District Education Officer - cum - District Programme Coordinator, Purnia.
4. The Range Education Officer, Banmankhi, Purnia.
5. The Block Education Extension Officer, Barhara Kothi, Purnia.

6. The Mukhia, Gram Panchayat Sukhsena, Purnia.
7. The Panchayat Secretary, Gram Panchayat, Sukhsena, Block: Barlaha Kothi, Purnia .
8. The Head Master, Primary School Adivasi Jhaungi, Block - Barhara Kothi, District – Purnia.
9. Shiv Narayan Mandal, S/O: Late Mangal Mandal, Resident of: Village - Kailutol Sukhsena, Block and P.S. - Barhara Kothi, District – Purnia.
10. Santosh Kumar, S/O: Shri Sumarit Thakur, Resident of: Village: Gulela Bitta, Block and P.S. - Barhara Kothi, District – Purnia.
11. Pawan Kumar Thakur, Son of: Shri Sumarit Thakur, Resident of: Village: Gulela Bitta, Block and P.S. - Barhara Kothi, District – Purnia.

.... Respondent/s

Appearance :

(In CWJC No.13835 of 2012)

For the Petitioner/s	Mr. Chittaranjan Sinha, Sr. Adv. with Mr. Amaresh Kumar Sinha Mr. Nagadeo Choubey
For the Respondent/s	Dr. Anil Kr Upadhyay SC-20 Mr. Naresh Prasadd, AC to SC-2

For Respondent nos.6 & 7 :	Mr. Pankaj Majjorwar
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For the Respondent No.19 :	Mr. R.C. Thakur
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(In CWJC No.16353 of 2012)

For the Petitioner/s	Mr. Gyanand Roy Mr. Nagadeo Choubey
For the Respondent/s :	Mr. Prabhakar Jha, GP-27

(In CWJC No.10622 of 2013)

For the Petitioner/s	Mr. Gyanand Roy Ms. Maya Jha
For the Respondent/s :	Mr. Birju Prasad, GP-13 Mr. Ravi Kumar, AC to GP-13 Mr. Ashok Kumar, AC to GP-13

(In CWJC No.5337 of 2014)

For the Petitioner/s	Mr. Uday Chand Prasad Mr. Manoj Kumar Mr. Nagadeo Choubey
For the Respondent/s :	Mr. Md. Harun Quareshi, AC to SC-1. Mr. Md. Irshad, AC to SC-1

(In CWJC No.6407 of 2014)

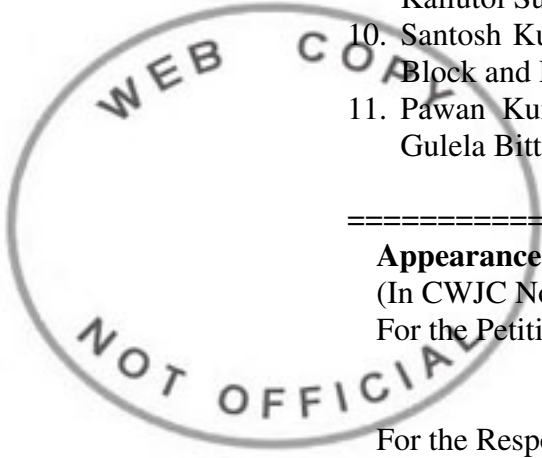
For the Petitioner/s	Mr. Uday Chand Prasad Mr. Manoj Kumar Mr. Nagadeo Choubey
For the Respondent/s :	Mr. Anil Kumar Singh, GP.-26 Mr. Nawal Kishore Singh, AC to GP-6 Mr. Gautam Kumar Yadav, AC to GP-26

(In CWJC No.5012 of 2014)

For the Petitioner/s	Mr. Y.V. Giri, Sr. Adv. with Mr. Uday Chand Prasad Mr. Manoj Kumar Mr. Nagadeo Choubey
For the Respondent/s :	Mr. Lokesh Kumar Singh, AC to AAG-13

(In CWJC No.5941 of 2014)

For the Petitioner/s	Mr. Uday Chand Prasad Mr. Manoj Kumar Mr. Nagadeo Choubey
For the Respondent/s :	Mr. Uday Prasad, AC to GP-22



(In CWJC No.6387 of 2014)

For the Petitioner/s : Mr. Uday Chand Prasad
Mr. Manoj Kumar
Mr. Nagadeo Choubey
Mr. Binod Kumar Sinha

