

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.113 of 2017
IN
Civil Writ Jurisdiction Case No. 5966 of 2015**

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1. Sanjay Kumar, son of Sri Sita Ram Thakur Bihari, Resident of Village – Manjhgain, P.O. Sangrampur, P.S. Sangrampur, District - Munger.
 2. Pramila Kumari, daughter of Sri Rajendra Prasad Singh, resident of Village - Mohammadpur, Bhagalpur, P.O. Bhagalpur, P.S. Tarapur, District - Munger.
 3. Bhavesh Kumar, son of Sri Karoo Lal Bhagat, Resident of Village - Karsauni, P.S. Rajaun, District - Banka.

.... Appellant/s

Versus

1. The State of Bihar.
2. The Director, Primary Education, Government of Bihar, Patna.
3. The District Magistrate, Banka.
4. The District Education Officer, Banka.
5. The District Programme Officer (Establishment), Banka.
6. The Block Development Officer, Amarpur, District - Banka.
7. The Block Education Officer, Amarpur, District - Banka
8. The Mukhiya, Gram Panchayat Raj, Shobhanpur, Block - Amarpur, District - Banka.
9. The Panchayat Secretary, Gram Panchayat Raj, Shobhanpur, Block - Amarpur, District - Banka.

.....Respondents/Respondents 1st Set.

10. Putul Kumari, daughter of Ambika Paswan, Resident of village - Kasaub, Shambhuganj, Dist - Banka.
11. Parmanand Sharma son of Late Govind Sharma Resident of Village - Mojampur, P.O. - Manjhgain, P.S. - Sangrampur, District - Munger,
12. Manoj Kumar, son of Deo Narayan Kapri, resident of village Mathurapur, P.O. Ahir, Dhoriy, District- Banka, at present posted as Panchayat Teacher at N.P.S. Kisanpur, Gram Panchayat, Sobhanpur, Block Amarpur, District- Banka
13. Kumari Nishu, wife of Chakradhari Mandal, resident of Village Sorampur, P.S. Amarpur, District- Banka, at present posted as Panchayat Teacher at N.P.S. Kisanpur, Gram Panchayat, Sobhanpur, Block Amarpur, District- Banka.
14. Seema Kumari Gupta, wife of Arun Gupta, resident of Village- Chiraiya, P.S. Amarpur, District- Banka, at present posted as Panchayat Teacher at N.P.S. Sovampur (Harijan), Gram Panchayat, Sobhanpur, Block Amarpur, District- Banka
15. Arbind Kumar, son of Ram Chandra Thakur, resident of Vilalge- Sovanpur, P.S. Amarpur, District- Banka, at present posted as Panchayat Teacher at N.P.S. Kisanpur (Urdu), Gram Panchayat, Sobhanpur, Block Amarpur, District- Banka
16. Rupesh Ranjan, son of Chanshyam Prasad, resident of Village-



Baldiha, P.O. Ahiro, Dhoraiya, District- Banka, at present posted as Panchayat Teacher at N.P.S. Sovannpur (Harijan), Gram Panchayat, Sobhanpur, Block Amarpur, District- Banka

17.Rambha Kumari, wife of Manoj Kumar, resident of village Ballikita, P.O. Koshalpur P.S. Amarpur, District- Banka, at present posted as Panchayat Teacher at N.P.S. Kisanpur, Gram Panchayat, Sobhanpur, Block Amarpur, District- Banka daughter of name not known to the appellants

18.Pinku Kumari, wife of Sanjeev Kumar, R/o Village- Bandanchua, P.O. Ahiro, Dhoraiya, District- Banka, at present posted as Panchayat Teacher at N.P.S. Janakpur (Mandaltola), Gram Panchayat, Sobhanpur, Block Amarpur, District- Banka

19.Kumar Gaurab, son of Sitaram Panjiyar, R/o Vilalge Mojahidpur, Amarpur, District- Banka, at present posted as Panchayat Teacher at U.M.S. Dodra Jarijakpur, Gram Panchayat, Sobhanpur, Block Amarpur, District- Banka.

