

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14834 of 2016

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1. Soni Kumari daughter of Sri Ramadhin Prasad resident of village- Sri Rampur Kharjamma, P.S. Chandi District- Nalanda at present Posted as Block Teacher (Physical) Middle School, Dumari, District- Nalanda.
 2. Ranjit Kumar son of Sri Bangali Prasad resident of village- Merhi, P.S. Islampur District- Nalanda at present Posted as Block Teacher (Physical), Utkrimi Middle School, Alanwa, District- Nalanda.
 3. Subodh Kumar son of Sri Jagdish Ram resident of village- Sardarbigha, P.S. Noorsarai, District- Nalanda at present Posted as Block Teacher (Physical) Middle School, Gabaspur, District- Nalanda.
 4. Ranjeet Kumar son of Kameshwar Pandit resident of village- Shamabad, P.S. Rahui District- Nalanda at present Posted as Block Teacher (Physical) Utkrami Middle School, Lakhma Bigha, District- Nalanda.
 5. Jyanti Sinha daughter of Amarnath Prasad resident of village- Guraru, P.S. Islampur, District- Nalanda at present Posted as Block Teacher (Physical) Utkrami Middle School, Haripur, District- Nalanda.
 6. Dev Narayan Prasad son of Sri Harihar Das resident of village- Kariyawan, P.S. Tharthari, District- Nalanda at present Posted as Block Teacher (Physical), Utkrimi Middle School, Vijayapura, District- Nalanda.
 7. Krishna Kant Kumar son of Late Bindeshwari Das resident of village-Shivpuri, P.S. Islampur, District- Nalanda at present Posted as Block Teacher (Physical) Middle School, Bhasimpur, District- Nalanda.
 8. Arun Kumar son of Sadanand Mistry resident of village- Noorsarai, P.S. Noorsarai, District Nalanda at present Posted as Block Teacher (Physical) Middle School, Alanwa, District- Nalanda.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Government of Bihar, Patna.
2. The Director, Primary Education, Government of Bihar, Patna.
3. The District Magistrate, Nalanda at Biharsharif.
4. The District Education Officer, Nalanda at Biharsharif.
5. The District Programme Officer (Establishment) Nalanda at Biharsharif.



6. The Block Education Officer, Parwalpur, District- Nalanda.
7. The Block Development Officer, Parwalpur, District- Nalanda.
8. The Member, District Teacher Appellate Authority Nalanda at Biharsharif.

.... Respondent/s

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Appearance :

For the Petitioners : Mr. Kamla Prasad Roy with
Mr. Anil Chandra, Advocates

For the State : Mr. Prabhakar Jha, GP 27 with
Mr. Shankar Kumar Thakur, AC to GP 27

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 23-03-2017

Heard learned counsel for the petitioners and the State.

2. The petitioners have challenged the order of the District Teachers Employment Appellate Authority, Nalanda (hereinafter referred to as the 'Authority') in Review Application arising out of Cases No. 53 of 2011, 85 of 2011 and 213 of 2010, dated 22.07.2016.

3. The petitioners were applicants for the post of Panchayat Teacher in Gram Panchayat Raj Parwalpur in the district of Nalanda for which the process was initiated in the year 2009. However, when there was some dispute raised by the some of the applicants, they moved before the Authority in Cases No. 53 of 2011 and 85 of 2011. In the said case, the Authority came to a finding that there had been irregularities in the process and it was directed that there should be fresh counselling. This order was not complied. The petitioners,



along with others, had also approached the Authority in Case No. 213 of 2010 in which also there was a direction to the Block Teachers Employment Unit, Nalanda to conduct fresh counselling of the petitioners and complete the process of appointment, by order dated 26.12.2011. When the order dated 15.04.2011 remained uncomplied with, such persons approached this Court in C.W.J.C. No. 20231 of 2012 which was disposed off by order dated 10.12.2012 by remanding the matter to the Principal Secretary, Department of Education to examine the matter. On such remand, the Principal Secretary, after taking into consideration all aspects, came to the conclusion that the petitioners of C.W.J.C. No. 20231 of 2012 were genuine and *bona fide* and the subsequent order in favour of the petitioners was not proper. He, accordingly, directed the District Programme Officer to file review. Pursuant to such decision of the Principal Secretary, review was filed by the District Programme Officer (Establishment), Nalanda and the order passed by the Authority on such review dated 22.07.2016 is impugned herein.

