

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.20592 of 2013

Rishikesh Tiwari Son Of Sri Ram Awadh Tiwari Resident Of Village - Chhathoin,
P.O. Jigna Dubey, P.S. Bhorey, District - Gopalganj

.... Petitioner/s

Versus

1. The State Of Bihar Through The Director, Primary Education, Department Of Education, Government Of Bihar, Patna
2. The District Magistrate, Gopalganj
3. The District Education Officer, Gopalganj
4. The District Programming Officer (Establishment), District - Gopalganj
5. The Block Education Officer, Bhorey, District - Gopalganj
6. The Block Development Officer, Bhorey, District Gopalganj
7. The District Teacher Appointment Appellate Authority, Gopalganj Through The Member, District Teacher Appointment Appellate Authority, District - Gopalganj
8. Rema Kumari D/O Sripat Narain Mishra Resident Of Village - Amhi Shukla, P.O. Jigna Dubey, P.S. Bhorey, District - Gopalganj
9. Suryadev Pratap Pyasi S/O Shree Mahanand Mishra Resident Of Village - Dighawa, P.O. Jigna Dubey, P.S. Bhorey, District - Gopalganj
10. The Mukhiya, Gram Panchayat Raj Chathiyawa, P.S. Bhore, District - Gopalganj
11. The Secretary Gram Panchayat Raj Chathiyawa, P.S. Bhore, District - Gopalganj
12. The Director, State Vigilance Department, Government of Bihar, Patna.

.... Respondent/s

with

Civil Writ Jurisdiction Case No. 17106 of 2013

Rima Kumari D/O Shripati Narayan Mishra Resident Of Village Amhi Mishir, P.O. Jigna Dubey, P.S. Bhore, District Gopalganj

.... Petitioner/s

Versus

1. The State Of Bihar
2. The District Magistrate, Gopalganj
3. The District Education Officer, Gopalganj
4. The District Teacher Employment Appellate Authority, Through Its Member, Gopalganj
5. The Mukhiya, Gram Panchayat Raj Chatyaw, P.O. Chatyaw, P.S. Bhore, District Gopalganj
6. The Panchayat Secretary, Gram Panchayat Raj Chatyaw, P.O. Chatyaw, P.S. Bhore, District- Gopalganj
7. Rishikesh Tiwary S/O Shri Ramawadh Tiwary Resident Of Village- Chatyaw, P.O.- Jigna Dubey, P.S. Bhore, District- Gopalganj
8. Surya Deo Pratap Pyasi S/O Mahanand Mishra Resident Of Village Dihwa, P.O. Jigna Dubey, P.S. Bhore, District Gopalganj

.... Respondent/s

Appearance :

(In CWJC No.20592 of 2013)

For the Petitioner/s : Mr. Vitesh Kumar Singh, Adv.

For the Respondent/s : Mr. Priya Ranjan, SC-23

For the Resp. No.9 : Mr. Nityanand Mishra, Adv.

(In CWJC No.17106 of 2013)

For the Petitioner/s : Mr. Bipin Bihari Singh, Adv.

For the Respondent/s : Mr. Uttam Kumar, AC to SC-23

For the Resp. No.8 : Mr. Balmiki Pandey, Adv.

Mr. Bhaskar, Adv.

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date: 27-06-2016

Heard learned counsel for the parties.

Both the cases are related to the same transaction of appointment for the post of Teacher relating to the Gram Panchayat Chhathiyaon with respect to the second phase of appointment. The petitioners, respondents and others applied for the post of Panchayat Teacher. As per claim of the parties, counseling was done and the selection was made of the present petitioners. Their selection was challenged before the Appellate Tribunal in Case No. 78 of 2012 in which the petitioner was made as a party including other respondents. The Tribunal, vide order dated 26.12.2012, set aside the appointment of the petitioner and the appointment of Rima Kumari was also held to be illegal. Accordingly, the selection of both the persons have been set aside. Both the persons challenged the impugned order dated 26.12.2012, in the present writ applications, primarily on the ground that the impugned order dated 26.12.2012 is a forged and fabricated

document. The Tribunal has never passed such an order which is apparently clear from the order-sheet of Appellate Tribunal which itself suggests that the case is pending but, in the meantime, the order has been obtained illegally.

A counter affidavit has been filed by the learned counsel for the State from where it reflects that the matter was investigated by the Vigilance, found that impugned order was never passed by the presiding officer and the order itself is fake. For that, already a Vigilance P.S. Case No. 37 of 2014 for offence under Section 406, 420, 467, 471 & 8/13 r/w 13(1) (d) of the P.C. Act, 1988 has been instituted against Pradeep Nath Tiwary, the then Presiding Officer and others in which already the police has obtained the sanction order against Pradeep Nath Tiwary and submitted the charge-sheet and the matter is pending before the trial court for necessary action.

There is another chapter what to do in the present case. Admittedly, the State has also filed counter affidavit where in paragraph nos.3 & 4 it has been specifically stated that the order impugned is a forged, fabricated and non-existent document which requires interference. Paragraph nos. 3 & 4 of the counter affidavit reads as follows:-

"3. That with regard to the averments made in para-1, it is stated that relief(s) sought for the petitioner



herein are subject for adjudication by this Hon'ble Court. However it is stated that subsequent to the enquiry made with regard issuance of order vide memo No. 103 dated 26.12.12 by the District Teacher's Employment Appellate Authority, Gopalganj it transpired that the said order is forged by which the respondent No.9 has been selected for the post of Panchayat Teacher and appointed at Primary School Amhi, Bhore and direction has been given by learned Tribunal for taking action against the respondent No.9.

4. *That it is further submitted that upon the receipt of the complaint from Amrendra Kumar Mishra with regard to alleged forgery committed by the respondent no.9, an enquiry was conducted by the Block Development Officer, Bhorey who vide his letter No. 2193 dated 21.12.12 submitted a report in that regard, which clearly demonstrate that Brajendra Kumar Mishra, S/o Sri Mahanand Mishra got selection as Panchayat Teacher in the name of Suryadeo Pratap Pyasi (respondent no.9). The name is of two person but in reality there is only one person."*

In such view of the matter, when the order itself is a fake and non-existent order, it has no value in the eye of law. It will be relevant to mention herein that the present petitioner had earlier approached this Court in CWJC No. 3782 of 2010 against the earlier impugned order dated 30.10.2009 which was set aside and the matter was remitted back, thereafter, present impugned order has been passed

which is a fake order. In such view of the matter, the order passed by the Appellate Tribunal dated 26.12.2012 passed in Case No. 78 of 2012 is set aside and the matter is remanded back to the Tribunal to pass a fresh order in accordance with law. This Court is not giving any opinion on the merit of the case. The Tribunal is directed to decide the case within a period of six months from the date receipt/production of a copy of this order. Till then, the petitioners and respondents are restrained to claim their appointment and restrained to discharge the duty and will be subject to the final result passed by the Tribunal.

With the aforementioned observations and direction, both the applications are disposed of.

(Shivaji Pandey, J)

Rishi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.7.2016
Transmission Date	NA