

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.18573 of 2010**

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Ajay Kumar, S/O Late Deo Nandan Prasad, R/O Village- Kharki Kuawaan, P.S.- Chakiya,  
District- East Champaran at Motihari.

.... .... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Department of Panchayati Raj, Government of Bihar, Patna.
3. The District Magistrate, East Champaran at Motihari.
4. The Block Development Officer, Block- Kalyanpur, District- East Champaran at Motihari.
5. The Panchayat Secretary, Gram Panchayat Raj, Bhuwan Chhapra, Block- Kalyanpur, District- East Champaran at Motihari.
6. Sanjit Kumar, S/O Akshay Lal Prasad, R/O Village- Bhuwan Chhapra, Block- Kalyanpur, District- East Champaran at Motihari.

.... .... Respondent/s

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**Appearance :**

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| For the Petitioner/s             | : | Mr. Rajesh Kumar Singh, Advocate with<br>Mr. Umesh Tiwari, Advocate<br>Mr. Ranvijay Naresh Singh, Advocate |
| For the Respondent-State         | : | Mr. Pawan Kuma, AC to GA-9                                                                                 |
| For the Respondent No.5          | : | Mr. Ashok Kumar Singh, Advocate                                                                            |
| For the Private Respondent No.6: | : | Mr. Lakmesh Marvind, Advocate<br>Mr. Priyank Samdarshi, Advocate                                           |

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**CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN**

**ORAL JUDGMENT**

**Date: 18-08-2016**

Heard Mr. Rajesh Kumar Singh, learned counsel appearing  
for the petitioner, Mr. Pawan Kumar Singh, learned Assisting Counsel to  
Government Advocate No.9 for the State, Mr. Lakmesh Marvind,  
learned counsel appearing for the private respondent no.6.

The petitioner is aggrieved by the order dated 4.8.2010  
passed by the Member, District Panchayat Teachers Appellate Authority,  
East Champaran (hereinafter referred to as the 'Appellate Authority'),  
whereby the appointment of the petitioner as a Panchayat Teacher has  
been cancelled and direction has been issued by the 'Appellate  
Authority' for appointment of respondent no.6.



Facts of the present case is in a very narrow compass. Following initiation of a selection process that the petitioner was appointed as a Panchayat Teacher vide Annexure-2 which is dated 16.12.2006 and is under the signature of the authorized officer. The petitioner joined his post on 18.12.2006. Two years after the selection process that cases were filed before the 'Appellate Authority' giving rise to Case Nos.31 and 32 of 2008 at the instance of two persons namely, Tuntun Prasad Yadav and respondent no.6 herein, namely, Sanjit Kumar. The 'Appellate Authority' in consideration of the complaint made and considering the materials on record while dismissed the complaint filed by Tuntun Prasad Yadav, allowed the appeal of the respondent no.6 and as a consequence the appointment of the petitioner has been set aside and a direction was issued to appoint the respondent no.6. The petitioner being aggrieved is before this Court.

In between the respondent no.6 also approached this Court through CWJC No.1876 of 2011 as there was a delay in implementation of the order passed by the 'Appellate Authority'. The said writ petition was disposed of vide order passed on 12.2.2013 with liberty to file appropriate application and since it was brought to the notice of the Bench that this writ petitioner had questioned the order of the 'Appellate Authority' through the present writ petition that the order of appointment issued in favour of the respondent no.6, was made subject to the decision in the present case.

The matter was taken up by the Appointment Committee

the proceedings of which has been placed on record at Annexure-A to the supplementary counter affidavit filed on behalf of the respondent no.6 on 29.5.2014 and following which the respondent no.6 gave his joining vide Annexure-B on 24.12.2014 and which has been accepted.

Mr. Rajesh Kumar Singh, learned counsel appearing on behalf of the petitioner has questioned the impugned order of the 'Appellate Authority' whereby appointment of the petitioner has been cancelled on a limited ground that the order was passed behind the back of the petitioner since he was not even arraigned as a respondent although his appointment was put to question. Mr. Singh appearing for the petitioner with reference to the observation of the 'Appellate Authority' present at page 25 of the proceedings submits that although it has been mentioned by the 'Appellate Authority' that the petitioner did not respond to the notice issued but the fact is that neither the writ petitioner was added as a party to the appeal before the 'Appellate Authority' nor the proceedings of the appeal which has been brought on record vide Annexure-7 to the supplementary affidavit filed on 18.12.2015 would show that any order for issuance of notice was passed by the 'Appellate Authority'. He thus submits that the order passed by the 'Appellate Authority' is in gross violation of the principles of natural justice inasmuch as the petitioner has been denied opportunity to address his case. Although Mr. Lakmesh Marvind has canvassed that notice was issued to the writ petitioner but Mr. Pawan Kumar, learned State Counsel has fairly admitted that notice was issued to another appointee, namely,

Amit Kumar on 1.6.2010 but no notice was issued to the petitioner nor he was arraigned as a party.

Another relevant aspect of the matter is that even though following the order of the 'Appellate Authority', a decision has been taken by the Appointment Committee vide Annexure-A to the supplementary counter affidavit of the respondent no.6, to appoint him but no formal order of appointment has been issued and the joining of the respondent no.6 has been accepted on a mere representation.

The discussion above is sufficient to hold that neither the order of the 'Appellate Authority' in cancelling the appointment of the petitioner, is sustainable nor in absence of an appointment order, the acceptance of joining of the respondent no.6, is legal.

Having heard learned counsel for the parties and in the uncontested circumstances discussed where the appointment of the petitioner has been set aside by the 'Appellate Authority' without the petitioner being added as a party and without any opportunity to him to defend his case, the order passed by the 'Appellate Authority' in Case Nos.31 and 32 of 2008 in so far as it relates to the writ petitioner cannot be upheld and is accordingly quashed and set aside. As a consequence the petitioner stands restored to his post and the appointment of respondent no.6 is set aside.

The matter is remitted back to the 'Appellate Authority' for the consideration of the complaint filed by the respondent no.6 afresh and its disposal in accordance with law. While the respondent no.6

would be at liberty to appropriately amend his appeal, if so advised, the writ petitioner would be at liberty to question the proceeding on all issues including the issues of delay.

It is made clear that this Court has expressed no opinion on the comparative merits of this case.

Considering the nature of dispute the ‘Appellate Authority’ would proceed to dispose of the matter expeditiously and preferably within six months from the date of receipt/production of a copy of this order.

**(Jyoti Saran, J)**

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