For the Respondent/s : Ms. Sweeti Singh, AC to AAG-10.
Ms. Shilpa Keshri, AC to AAG-10

(In CWJC No.5843 of 2014)

For the Petitioner/s : Mr. Amaresh Kumar Sinha
Mr. Nagadeo Choubey

For the Respondent/s : Mr. Shailesh Kumar, AC to GP-5

For the respondent-Panchayat: Mr. Pankaj Kr. Maijorwar

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 12-08-2016

The petitioners in each of these nine writ petitions have a common reason for approaching this Court under Article 226 of the Constitution of India. The reason is an order bearing No.275 dated 4.5.2012 passed by the District Panchayat Teacher Employment Appellate Authority (hereinafter referred to as the 'Appellate Authority'), Purnea in Appeal No.307 of 2009 (Shiv Narain Mandal), Appeal No.988 of 2011 (Pawan Kumar Thakur), and Appeal No.987 of 2011 (Santosh Kumar) which were heard with several other appeals and whereby the 'Appellate Authority' has been pleased to quash the appointments of these petitioners and has directed the Panchayat authorities to take fresh steps for preparation of merit list.

Since it is the same order which is put to challenge in each of the writ petitions, hence I would refer to the pleadings made in CWJC No.13835 of 2012 for ready reference unless clarified by specific reference to any other writ petition.



The facts of the case briefly stated is that an exercise for appointment of Panchayat Teacher was initiated in the year 2006 in accordance with the procedure prescribed in the Bihar Panchayat Elementary Teachers (Appointment and Service Condition) Rules, 2006 (hereinafter referred to as 'the Rules'). The petitioners along with the complainant and some others applied against the vacancies. Their applications were processed and the provisional merit list was prepared which was duly put up on the notice board seeking objections. The merit list was prepared in two categories i.e. Trained Teacher and Untrained Teachers. Objections were invited to the provisional merit list which was put up in the Panchayat office and other places. After the expiry of the period of objection, the merit lists of Trained and Untrained Teachers were separately prepared and put up on the notice Board of the Panchayat. The date of counselling was fixed and notified. It is after the counselling that a final merit list as per the roster was prepared, a copy of which has been placed on record vide Annexure-8. Appointment orders were issued and the petitioners joined their respective post. The private respondents in the respective writ petitions being aggrieved by their non-selection filed their respective appeals before the 'Appellate Authority'. The matter was heard and by the order impugned the selection process was held vitiated, inter alia, on grounds that: (a) the roster had not been correctly followed and (b) the final merit list had not been published. The 'Appellate Authority' by the order



impugned set aside the appointment of the petitioners while saving the appointment of one Rubi Kumari in the light of the order passed by a Bench of this Court in CWJC No.3907 of 2011 and directed the Appointment Committee, Gram Panchayat, Sukhsena in the district of Purnea to prepare a fresh merit list from the 572 applicants containing at least 10 names in each category, and put up the same on the notice board, invite objections and after disposal of the objections, carry out the counselling process to prepare a final merit list on the basis of roster. The petitioners being aggrieved are before this Court.

Mr. Y.V. Giri, learned Senior Advocate, Mr. Chittaranjan Sinha, learned Senior Advocate, Mr. Gyanand Roy, Advocate, Mr. Uday Chand Prasad, Advocate, Mr. Amaresh Kumar Sinha, Advocate and Mr. Nagadeo Choubey, Advocate have appeared on behalf of the petitioners. Dr. Anil Kumar Upadhyaya, learned Standing Counsel No.2, Mr. Anil Kumar Singh, learned G.P. 26, Mr. Prabhakar Jha, learned GP-27, Mr. Shailesh Kumar, learned AC to GP-5, Mr. Uday Prasad, AC to GP-22, Md. Irshad, AC to SC-1, Ms. Shilpa Keshri, AC to AAG-10 and Mr. Naresh Prasad, learned AC to SC-2 have appeared for the State in the respective writ petitions. The Mukhiya, Gram Panchayat, Sukhsena and the Panchayat Secretary have appeared through Mr. Pankaj Kumar Maijowar who have also produced the records of appointment and Mr. R.C. Thakur has appeared for the complainant-private

respondents in the respective writ petitions.

