

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.10267 of 2012**

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Manoj Kumar Das, S/O Bigan Lal Das, R/O Village- Jamanganj, P.S.-  
Makhdumpur, District- Jahanabad.

.... .... Petitioner

Versus

1. The State of Bihar through the Collector, Jahanabad.
2. The District Teachers Employment Appellate Authority Jahanabad,  
District- Jahanabad.
3. The District Superintendent of Education, Jahanabad.
4. The Block Education Officer, Makhdumpur Block, District- Jahanabad.
5. The Mukhiya, Grampanchayat, Chhariari, P.S.- Makhdumpur, District-  
Jahanabad.
6. The Panchayat Secretary Grampanchayat Chhariari, P.S.-  
Makhdumpur, District- Jahanabad.
7. Subodh Kumar, S/O Kamdeo Paswan, R/O Village- Makhdumpur, P.O.  
Makhdumpur, Police Station- Makhdumpur, District- Jahanabad.

.... .... Respondents

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**Appearance :**

For the Petitioner :M/S. Yogendra Mishra and Arvind Kumar Jha,  
Advocates.

For the State :Mr. Shashi Bhushan Kr., S.C. 7.

For the Respondent No.6 :M/S. Nagendra Sharma and Amar Prakash,  
Advocates.

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**CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH**  
**ORAL ORDER**

4      02-08-2017                      Heard learned counsel for the petitioner and learned  
counsel for the respondents.

In this writ application, the challenge is made to the  
order passed by the District Teachers Employment Appellate  
Authority, Jehanabad, in Complaint Case No. 521 (44)/2011  
issued vide Memo No. 394 dated 23.11.2011 and its  
consequential order vide Letter No. 01 dated 16.05.2012,  
issued by the concerned Panchayat Secretary of Gram



Panchayat Chhariyari, by which the respondent no. 07 named Subodh Kumar has been appointed after making removal of the petitioner from the post of Panchayat Teacher.

The learned counsel for the State submits that the petitioner has statutory appellate remedy before the State Appellate Authority against the order under challenge passed by the District Teachers Employment Appellate Authority, Jehanabad, under Bihar State School Teachers and Employees Dispute Redressal Rules 2015. Since there is a statutory alternative forum available to the petitioner as to ventilate his grievances impugned hereunder, therefore, this Court must not exercise the power under Article 226 of the Constitution of India, which is discretionary in nature in the facts and circumstances of this case and the nature of relief sought for.

Per contra, the learned counsel of the petitioner submits that the order under challenge herein, was passed in the year 2011 itself by the District Teachers Employment Appellate Authority, Jehanabad, and by that time Bihar State School Teachers and Employees Dispute Redressal Rules, 2015 was not even in existence. Hence, the writ application is maintainable, irrespective of the facts that the statutory



Appellate Forum is now available to the petitioner against such order passed by the District Appellate Authority. The counsel for the petitioner further submits that the petitioner is not required to avail the statutory remedy available in terms of Rule 14 of Bihar State School Teachers and Employees Dispute Redressal Rules, 2015.

Considering the rival submissions made on behalf of the parties, the issues which is to be adjudged firstly, in the present writ application; whether 'Rule 14' of Bihar State School Teachers and Employees Dispute Redressal Rules, 2015 is applicable in respect of such orders of the District Teachers Employment Appellate Authority, which have been passed prior to, coming into force of the said 'Rules 2015'.

At this Juncture, I may firstly take note of Rule 14 of Bihar State School Teachers and Employees Dispute redressal rules 2015, which reads thus ;

**“Rule-14. Powers and Functions of the State Appellate Authority-**

- (1) The appeal against the orders of District Appellate Authority shall be heard and disposed of by the State Appellate Authority.
- (2) All types of appeals shall be filed before the State Appellate Authority within 30 days from the date of the



order passed by the District Appellate Authority but the Appellate Authority will have power to condone the delay in filing the appeal on reasonable grounds.

(3) The State Appellate Authority, while enquiring into any matter and hearing any matter, shall have the same powers as are vested in a civil court while trying a suit under the Code of Civil Procedure 1908, in respect of the following matters, namely :-

- (a) Summoning and ensuring the attendance of persons and compel them to give oral or written evidence on oath and to produce documents and things;
- (b) Requiring the discovery and inspection of documents;
- (c) Receiving evidence on affidavit;
- (d) Issuing summons for examination of witnesses or documents.”

It is well settled principle that where a particular statute provides a particular remedy in a particular forum, in a particular manner, the remedy must be sought in that forum and in that manner and all other forums and modes are impliedly excluded.

In my view, since the remedy of writ is prerogative remedy, therefore, before exercising extraordinary jurisdiction under the Constitution of India, this Court must consider whether



alternative and efficacious remedy is available to this aggrieved applicant.

From reading of Rule 14 (3) of Rule 2015, it is manifest that the remedy of appeal before the State Appellate Authority against the order of District Appellate Authority is more appropriate as the scope of appeal is broader than the scope of judicial review under Article 226 of the Constitution of India because the State Appellate Authority has the same power as are vested in civil court i.e. summoning the witnesses, taking evidence, discovery and inspection of documents, for the purposes of deciding an appeal. Thus, the statutory alternative and efficacious remedy of appeal is already available to the petitioner.

I am of the opinion that Rule 14 of 'Bihar State School Teachers and Employees Dispute Redressal Rules, 2015' only deals with procedure of remedy & its forum against the order passed by the District Appellate Authority. Therefore, in contrast to the statutes dealing with substantive rights, the statutes dealing with merely matters of procedure are presumed to be retrospective unless such a construction is textually inadmissible.

LORD DENNING said, "The rule that an



Act of Parliament is not to be given retrospective effect applies only to statutes which affect vested rights. It does not apply to statutes which only alter the forum of procedure or the admissibility of Evidence, or the effect which the Courts give to evidence.”

It has been expressed in Maxwell : Interpretation of Statute, 11<sup>th</sup> Edition :

“No person has a vested right in any course of procedure. He has only the right of prosecution or defence in the manner prescribed for the time being by or for the Court in which the case is pending, and if, by an Act of Parliament the mode of procedure is altered, he has no other right than to proceed according to the altered mode”.

In the case of K.Eapin Chako Vs. Provident Fund Investment Company (P) Ltd; AIR 1976 SC 2610 the Hon’ble Supreme Court held that if the new Act affects matters of procedure only, then, prima facie, “it applies to all actions pending as well as future.”

Therefore, in my considered opinion, orders passed by the District Appellate Authority, prior to coming into force of Bihar State School Teachers and Employees Dispute Redressal Rules 2015, are amenable to appeal before the State Appellate Authority in terms of Rule 14, of the said Rules, 2015.

In view of the discussions and observations made above, I am not inclined to invoke the Jurisdiction under Article-226 of the Constitution of India, since there is already alternative and efficacious remedy available to the petitioner.



The petitioner may prefer an appeal before the State Appellate Authority, if so advised, within sixty days from the date of the order, which shall be considered by the State Appellate Authority, on merits, in accordance with law. The 'issue of limitation' shall not come in way, while deciding such appeal on merits.

With the aforesaid observations and directions, the present writ application stands dismissed.

**(Sudhir Singh, J)**

Amit/-

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