20.Shailesh Kumar son of Sri Saru Das, resident of Vilalge- Bishanpur, Jichho, Lodipur, District- Bhagalpur, at present posted as Panchayat Teacher at N.P.S. Dhanai, Gram Panchayat, Sobhanpur, Block Amarpur, District- Banka.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. P. K. Shahi, Sr. Advocate
Mr. Mrityunjay Kumar, Advocate
For the Respondent/s : Mr. Tej Bahadur Singh, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY)

Date: 03-11-2017

Ref.: I. A. No. 821 of 2017

The present interlocutory has been filed for condonation of delay in filing the appeal.

2. After hearing the parties and on consideration of the reasons stated in the interlocutory application for condonation of delay, I.A. No. 821 of 2017 is allowed and delay in filing the appeal is



condoned.

3. The instant appeal has been preferred under Clause 10 of the Letters Patent of the Patna High Court Rules by three appellants (private respondent nos. 11, 12 and 13 in C.W.J.C. No. 5966 of 2015) against the order dated 29.11.2016 passed by the learned Writ Court on the writ petition filed by respondent 2nd set. The writ court after hearing the parties and on consideration of the entire facts and circumstances of the case quashed the order of the District Teachers Employment Appellate Authority, Banka (hereinafter referred to the 'Appellate Authority') dated 02.03.2015 passed in Misc. Case No. 2 of 2015 and directed the District Programme Officer to consider the grievance of the writ petitioners with regard to non-payment of the salary from February, 2015.

4. The brief fact of the case for the purpose of deciding the present appeal are summarized below:

5. In Gram Panchayat Raj, Sobhanpur in Amarpur Block in the district of Banka selection process was undertaken for appointment for the post of Panchayat Teacher and 14 appointments were made by the employment unit of the Gram Panchayat. The appointment of 14 persons were questioned by the writ petitioners before the Appellate Authority in Case no. 432 of 2009 and the



Appellate Authority on considering the facts held out that appointment process was not transparent and quashed the appointment. 4 out of 14, whose appointments were held bad in law by the Appellate Authority approached the writ Court in C.W.J.C. No. 5214 of 2010. The Writ Court noticing the grievance of the four petitioners that the order adversely was passed without notice and hearing them, passed interim order on 08.04.2010 in favour of the four writ petitioners of C.W.J.C. No. 5214 of 2010.

6. The present writ petitioners filed intervention petition in the said C.W.J.C. No. 5214 of 2010. The Writ Court after hearing the parties modified the order dated 08.04.2010 whereby interim order was passed in favour of 4 writ petitioners of C.W.J.C. No. 5214 of 2010. The Writ Court allowed the writ petition vide order dated 17.01.2013. The relevant part of the common order dated 17.01.2013 whereby all the three writ petitions have been allowed is reproduced herein below:

“All the three writ applications arise from a common order dated 02.12.2009 passed in Case No. 432 of 2009. There are two pointed submissions which have been made at the bar on behalf of these petitioners, one that their appointment was never under any cloud because no insinuation or allegations as such were made



against them. The thrust of the case filed by the private respondent / intervener was directed against ten other persons against whom findings have emerged in the impugned order, which is Annexure-6 or Annexure-7 in these writ applications. That is the reason why the District Teachers Employment Appellate Authority did not say anything pointedly or specific against these petitioners.

The other important submission is that these petitioners have never been made parties to the proceedings nor were they issued notice by the tribunal but still order having civil consequences was passed against them.

Counsel for the intervener is not in a position to dispute this aspect of the matter.

In view of the same petitioners have made out a case for interference with the order in so far as it relates to them.

The impugned order dated 02.12.2009 stands quashed. Writ applications are allowed.

Since there was an ad interim order of stay passed in favour of the petitioners, the status would not change till any decision is taken in this regard afresh.

The claim of payment of salary for the period petitioners have worked prior to



passing an order will have to be sorted out now by the authorities preferably within a period of two months from the date of production of a copy of this order.”