Mr. Sinha, learned senior counsel appearing for the petitioner in CWJC No.13835 of 2012 has questioned the decision of the 'Appellate Authority' on grounds that the appeal was filed belatedly. According to Mr. Sinha, the appointment is of the year 2006. The petitioners joined their respective post in 2007 but it was challenged in the year 2009 which is after gross delay. It is further the Argument of Mr. Sinha that the petitioners were not added as party. Although he accepts that the petitioners have appeared and also filed reply. He submits that the delay has been condoned mechanically by the 'Appellate Authority'. It is the argument of Mr. Sinha that although a representation was filed by the appellants on 13.11.2006 but it was not before the correct authority as it was addressed to the Block Education Officer when the competent authority at the relevant time was the Block Development Officer.

Mr. Sinha has referred to a judgment of this Court reported in **2014(4) PLJR 763 (Md. Faiz Akhar vs. The State of Bihar)** and with reference to the opinion expressed in paragraph 8 of the judgment he submits that the Division Bench has held that even though rule 18 of 'the Rules' does not prescribe any time limit but an appeal has to be filed within a reasonable time of 3 to 4 months but a delay of two years was held unreasonable. He submits that the case in hand is squarely covered by the opinion of the Division Bench. Mr. Sinha has also referred to a judgment of Supreme Court



reported in **AIR 2011 SC 2542 (Syed Maqbool Ali vs. State of Uttar Pradesh)** on the issue of belated approach by the litigants. On the same issue Mr. Sinha has also made reference to a Bench decision of this Court reported in **2011(4) BBCJ (V) page 278 (Gangesh Kumar Singh Vs. State of Bihar)** and at page **279 (Indu Kumari vs. State of Bihar)** of the same volume. It is thus submitted that the appeals should have been dismissed for laches on the part of the complainant in approaching the ‘Appellate Authority’ after two years of the appointment.

Learned counsel with reference to the issues framed by the ‘Appellate Authority’ at paragraph 12 of the impugned order submits that the selection process was doubted on grounds that neither any roster was prepared nor a merit list was prepared nor it was published. He submits that although an issue of roster came for consideration but in so far as the petitioner in CWJC No.13835 of 2012 is concerned, he is found at correct roster point. According to Mr. Sinha, there was no infirmity in the selection process.

Mr. Giri, learned senior counsel has appeared for the petitioner in CWJC No.5012 of 2014 and while adopting the argument advanced by Mr. Sinha, it was argued that the exercise of power by the ‘Appellate Authority’ is wholly without jurisdiction. According to Mr. Giri, at the relevant time when the appointments were made, the appropriate authority to examine the selection process was the Block Development Officer under rule 18 of ‘the



Rules’ as it then existed. The power vested in the Block Development Officer stood transferred in the ‘Appellate Authority’ vide amendment introduced in the year 2008 to hear appeals against the appointment of teachers. According to Mr. Giri, since the amendment of rule 18 introduced in 2008 does not save the past actions nor the appeals in question were pending on the date when ‘the Rule’ was amended hence the ‘Appellate Authority’ was not within its jurisdiction to hear appeals in relation to matters pertaining to an appointment process of 2006 on which date the ‘Appellate Authority’ had no jurisdiction. According to Mr. Giri, rule 18 of ‘the Rules’ as it presently stands, has no retrospectivity to consider the disputes relating to appointment prior to the amendment of 2008.

Mr. Giri while accepting that the private respondents had earlier approached in CWJC No.10246 of 2007 questioning the appointment which was disposed of on 20.7.2009 with liberty to approach the ‘Appellate Authority’ but with reference to a Division Bench judgment of this Court reported in **2009 (1) PLJR 712 (State Election Commission vs. Punam Kumari)** he submits that the Division Bench at paragraph 10 has held that if an authority has no jurisdiction to go into any question, such authority cannot be vested by the High Court exercising power under Article 226 of the Constitution of India. On the same proposition Mr. Giri has also referred to a judgment of the Supreme Court reported in **(2012) 7**

SCC 610 (Vijay Kumar Kaul vs. Union of India). On the issue of roster, it is the argument of Mr. Giri that in so far as the petitioner in CWJC No.5012 of 2014 is concerned, there is no infirmity in following the roster.

It is also submitted by Mr. Giri that by virtue of the order passed by the department dated 15.11.2013 all the petitioners have continued on their respective posts.