4. Learned counsel for the petitioners submitted that they were not party before this Court earlier in C.W.J.C. No. 20231 of 2012 and, thus, the order remanding the matter to the Principal Secretary, Department of Education is not binding on them. It was further submitted that the Authority has no power to review its earlier



order and, thus, the order passed in Case No. 213 of 2010 filed by the petitioners, which was disposed off on 26.12.2011, could not have been interfered with by the Authority. For such proposition, learned counsel has relied upon the decision of a co-ordinate Bench of this Court dated 12.05.2014 in C.W.J.C. No. 8680 of 2010 (**Ashok Kumar Vs. The State of Bihar & Ors.**).

5. Learned counsel for the State, at the very outset, submitted that though there could be no exception to the proposition of law that the Authority may not have power to review, but if facts are looked into, the finding of the Principal Secretary, Department of Education, that too, pursuant to remand by this Court in C.W.J.C. No. 20231 of 2012, having thrown up facts which were clearly indicative that the procedure or selection was not proper and that the appointment of the petitioners, pursuant to order passed in their case by the Authority in Case No. 213 of 2010 dated 26.12.2011, he found both matters overlapping and, thus, directed for filing review.

6. Having considered the matter, though strictly speaking and technically, the Authority may not have the power to review but in the special facts and circumstances of this case, the Court is not inclined to interfere in its prerogative extraordinary writ jurisdiction under Article 226 of the Constitution of India for the reasons mentioned hereinbelow. First and foremost, there are two conflicting



orders passed by the Authority relating to the same appointment process. In one case, there was a finding that what had happened was not correct and a direction was given for re-counselling but in the case of the petitioners in Case No. 213 of 2010, there was specific direction that fresh counselling should be done with regard to the petitioners. Though the order for re-counselling of the entire lot was made in the case of the other applicants, that is, the writ petitioners of C.W.J.C. No. 20231 of 2012 in the order of the Authority dated 15.04.2011 in Cases No. 85 of 2011 and 53 of 2011, but the same having remained unimplemented and the order passed in Case No. 213 of 2010 filed by the applicants on 26.12.2011, that is, after 8 months being implemented and, that too, the exercise restricted only to the petitioners, cannot be justified, either in law or on facts. Once re-counselling was required, it was required to be done as a whole, for all the applicants and could not have been restricted to one group or to the persons who had moved before the Authority. This not having been done, the other persons have wrongly been penalized and put to loss because of the order of the Authority. Moreover, once the Authority, while considering the same transaction of appointment for the same Panchayat, having passed an order on 15.04.2011 in Cases No. 85 of 2011 and 53 of 2011, could not have passed fresh order on 26.12.2011 in Case No. 213 of 2010, which was filed by the



petitioners. This is clearly impermissible as once having passed an order relating to any issue, no further jurisdiction remains with the Authority to consider matters relating to the same dispute. The other equally important aspect is that a co-ordinate Bench of this Court had remanded the matter to the Principal Secretary for consideration, and upon consideration, it was found that due to overlapping, fresh counselling was required and, thus, a direction was issued to file review. The contention of learned counsel for the petitioners that because the order passed by the co-ordinate Bench was without making them party or hearing them, such order is not binding on them, stands waived in view of the fact that upon remand, the Principal Secretary having directed for filing review and in the review, the petitioners submitting to the jurisdiction of the Authority, without raising any dispute and also without approaching this Court for review or modification of its order dated 10.12.2012 passed in C.W.J.C. No. 20231 of 2012, the Authority has rightly gone on merit. Upon perusing the order, at least on facts, the Court is convinced that what has happened till date is not proper. Further, it is quite clear that the initial exercise itself was vitiated and thus, re-counselling was required, but the manner in which re-counselling has been restricted to the petitioners without it being made general and open for all persons, who had applied within the cut off date, such direction cannot be held



to be just and fair. Once the Court is convinced that on facts/merits, the proper recourse is re-counselling, which has been ordered by the Authority in the impugned order, there exists no ground for any judicial interference by this Court in the present writ petition.

7. Accordingly, the writ petition stands dismissed.

(Ahsanuddin Amanullah, J)

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