7. It is to be noted here that the Appellate Authority passed the order against the 14 persons on 02.12.2009 and only 4 out of 14 have challenged the said order by way of three writ applications bearing C.W.J.C. No.5214 of 2010, C.W.J.C. No. 4998 of 2010 and C.W.J.C. No. 5128 of 2010. The Writ Court while allowing the writ petitions has noted that appointment of the four writ petitioners were never under cloud the private respondents-interveners, allegation was against 10 persons and against those 10 persons finding have emerged in the impugned order i.e. order dated 02.12.2009. Thus the order dated 02.12.2009 has remained unchallenged by the 10 appointees, out of 14 and the writ court interfered so far as the findings against the four writ petitioners in C.W.J.C. No.5214 of 2010, C.W.J.C. No. 4998 of 2010 and C.W.J.C. No. 5128 of 2010 are concerned. Since the order of the Writ Court was for the protection of only 4, out of 14 appointees, therefore, Misc. Case No. 01 of 2013 was preferred by the writ petitioners of C.W.J.C. No. 5966 of 2015, so far as the remaining 10 posts are concerned. The case of the petitioner in C.W.J.C. No. 5966 of 2015 was considered by the Appellate Authority and the Appellate Authority allowed their claim vide order dated 07.11.2014.



The District Programme Officer as a follow up order of Appellate Authority in Misc. Case No. 1 of 2013 issued direction to the Panchayat Secretary of the employment unit to take step for notifying the vacancy and accordingly advertisement was published and vacancy was notified on 22.01.2015. Pursuant to the selection process, 9 writ petitioners and one Bina Kumari were appointed on 09.02.2015. The said Bina Kumari was among the 10 writ petitioners, whose services, was terminated on the ground of lack of selection process by the order of the Appellate Authority dated 02.12.2009. Thus, it is now admitted position that the writ petitioners of C.W.J.C. No. 5966 of 2015 were appointed pursuant to the selection process, as per the decision of the Appellate Authority dated 07.11.2014 and the order of the Appellate Authority dated 02.12.2009 so far as 10 posts of Panchayat Teachers are concerned, has been worked out and the same attained finality, as the writ court in C.W.J.C. No. 5214 of 2010 and other analogous cases only interfered with the order dated 02.12.2009, so far as the same relates to the selection and appointment of 4 writ petitioners of three writ petitions. Against the fresh appointment Misc. Case No. 02 of 2015 was filed for review of order dated 07.11.2014 passed by the Appellate Authority in Misc. Case No. 01 of 2013 whereby the Appellate Authority directed appointment against 10 vacancies. The Appellate Authority exercised the power of



review and passed order on 02.03.2015 in Misc. Case No. 02 of 2015. Against the order dated 02.03.2015 passed by Appellate Authority in Misc. Case no. 02 of 2015 C.W.J.C. No. 5966 of 2015 was filed by the writ petitioners/respondent 2nd set in the instant appeal. The writ court after hearing the parties and on consideration of entire facts of the case allowed the writ application on the ground that the Appellate Authority was not vested jurisdiction to review its own order. The writ court noted the order passed in Misc. Case no. 01 of 2013, the order passed pursuant to the decision of the writ court in C.W.J.C. No. 5214 of 2010 and other analogous cases, in the said batch of three writ petitions, wherein the writ court only interfered with the order of the Appellate Authority dated 02.12.2009 so far it relates to 4 writ petitions and protected the interest of only four writ petitioners. The writ court noted the fact that order dated 02.12.2009 remained unchallenged by the 10, out of 14 Panchayat Teachers in the earlier round of the proceeding in C.W.J.C. No. 5214 of 2010 and other analogous cases. In that batch of writ petitions, the writ court noted that there was no infirmity so far selection of four writ petitioners in the three writ applications are concerned. The writ court also noted that the allegation was against the 10 appointees. Further the decision of the Appellate Authority in Appeal no. 432 of 2009 dated 02.12.2009 has remained unchallenged and in view of the qualified



order of the writ court the Appellate Authority has acted without jurisdiction to unsettle the issue, which become final. The writ court has noted that the Appellate Authority has committed serious error of jurisdiction by entertaining the application and setting aside the appointment of 9 writ petitioners, as Annexure-1, the order of the Appellate Authority dated 02.12.2009 was never challenged by the 10 appointees, whose appointments were interfered vide order dated 02.12.2009.