Mr. Gyanand Roy has appeared for the petitioner(s) in CWJC No.16353 of 2012 and CWJC No.10622 of 2013. Supplementing the argument advanced by learned senior counsel it is argued that there is no allegation against the said petitioners that their appointment is tainted rather their appointment has been found to be as per the roster. He further submits that the 'Appellate Authority' has also admitted in paragraph 25 of the order that some of the appointments are as per roster and as per recommendation and thus there was no occasion for the 'Appellate Authority' to interfere with such appointments which were found valid. On the issue of publication of result he submits that the opinion solely based on the assertions made by the appellants. Learned counsel has referred to a judgment of the Supreme Court reported in **2014(3) PLJR (SC) 337 (Joginder Pal vs. State of Punjab)** to submit that the 'Appellate Authority' should have segregated the valid appointment from invalid ones and should not have sweepingly, quashed the appointments.



Mr. Uday Chand Prasad has appeared for the petitioners in CWJC No.5337 of 2014, CWJC No.6407 of 2014, CWJC No.5941 of 2014 and CWJC No.6387 of 2014 and while adopting the arguments advanced he has referred to a Division Bench judgment of this Court reported in **2016 (1) PLJR 836 (Puja vs. The State of Bihar)** to submit that the ‘Appellate Authority’ could not have gone beyond the challenge to quash the entire selection.

Mr. Amaresh Kumar Sinha has appeared in CWJC No.5843 of 2014 to adopt the arguments advanced by learned counsel appearing for the petitioners.

Dr. Anil Kumar Upadhyay, learned Standing Counsel No.2 has led the arguments on behalf of the State to submit that since the procedure mandated under ‘the Rules’ had not been followed in the present cases, hence it has been set aside with a direction to the Appointment Committee to prepare a fresh merit list. According to Dr. Upadhyay, there can be no prejudice to the petitioners since the direction of the ‘Appellate Authority’ is to prepare a fresh merit-list in accordance with ‘the Rules’. He further submits that although the case of Rubi Kumari has been left untouched by the ‘Appellate Authority’ but the fact is that the said Rubi Kumar was not found to be an applicant to the post and yet appointed. According to Dr. Upadhyay since the entire selection process is now under scrutiny in the batch of these writ petitions, it would not preclude this Court to deal with the case of Rubi Kumari

also since the Bench while considering the issue in CWJC No.3907 of 2011, had merely upheld the qualification of Rubi Kumari without making any comment on the selection process. According to Dr. Upadhyay, the appointments are resting on a fraud and should be appropriately dealt for anything obtained by practising fraud is a nullity as held by the Supreme Court as reported in **(1994) 1 SCC (S.P. Chengal Varaya Naidu vs. Jagannath)**.

Other State Counsel(s) have proceeded to adopt the arguments advanced by Dr. Upadhyay.

Mr. R.C. Thakur, learned counsel has appeared on behalf of the appellants who are private respondents herein and has contested the argument advanced on behalf of the petitioners to submit that these appellants had better marks than the writ petitioners and they have been denied appointments rather unjustly. It is submitted that no notice for counselling was received by these appellants and which precluded them in participating in the same. He submits that there is no error in the order of the 'Appellate Authority' and it is resting on the verification of the records. Learned counsel has reiterated the submissions advanced by Dr. Upadhyay to support the impugned order of the 'Appellate Authority'.

The Mukhiya and Panchayat Secretary are represented by Mr. Maijorwar and who has produced the record of appointment process for verification. According to Mr. Maijorwar, a cursory



glance of the proceedings of Appointment Committee would show that each procedure has been followed, a merit list has been published and placed for scrutiny of the candidates giving them one week time to file objections in terms of the statutory procedure. He submits that since the names of the complainants were already there in the provisional merit list hence there was no occasion for them to file any objections nor they did proceed to do so. Learned counsel with reference to the schedule brought on record at Annexure-6/A submits that each of the applicants were fully aware of the date of preparation of the panel and for filing of their objections and the preparation of the final merit list. He further submits that the date of counselling was notified vide Annexure-R6/A to be held in between 12.10.2006 to 14.10.2006 and the candidates were required to be present with their documents relating to educational qualification but the complainants did not choose to present themselves for counselling. He thus submits that the final appointment was made after carrying out the counseling on the date fixed and as per the roster points available. He submits that the 'Appellate Authority' has relied upon the roster presented by the appellants which is not correct and the correct roster has been brought on record vide Annexure-R6/C which was provided by the District Superintendent of Education. According to Mr. Maijorwar, the merit list is as per the roster and there is no infirmity. It is thus the argument of Mr. Maijorwar that since the private respondents did not choose to

appear for counselling obviously they stood excluded from the consideration. Learned counsel has taken this Court through the proceedings of the appointment committee as well as the provisional merit list and final merit list to demonstrate that the process has not been found wanting.

