

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12858 of 2011

Vinay Kumar Pandey S/O Late Yogendra Pandey R/O Vill.- Kishunpur Pandey Tola (Barwa Tola), P.S.- Pipara Kothi, Distt.- East Champaran (Bihar)

.... Petitioner/s

Versus

1. The State Of Bihar Through Its Principal Secretary, Human Resource Development Department, Govt. Of Bihar, Patna
2. The Commissioner Tirhut Division, Muzaffarpur
3. The District Magistrate East Champaran, Motihari
4. The District Superintendent Of Education-Cum-District Programme Co-ordinator East Champaran, Motihari
5. The Block Development Officer Kotawa Block, District.- East Champaran
6. The Mukhia, Gram Panchayat, Barharwa Kala Paschmi Block Kotawa, District.- East Champaran
7. The Panchayat Secretary Panchayat Raj, Barharwa Kala Paschmi Block Kotawa, District.- East Champaran
8. The Headmaster Newly Created Primary School Ammapar, Block-Kotawa, Distt.- East Champaran

.... Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Prabhakar Dwivedi
For the Respondent nos. 6 to 8	:	Mr. Sharda Nand Mishra, Adv Mr. Deepak Kumar, Adv Mr. Rajiv Ranjan, Adv Mr. Harish Patel, Adv
For the State	:	Mr. Sunil Kumar, AC to GA-12

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date: 08-04-2017

Heard learned counsel for the petitioner and learned counsels for the respondents.

The present writ application has been preferred for issuance of writ of mandamus commanding upon the respondent authorities for payment of arrears of salary as well as



current salary of the petitioner being Panchayat teacher in Gram Panchayat Raj Barharwa Kala under Kotwa Block, East Champaran and further direction to the respondent authorities to provide the original attendance register to mark his attendance as he is attending his duties as Panchayat teacher continuously since 21.03.2009 and for any other relief for which he is entitled to.

The factual matrix of the case is that the petitioner and others applied for being appointed as Panchayat teacher in Gram Panchayat Raj Barharwa Kala under Kotwa Block, East Champaran. The petitioner having 69.33 percent marks at his Intermediate Examination was not appointed as Panchayat teacher and three other persons namely Rajesh Kumar(62.22%), Munna Kumar Singh (62.11%) and Mukesh Kumar (61.88%) having lesser marks got appointed as Panchayat teachers by the Panchayat Mukhiya and Panchayat Secretary. Six months after counseling, the merit list was published. Thereafter the petitioner filed a complaint before the Block Development Officer, Kotwa who conducted an enquiry and disposed of the complaint vide order dated 11.07.2008 by directing the Panchayat Mukhiya and the Panchayat Secretary to appoint the petitioner within a period of one week from the date of receipt of the order. The Panchayat Secretary, in compliance of the order of the Block Development Officer, Kotwa dated 11.07.2008 cancelled the appointment of three persons namely Rajesh Kumar, Munna Kumar Singh and Mukesh Kumar vide memo no. 10 dated 14.08.2008 and vide letter



No. 10 dated 14.08.2008, appointed the petitioner as Panchayat teacher and posted him at newly created Primary School, Ammapar.

The above three persons namely Rajesh Kumar, Munna Kumar Singh and Mukesh Kumar challenged the order of the Block Development Officer, Kotwa dated 11.07.2008 in C.W.J.C No. 14121 of 2008 on the ground that the Block Development Officer has passed the order without giving any notice to them. Though, against the order of the Block Development Officer, the above three persons filed an application before the District Magistrate also who vide order dated 20.08.2008 stayed the order of Block Development Officer, dated 11.07.2008 , but, later on, the District Magistrate vide order dated 25.11.2009 vacated the order of stay.