8. Mr. P. K. Shahi, learned senior counsel appearing on behalf of the appellants submitted that the writ court has wrongly held out that the Appellate Authority was not vested with the jurisdiction to review the order. He has referred to the judgment of the Apex Court reported in (1999) 4 SCC 396 to contend that the inherent power of the Appellate Authority or the court to recall the earlier order made in the proceedings if suffered from the inherent lack of jurisdiction or there existing fraud or collusion in procuring judgment or there is mistake of the court causing prejudice to the parties. He submitted that the order of the Appellate Authority dated 02.12.2009 was nullity in the eyes of law, as the same was passed without notice and hearing the writ petitioners. He submitted that it is true that the appellants have not approached the writ court like the petitioners of C.W.J.C. No. 5214 of 2010 and analogous cases, but their cases are identical to



the case of other four writ petitioners of C.W.J.C. No. 5214 of 2010 and other analogous cases and the Appellate Authority has committed no error in correcting the mistake in the order dated 07.11.2014 by allowing the Misc. Case No. 02 of 2015 vide order dated 02.03.2015. He submitted that in the totality of the facts situation, this Court should consider exercise of equity jurisdiction in favour of the appellants and the appellants should not be non-suited on the ground that the appellants have not challenged the order dated 02.12.2009 by way of filing writ petition.

9. Mr. Tej Bahadur Singh, learned senior counsel appearing on behalf of the respondents has submitted the writ court on consideration of entire facts of the case has rightly allowed the writ application. He submitted that it is not a case for recall of the order, but it is case of review of order dated 02.12.2009, which has merged in the order of the writ court in C.W.J.C. No. 5214 of 2010 and other analogous cases. He submitted that the order of writ court in C.W.J.C. No. 5214 of 2010 and other analogous cases are qualified only for the writ petitioners (the case of four writ petitioners), out of 14 appointees, whose appointments were interfered with by the order of the Appellate Authority dated 02.12.2009 . Mr. Singh submitted that not only the order of the Appellate Authority dated 02.12.2009 but the order of the writ court in C.W.J.C. No. 5214 of 2010 and other



analogous cases were worked out and as such the Appellate Authority has no jurisdiction to review the order dated 07.11.2014, which was passed in the light of order of the writ court dated 17.01.2013.

10. Mr. Singh submitted that the writ petitioners, who are respondents 2nd set in the instant appeal were selected after following the selection process and equity of the situation is in their favour, as they have been appointed after selection process, after publication in the newspaper and counselling and there is no infirmity in their appointment. He submitted that the writ court has committed no legality warranting interference in exercise of appellate jurisdiction.

11. We have heard the counsel for the parties and considered the judgment of the writ court. From perusal of the judgment of the writ court dated 29.11.2016, we find that the writ court has considered the entire factual and legal aspects involved in the instant appeal. We have also noticed the peculiar facts and circumstances of this case and the finding recorded by the writ court in earlier round of proceeding at the instance of 4, out of 14 appointees and in particular the finding of the writ court that the case of 4 writ petitioners in C.W.J.C. No. 5214 of 2010 and other analogous cases stand on different footing then the remaining 10, who were not the writ petitioners and who have not challenged the order of the Appellate Authority dated 02.12.2009.



12. Thus, in the totality of the facts situation, we are of the view that the writ court has rightly held out that the order of the Appellate Authority dated 02.12.2009 has attained finality and as such it was not interfered with by the writ court. In C.W.J.C. No. 5214 of 2010 and other analogous cases, decision was qualified with regard to four petitioners. While passing the order dated 17.01.2013, the writ court has distinguished the case of the 4 writ petitioners with the remaining 10, out of 14 and thus we find substance in the submission of Mr. Tej Bahadur Singh that the case of the appellants does not stand on the same footing like four writ petitioners in C.W.J.C. No. 5214 of 2010 and other analogous cases. In any view of the matter, the order dated 02.12.2009 and the order of the writ court in C.W.J.C. No. 5214 of 2010 and other analogous cases has remained unchallenged and attained finality. Not only, the order has attained finality, it has also worked out as after the order of the writ court selection process was undertaken against the 10 posts considering the order of the Appellate Authority dated 02.12.2009, as the said order remained unchallenged and attained finality, so far as 10 appointees are concerned. After fresh selection process appointments have been made and the writ petitioners of C.W.J.C. No. 5966 of 2015 have been appointed against the 10 posts out of 14 posts.

13. In view of the peculiar facts of the case, we do not find



any error in consideration and decision of the writ court, accordingly, the present appeal is dismissed. The order of the writ court dated 29.11.2016 passed in C.W.J.C. No. 5966 of 2015 stands approved.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

Uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.11.2017
Transmission Date	NA