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

The appointments of these petitioners have been cancelled on grounds that: (a) the roster was not followed and (b) neither any merit-list was prepared nor it was published. 'The Appellate Authority' also held that the appeals were not barred by limitation.

I would first consider the issue of limitation raised by the petitioners. Though exhaustive arguments is advanced by Mr. Sinha and Mr. Giri to question the appellate proceedings on this count but in my opinion there was no delay on the part of the appellants in approaching 'the Appellate Authority'. It is an admitted position that this issue was first raised before this Court in CWJC No.10246 of 2007 and which was disposed of only on 20.7.2009 requiring the said writ petitioners to approach the 'Appellate Authority' and immediately whereafter he filed the appeal in question. Mr. Giri, learned senior counsel appearing for the petitioners has complained of misconduct on the part of the appellants in suppressing the filing of the appeal before the 'Appellate Authority' at the time of

consideration of the writ petition in CWJC No.10246 of 2007 but in my opinion such objection is a non-issue nor the act complained can be held a suppression for no benefit accrued to the writ petitioners on that count.

The argument of Mr. Giri questioning the jurisdiction of the 'Appellate Authority' to consider the appointments on grounds that it relates to appointment process of the year, 2006 is again not supported by the statutory provisions for unless the jurisdiction of the 'Appellate Authority' is restricted by the statutory provisions, merely because the appointment in question relates to the year 2006, in absence of any statutory bar, the 'Appellate Authority' was not precluded to enter into the dispute. It is again not a case of confirmant of jurisdiction on the 'Appellate Authority' by the High Court for the 'Appellate Authority' is already conferred with such powers to hear appeals under 'the Rules'.

The objections raised by learned counsel for the petitioners to question the appellate proceedings on the issue of delay, laches as well as on the issue of jurisdiction, in my opinion is unsustainable and not supported by any statutory provisions.

I would now consider whether the opinion of the 'Appellate Authority' on the roster and preparation and publication of merit list, requires any interference.

According to learned counsel appearing for the writ petitioners as well as Mr. Maijowar, learned counsel appearing for



the Panchayat, the roster relied upon by the 'Appellate Authority' is not the correct roster rather it is the roster enclosed at Annexure-R6/C which is the correct roster and which was provided by the District Superintendent of Education. It is also the submission of Mr. Maijowar that the roster points had also been fixed by the District Superintendent of Education and the appointment committee has simply entered the names of the candidates on the basis of merit in each of the category. Such argument advanced has not been contested by either the State or the private respondents.

The other ground on which the entire selection process has been set aside is that no merit list was either prepared or published. In my opinion the finding of the 'Appellate Authority' is contrary to the records. The records have been produced by Mr. Maijowar and which includes the register for the meetings, the counselling held, the provisional merit list, the final merit list as also the appointment roster. The proceedings of the appointment committee have also been produced and which show that the statutory procedure has been followed by the appointment committee. The Register with flag No.1 contains the minutes of the meeting of the appointment committee and copies of which have also been enclosed in the counter affidavit filed by the Mukhiya and the Panchayat Secretary. The minutes dated 16.8.2006 at Agenda No.7 resolve to put up notice inviting applications for the post at the Panchayat Bhawan and other major places in the Panchayat. The



minutes dated 6.9.2006 takes note of the 576 applications received against the vacancies and at Agenda No.3 directs for preparation of the provisional merit list separately in respect of the Trained and Untrained applicants. The minutes dated 13.9.2006 at Agenda No.2 directs to make public the provisional merit list by placing it at the Panchayat Bhawan and other places including the Block head office inviting objections against the same. The minutes of the proceeding dated 24.9.2006 records at Agenda No.2 that no objections were received and thus the provisional merit list was treated to be the merit list for the purpose and at Agenda No.3 it was decided to notify it at the Panchayat Office in between 25.9.2006 to 28.9.2006 as also for intimation to the applicants by post. The minutes dated 5.10.2006 at Agenda No.2 records notifying of the dates for counseling from 12.10.2006 to 14.10.2006 and which was published vide Annexure-R6/A at page 77. After the counseling was done that the final merit list was prepared, a copy of which as per roster is present at Annexure-R6/C.

