

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9709 of 2013

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1. Bandana Kumari, D/O Durganand Jha and W/O Bisheshanand Jha, resident of Village- Gagir Ihati, P.S- Kursakanta, District- Araria.
 2. Kanhaiya Kumar Rauniyar, S/O Late Dulhi Prasad Rauniyar, resident of Village- Laukaha, P.S- Laukaha, District- Madhubani.
 3. Pramod Kumar Pankaj, S/O Bisnual Yadav, resident of Village- Maheshkhunt, P.S- Aursakanta, District- Araria.
 4. Mina Kumari, W/O Ravi Shankar Sharma and D/O Laxmi Kant Sharma, resident of Village- Dewari, P.S- Barhara Kothi, District- Purnea.
 5. Rajwati Devi, W/O Bisheshwar Singh and D/O Shyamanand Singh, resident of Village- Siktiya, P.S- Songmani Godam, District- Araria.
 6. Kaushal Kumar Mandal, S/O Bhagwat Mandal, resident of Village- Pararia, P.S- Kursakanta, District- Araria.

.... Petitioners

Versus

1. The State of Bihar.
2. The Director Primary Education, Patna.
3. The District Magistrate, Araria.
4. The District Teacher Employment Appellate Tribunal, Araria, through Member.
5. The District Superintendent of Education Araria.
6. The Block Education Extension Officer, Kursakanta, District- Araria.
7. The Popularly Elected Mukhia, Gram Panchayat Raj Siktiya, Block Kursakanta, District- Araria.
8. The Secretary, Gram Panchayat Raj Sikatiya, Block Kursakanta, District- Araria.
9. Santosh Kumar Das, S/O Anant Das, resident of Village- Chikani, P.S- Kursakanta, District- Araria.
10. Bandana Kumari, D/O Sachidanand Misra, resident of Village- Jamua, P.S- Ishari, District- Araria.
11. Gautam Kumar, S/O Krishna Mohan Yadav, resident of Village- Parbatta, P.S- Kurshakanta, District- Araria
12. Laxman Tatma, S/O Sundar Tatma, resident of Village- Rajaula, P.S- Kursakanta, District- Araria.
13. Amarkant Mishra, S/O Durganand Mishra, resident of Village- Palasmani, P.S- Kursakanta, District- Araria.
14. Jay Kumar Mandal, S/O Bindheshwar Mandal, resident of Village- Jamua, P.S- Tarabari, District- Araria.
15. Navin Kumar Chaudhary, S/O Naresh Mohan Chaudhary, resident of Village- Jamua, P.S- Tarabari, District- Araria.

.... Respondents

Appearance :

For the Petitioners : Mr. Y.B. Giri, Sr. Advocate and Mr. Raj Kumar Rajesh, Advocate.

For the State : Mr. P.K. Verma, A.A.G. 3, Mr. Ujjwal Kumar Sinha, A.C. to A.A.G. 3 and Mr. Dr.



Mankeshwar Tiwari, A.C. to A.A.G. 3.

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CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
ORAL ORDER

6 29-11-2017 Heard learned senior counsel for the petitioners and

learned counsel for the State.

The following reliefs have been sought for by the
petitioners in the present writ application.

“1. That through this writ application, the petitioners pray for issuance of writ/writs, order/orders, direction/directions in the nature of certiorari for set aside the order passed on 28.04.2012 vide Memo No. 298 by the Member, the District Teachers Employment Appellate Tribunal, Araria, in Case No. 27/09 whereby and whereunder the Member pleased to cancel the appointment of the petitioners alongwith others under Gram Panchayat Raj Sikatiya, Block-Kurasakanta, District-Araria and also directed the complete fresh appointment processes within 45 days, further be pleased to direct the respondents to pay the arrear of the salary of the petitioners and any other relief/reliefs for which the petitioners are entitled.”

It has been submitted by learned senior counsel for the
petitioners that the similarly situated persons had filed C.W.J.C.
No. 10706 of 2012 before this Court which was allowed on
01.10.2012. Subsequently, the private respondent nos. 9 to 14 of



the said C.W.J.C. No. 10706 of 2012 had preferred L.P.A. No. 143 of 2013 challenging the order dated 01.10.2012 passed in C.W.J.C. No. 10706 of 2012 which was allowed on 05.02.2014 and the order dated 01.10.2012 passed in C.W.J.C. No. 10706 of 2012 was set aside with costs by Division Bench of this Court. Thereafter, S.L.P. No. 12528 of 2014 was preferred before the Hon'ble Supreme Court where the said S.L.P. No. 12528 of 2014 was dismissed as withdrawn, with liberty to file review petition before the Division Bench at Patna High Court. In pursuance to the liberty granted in the aforesaid S.L.P. No. 12528 of 2014, a review application was preferred vide Civil Review No. 216 of 2014. The order dated 07.04.2015 passed in Civil Review No. 216 of 2014 is as follows:-

“This application is filed with a prayer to review the order dated 5.2.2014 passed in L.P.A. No. 143 of 2013.

Heard learned counsel for the petitioners and the learned counsel for the opposite parties.

The record discloses that S.L.P. No. 12528 of 2014 was preferred against the present order under review before the Hon'ble Supreme Court and the same was dismissed as withdrawn, with liberty to file review petition before this Court through order dated 9.5.2014.

L.P.A. No. 143 of 2013 was filed against the order dated 1.10.2012 passed in CWJC No.



10706 of 2012. The said appeal was allowed and the writ petition (CWJC No. 10706 of 2012) was dismissed with costs.

The grievance of the petitioners herein is that an issue, similar to the subject-matter of the appeal is pending adjudication in another writ petition and since no adjudication was undertaken on merits, the dismissal of CWJC No. 10706 of 2012 may not be treated as operating as binding precedent.

We make it clear that the dismissal of CWJC No. 10706 of 2012 was not on merits but on the ground of suppression of facts and thus cannot be construed as the expression of view on the order of the Tribunal, which is challenged in another writ petition. We leave the same open, to be decided on merits.

The review application, thus, stands disposed of. The interlocutory application, if any, shall also stand disposed of. There shall be no order as to costs.”

Hence, it is prayed on behalf of the petitioners that let the present writ application be heard on merits and be decided. Admittedly, when the order in the aforesaid review application dated 07.04.2015 was being passed on the said date, The Bihar State School Teachers and Employees Disputes Redressal Rules, 2015 had not come into existence. The aforesaid Rule had been notified on 13.05.2015. Under the said Rule, Rule 14 provides for powers and functions of the State Appellate Authority. Rule 14 is



as follows:-

“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;

Considering the aforesaid facts and circumstances, I find that there is statutory remedy available to the petitioners for preferring an appeal before the State Appellate Authority against the order dated 28.04.2012 passed by the Member, District



Teachers Employment Appellate Authority, Araria. For the said reason, I do not want to invoke power under Article 226 of the Constitution of India as there is statutory remedy available to the petitioners, under the Rules.

The petitioners are directed to file statutory appeal before the State Appellate Authority against the order dated 28.04.2012 contained in Memo No. 298 dated 28.04.2012 passed by the Member, District Teachers Employment Appellate Authority, Araria, in Case No. 27/2009 under Rule 14 of The Bihar State Teachers and Employees Disputes Redressal Rules, 2015, within a period of thirty days from the date of order. The State Appellate Authority shall consider the case of petitioners and pass an appropriate order in accordance with law within the statutory period.

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

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(Sudhir Singh, J)