A coordinate Bench of this Court, on the ground of violation of natural justice, quashed the order of the Block Development Officer, Kotwa dated 11.07.2008, whereby the Panchayat Mukhiya and Panchayat Secretary were directed to terminate the services of Rajesh Kumar, Munna Kumar Singh and Mukesh Kumar and appoint the petitioner as Panchayat teacher. This Court further directed the Block Development Officer to transmit the entire records including the complaint of the petitioner and one Rupesh Kumar, enquiry report and all connected materials to the statutory Appellate Authority positively within a period of four weeks from the date of receipt/production



of a copy of this order. On receipt of the records, the Appellate Authority was directed to issue notice to Rupesh Kumar and Vinay Kumar Pandey (the present petitioner) and to the Panchayat authorities, and to call for the original records from the Panchayat and decide the matter on merits positively within a period of three months from the date of receipt of the records from the office of the Block Development Officer or any other authority. Till final order is passed by the Appellate Authority, the status quo as on that date was directed to be maintained. The relevant portion of the order reads as follows:-

“In the circumstances, the order of the B.D.O., as contained in Annexure-1, is quashed. Quashing of the order revives the complaint and the proceeding pending before the B.D.O. Hence, he is directed to transmit the entire records, including the complaint of respondent nos. 13 and 14, any inquiry report and all connected materials to the statutory Appellate Authority positively within four weeks from the date of receipt/production of a copy of this order. On receipt of the records, the Appellate Authority shall issue notice to the petitioners as well as respondent nos. 13 and 14 and the Panchayat authorities, shall call for the original records from the Panchayat and shall decide the matter on merits, positively within three months from the date of receipt of the records from the office of the B.D.O or any other authority.

Till the final orders are passed



by the Appellate Authority, status quo as of today shall be maintained.

The writ application is disposed of with the aforesaid observations and directions.”

It is submitted by learned counsel for the petitioner that though the petitioner was made party as respondent no. 14 in the aforesaid writ application but he was never been noticed and the order passed in his favour by the Block Development Officer, Kotwa dated 11.07.2008, had been quashed without hearing the petitioner. The petitioner was not aware about the order passed in C.W.J.C No. 14121 of 2008. The petitioner has only came to know about the said order when the counter affidavit was filed by the respondent no. 7 bringing on record the order dated 17.11.2011 passed in C.W.J.C No. 14121 of 2008. Hence, petitioner is also not aware whether the records have been transmitted to the District Appellate Authority or the matter has been disposed of or not because the petitioner till date has not received any notice from District Appellate Authority.

Paragraph no. 13 of the counter affidavit of respondent no. 7 suggests that in pursuance to the order of this Court dated 17.11.2011 passed in C.W.J.C No. 14121 of 2008 the issue is under consideration before the District Teacher Appellate Authority, East Champaran, Motihari bearing Miscellaneous Case No. 57 of 2011. Paragraph no. 13 of the counter affidavit reads as follows:-

“That the petitioner has not



filed connected writ application by a clean hand rather matter has been suppressed but did not deal with the order dt. 17.11.2011 passed in CWJC No. 14121 of 2008 whenever he was party as respondent no. 14, in pursuance of the order of this Hon'ble Court the rightly payment of the petitioner withheld reason behind matter is under consideration before the District Teacher Appellate Authority, East Champaran, Motihari bearing Misc. Case No. 57/2011.”

In the present writ application, the petitioner has not made other affected persons who were initially appointed namely Rajesh Kumar, Munna Kumar Singh and Mukesh Kumar, as party respondents nor has he filed any L.P.A against the order dated 17.11.2011 passed in C.W.J.C No. 14121 of 2008. Hence, in this writ application, no relief can be granted to the petitioner.

The order dated 17.11.2011 passed in C.W.J.C No. 14121 of 2008 reflects that the Appellate Authority was directed to dispose of the appeal within a period of three months. At the same time direction was also given to issue notice to the petitioner in the said matter. It is surprising that the matter has not been disposed of till date by the Appellate Authority, as gets reflected from the counter affidavit of respondent no. 7.

In the circumstances, the writ application is disposed of. It is expected from the District Appellate Authority to pass appropriate order within the parameters of the order dated 17.11.2011 passed in C.W.J.C No. 14121 of 2008, expeditiously, if



the matter has not been disposed of as yet.

Accordingly, the writ application is disposed of.

(Dinesh Kumar Singh, J)

Shageer/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12/04/2017
Transmission Date	NA