The Register with FlagNo.2 contains the names of the applicants who applied against the post. The Register with Flag-3 contains the provisional merit list of untrained applicants and Flag-4 is the provisional merit list of Trained candidates. The Registers with Flag nos.5 and 6 are the counselling register and contains the names of 59 candidates in untrained category and 15 candidates in Trained category respectively. In fact the proceedings recorded in



registers are sufficient to hold that there was no infirmity in the procedure followed by the appointment committee for if the appointment was made in a surreptitious manner, then the counselling held in between 12.10.2006 to 14.10.2006 would not have been attended by 74 candidates of which only 12 had been appointed. The register at Flag-7 is the appointment carried out at different phases and the document at Flag-8 is the roster sent by the District Superintendent of Education together with the roster points which has been filled up as per the merit position of the candidates. I am rather surprised as to how despite such position existing yet the 'Appellate Authority' has proceeded to venture into the appointment process to hold it otherwise.

Before proceeding further I would also like to clarify the bogey which has been raised in respect of Kumari Rubi by the State by submitting that she was not even an applicant for the post which assertion is contrary to record. The applicant register at Flag-2 at serial no.437 contains the name of Kumari Rubi, D/o Giri Narain Jha which puts all doubts raised on her being of non-applicant for the post, at rest.

Apart from the fact that the appointment process followed by the appointment committee does not suffer from any procedural infirmity, the 'Appellate Authority' is also not vested with any jurisdiction to venture into the issue of selection process as held by this Court in the judgment relied upon by Mr. Uday Chand

Prasad in the case of **Puja** (supra) where the Division Bench has held that the jurisdiction of the 'Appellate Authority' is restricted to inter-party dispute and the 'Appellate Authority' can not enlarge its jurisdiction to become a supervisory authority over the entire selection process.

In so far as the present contest is concerned, 7 appeals were filed before the 'Appellate Authority' questioning the appointments on one ground or the other and which were heard analogous. The 'Appellate Authority' on consideration has dismissed the appeals preferred by the other applicants and has granted indulgence only to the appeals preferred by Shiv Narain Mandal, Pawan Kumar Thakur and Santosh Kumar. Now each of these appellants had merely raised a grievance that although they had secured better marks in their respective category but candidates who have obtained lesser marks have been appointed because they were not intimated the date of counselling. Meaning thereby even though an inter-party dispute was raised by these appellants, the 'Appellate Authority' has proceeded to assume jurisdiction over the entire selection process which as held by the Division Bench, is an exercise without jurisdiction.

I have already explained above in reference to the registers and the provisional merit list that all these appellants found place in the merit list and although the date of counseling was notified vide Annexure-6/A series at page 77 but these



appellants did not report for counselling although 74 candidates were present in both the categories of which 12 were appointed. The appellants thus have to blame themselves for their lapse but in the circumstances resulting from the counselling register so produced, no infirmity can be found in the appointments made by the appointment committee. The order of the 'Appellate Authority' impugned in these batch of writ petitions in so far as it relates to the Appeal Nos. 307 of 2009, Appeal No.987 of 2011 and Appeal No.988 of 2011 is concerned, suffers not only from error of jurisdiction but even the conclusion drawn suffers perversity for the finding recorded is contrary to the materials available on record.

In result the order dated 4.5.2012 passed by the District Panchayat Appellate Authority in Appeal No.307 of 2009, Appeal No.987 of 2011 and Appeal No.988 of 2011 impugned in the respective writ petitions cannot be upheld and is accordingly set aside.

It was submitted by Mr. Giri, learned senior counsel and not contested that following the orders of the State Government dated 15.11.2013, these petitioners have continued on their respective posts and have also discharged their duties but have not been paid their salary for the period. If the assertion so made by Mr. Giri regarding continuous officiation of the petitioners is found to be correct in its entirety or in part then the respondents should consider the claim of the petitioners for payment of salary for the

period they have discharged duties of Panchayat Teacher and pass appropriate orders in accordance with law. Since the petitioners are already serving on their respective posts hence they shall continue on their posts.

The writ petitions are allowed.

Let the records produced by Mr. Maijorwar, learned counsel for the Panchayat, be returned to him.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	18-08-2016
Transmission Date	N.A.