

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 7023 of 2010

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Diwakar Prasad Yadav Son of Late Birendra Nath Yadav Resident of Village-
Garbaghwa Siktiya, Police Station- Azamnagar, District- Katihar.

.... Petitioner/s

Versus

1. The State of Bihar
2. The District Magistrate, Katihar.
3. The Deputy Development Commissioner, Katihar.
4. The Deputy Superintendent of Education, Katihar.
5. The District Education Officer, Katihar.
6. The Member, District Teacher Appointment Appellate Tribunal, Katihar.
7. The Block Education Extension Officer, Azamnagar, Katihar.
8. The Block Development Officer, Azamnagar, Katihar.
9. The Mukhiya-cum-Chairman, Selection Committee, Gram Panchayat Raj Shitalpur, Block Azamnagar, District- Katihar.
10. The Panchayat Secretary, Gram Panchayat Raj Shitalpur, Block- Azamnagar, District- Katihar.
11. Sanjay Kumar Sharma, Son of Bittu Sharma Resident of Village- Roshna Bazar, Post Office- Roshna Bazar, District- Katihar.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Najeeb Ahmad, Advocate
For the Respondent/s	:	Mr. Kinkar Kumar, SC-2
		Mr. Zaki Haider, AC to SC-4

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 28-02-2017

Heard learned counsel for the parties.

Despite the matter being of the year 2010 and copy of the writ petition having been served on learned counsel for the State on 15.04.2010, no counter affidavit has been filed on its behalf. The position is more serious as the petitioner was given interim protection as far back as 13.05.2010 *inter alia* on the ground that the order passed by the Member, District Teachers Employment Appellate Authority, Katihar (hereinafter referred to as the ‘Authority’) was



beyond jurisdiction inasmuch as, he had seized to be a member on 19.01.2010, when the order impugned was passed.

In view thereof, the State was required to take a categorical stand on the said issue. The same not being done, the Court would presume that such fact is not denied.

The challenge in the present writ application is to the order dated 19.01.2010 passed by the Member of the Authority in Appeal No. 1902 of 2010 by which the selection of the petitioner to the post of Panchayat Teacher has been cancelled with a direction to appoint respondent no. 11 in his place. Subsequently, the petitioner has also assailed the consequential order passed by the respondent no. 9 dated 22.01.2010, directing the petitioner to hand over all concerned records. The two orders had earlier been stayed by this Court vide order dated 13.05.2010.

Learned counsel for the petitioner submitted that against the order dated 19.01.2010, initially, the petitioner had preferred a review but the same has been dismissed on 31.03.2010 holding that there was no power to set aside the judgment of the predecessor Court. Learned counsel submitted that in the said order as well as the notification of the Government, it is clear that the term of the Member of the Authority, who had passed the impugned order dated 19.01.2010 was till 18.01.2010 and, thus, the order passed after



the said date is *non est* in the eyes of law and completely without jurisdiction.

Despite notice having been validly served on respondents no. 9, 10 and 11, nobody appears on their behalf when the case is taken. No counter affidavit has been filed on their behalf.

Having considered the submissions of learned counsel for the petitioner and the State, in view of the materials on record and the unrebutted position that the impugned order was passed by a person when he was no longer holding the post of Member of the Authority, on such short point, the Court holds that the order is without jurisdiction and cannot be sustained.

Accordingly, the impugned order of the Authority passed in Appeal No. 1902 of 2010, is set aside. The consequential order of the respondent no. 9 dated 22.01.2010 is also set aside.

The writ petition stands allowed in the aforementioned terms.

(Ahsanuddin Amanullah, J.)

P. Kumar

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