

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2760 of 2011

=====

Suresh Singh S/o Sri Bhagwat Singh Resident Of Village - Shahpur Anchal , P.S.
Sirdala, District - Nawada

.... Petitioner/s

Versus

1. The State Of Bihar Through The Principal Secretary, Human Resources Development Department, Govt. Of Bihar, Patna
2. The District Magistrate, Nawada
3. The District Superintendent Of Education Cum District Programme Co-Ordinator, Sarva Siksha Abhiyan, Nawada
4. The Member, District Teacher's Employment Appellate Tribunal, Nawada
5. The Mukhia, Chaube Gram Panchayat , P.S. - Sidala, District - Nawada
6. The Panchayat Secretary, Chaube Gram Panchayat, P.S. - Sirdala, District - Nawada
7. Nawal Kishore Singh, s/o Baleshwar Singh, r/o village Jharna P.S. Sirdala, District Nawada

.... Respondent/s

=====

Appearance :

For the Petitioner/s	:	Sri Siya Ram Shahi Mr. Gopal Bohra
For the Respondent/s	:	Mr. Anshuman Pandey SC 14 Sri Ravi Bhusan Prasad Sri Rajendra Narain, Sr. Adv. Smt. Anju Narain

=====

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 21-06-2016

Heard Sri Siya Ram Shahi, learned counsel, who was assisted by Mr. Gopal Bohra, learned counsel for the petitioner, Sri Anshuman Pandey, learned SC No. 14 , Sri Ravi Bhusan Prasad, learned counsel appearing on behalf of the respondent no. 6/ Panchayat Secretary as well as Sri Rajendra Narain, learned senior counsel, assisted by Smt. Anju Narain, learned counsel for the newly added respondent no. 7. The respondent no. 7 was impleaded as party

respondent in view of order dated 14.2.2012 which was passed in the interlocutory application no. 166 of 2011.

The petitioner, invoking writ jurisdiction of this court under Article 226 of the Constitution of India has prayed for setting aside an order dated 28.9.2010 passed in Case No. 360 II / 10 with 359 II / 10 by the Member, District Teacher's Appointment Appellate Authority, Nawada (hereinafter referred to as "Appellate Authority"). By the said order the learned Appellate Authority has declined to issue direction to comply the earlier order dated 17.6.2009 passed by the Appellate Authority. The petitioner has also prayed for directing the respondents to appoint him as Panchayat Teacher in Chaube Gram Panchayat, Nawada.

Sri Shahi, learned counsel for the petitioner, submits that due to inadvertence in paragraph no. 1(i) it has incorrectly been typed that by order dated 28.9.2010 petitioner's prayer for implementation of the order dated 17.6.2009 was rejected whereas from perusal of the said order it is evident that by the said order direction was again issued for implementation of the earlier order. In sum and substance, a prayer is being made to direct the respondents to immediately implement the order dated 17.6.2009 (Annexure – '2' to the writ petition) as well as for implementation of the order dated 28.9.2010 passed by the same appellate authority.



At the very outset, Sri Rajendra Narain, learned senior counsel appearing on behalf of the newly added respondent no. 7 submits that in both the orders the respondent no. 7 was never impleaded as party, whereas on the strength of higher marks the respondent no. 7 was appointed against the only post of Panchayat Teacher of the concerned Panchayat in the category in which petitioner is claiming, which was disputed by Sri Shahi. Sri Shahi submits that petitioner is having higher marks than the respondent no. 7. Sri Narain has reiterated that in both the proceedings respondent no. 7 was not impleaded as party, and as such, this court may refrain from directing for implementing both the orders of the appellate authority. He has initially argued that both the orders are required to be set aside by this court. In reply Sri Shahi, learned counsel for the petitioner, submits that the submission made by Sri Rajendra Narain for setting aside both the orders of the appellate authority is not at all sustainable due to the simple reason that in the writ petition, which has been preferred by the petitioner no relief can be granted to the other side. However, he does not dispute the fact that against the post to which petitioner is claiming appointment the respondent no. 7 was already appointed. In view of the submissions of learned counsel for the parties it is evident that the order passed by the appellate authority was passed behind the back of the

respondent no. 7. Keeping in view the fact that the present writ petition has not been preferred by the respondent no. 7, certainly no order can be passed against both the orders of the appellate authority but, at the same time, once a fact is noticed by this court that an order was passed by the appellate authority without notice to the concerned party, who was going to be aggrieved, this court may refrain from passing any order for implementation of such orders. It goes without saying that if the respondent no. 7 feels that order was passed by the authority concerned without hearing him, he would be at liberty to approach the same authority. I do not find any ground to pass any positive order.

The writ petition stands disposed of granting liberty to the respondent no. 7 to approach the District Teacher's Appointment Appellate Authority for review or recall of the aforesaid orders, which was passed behind the back of the respondent no. 7.

(Rakesh Kumar, J)

Praful/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	23-06-2016
Transmission Date	N.A.