

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16124 of 2014

Pakeeza Khatoon W/O Azaz Ahamad, R/O At+ P.O.- Betha, P.S.- Bela, District- Sitamarhi

.... Petitioner

Versus

1. The State of Bihar, through the Principal Secretary, Education Department, Government of Bihar, Patna
2. The Director, Primary Education, Education Department, Government of Bihar, Patna
3. The Member, District Teacher Employment Appellate Authority, Sitamarhi, District- Sitamarhi
4. The District Magistrate, Sitamarhi, District- Sitamarhi
5. The District Education Officer, Sitamarhi, District- Sitamarhi
6. The District Programme Officer (Establishment), Sitamarhi, District- Sitamarhi
7. The Block Development Officer, Parihar, District- Sitamarhi
8. The Block Education Officer, Parihar, District- Sitamarhi
9. Md. Faiz Ahamad, son of Md. Karim, R/O Village- Ramnaika, P.O.- Jagdar, P.S.- Parihar, District- Sitamarhi, the Ex-Mukhiya, Gram Panchayat Raj Jagdar, Block- Parihar, District- Sitamarhi
10. Sachindra Singh, Son of Late Sone Lal Singh, At+P.O.- Budhanagar, P.S.- Nanpur, district- Sitamarhi
11. Dinesh Purve, Son of Sri Mahendra Purve, R/o Village- Jagdar, P.S.- Parihar, District- Sitamarhi, Present Mukhiya, Gram Panchayat Raj Jagdar, Block + P.S.- Parihar, District- Sitamarhi
12. The Panchyat Secretary, Gram Panchayat Raj Jagdar, P.S.- Parihar, District- Sitamarhi

.... Respondents

Appearance :

For the Petitioner/s : Mr. Durga Nand Jha, Adv.
Mr. Mrityunjay Kumar, Adv.
For the Respondent/s : Mr. Anil Kumar Verma, AC to AAG9
For respondent no.11 : Mr. V.R.P.Singh, Adv.
Mr. Pushpendra Kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 15-11-2016

Heard Mr. Durga Nand Jha, learned counsel appearing for the petitioner, learned counsel for the State and Mr. V.R.P.Singh, learned counsel appearing for Ex-Mukhiya, who was the applicant before the appellate authority.

The petitioner is aggrieved by the order dated 3.10.2013 passed by the District Teachers Employment Appellate Authority, Sitamarhi, a copy of which is impugned at Annexure 9 to the writ petition, whereby the appointment of the petitioner to the post of Panchayat Teacher, Primary School, Mahuawa, has been set aside.

Mr. Jha, learned counsel appearing for the petitioner, has referred to a decision of this Court rendered in the case arising from C.W.J.C.No. 2197 of 2014 (**Krishnadeo Prasad Yadav v. the State of Bihar & ors.**) to submit that the judgment and order of this Court passed in the said case would squarely apply to the case of the petitioner. He submits that the same order, as impugned in the present writ petition, was put to challenge in the said case and has been quashed in so far as it related to the petitioners of the said case.

Mr. Singh, learned counsel for the Mukhiya chooses to contest the position by relying upon the judgment of the Supreme Court reported in (1988)1 SCC 40 (**Mohammad Swalleh & ors. v. Third Addl. District Judge, Meerut & anr.**) and AIR 1977 Patna 166 (**Devendra Prasad Gupta v. the State of Bihar & ors.**) to submit that since the Mukhiya and Panchayat Secretary, who were applicant before the appellate authority, had pointed out manifest irregularities in the appointment process, any interference with the order passed by the appellate authority would revive an illegal

appointment process. He submits that this aspect of the matter has not been considered by this Court in the judgment rendered in the case of **Krishnadeo Prasad Yadav** (supra).

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

In my opinion, the submission advanced by Mr. Singh, learned counsel appearing for the Mukhiya, is not correct. This Court while considering the issue in the case of **Krishnadeo Prasad Yadav** (supra) was conscious of the issue raised by the applicants before the appellate authority being the Mukhiya and Panchayat Secretary and it is taking note of the matter in contest as well as the jurisdiction vested in the appellate authority that the issue raised was decided in favour of the appointees. I would do no better than to reproduce the relevant portion of the judgment which would squarely cover the case of the present petitioner arising from the same impugned order:

"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 appointment 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:

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- (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 GA5, 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 traveled beyond jurisdiction to investigate into the selection process. A Division Bench of this Court in a judgment reported in 2016(1) PLJR 836 (Puja v. 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 GA5, 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 qualification 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."

In view of the position settled by this Court in the case of **Krishnadeo Prasad Yadav** (supra) it is only a completion of formality to quash the order dated 3.10.2013 passed by the appellate authority in so far as the petitioner is concerned and which is, accordingly, quashed and set aside.

The writ petition is allowed. As a consequence, the petitioner shall stand restored to her post.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	22.11.2016
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