

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8187 of 2017

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Renu Kumari W/o Sri Amresh Kumar Madal, Resident of Village-Tikapatti
Chandpur, P.O._Tikapatti, P.S.-Falka, District-Katihar.

... .. Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Human Resource Department, Govt. of Bihar, Patna.
2. The State Appellate Authority, Education Department, Bihar, 5C-D, Niyojan Bhawan, Baily Road, Patna.
3. The Zilla Appeleya Pradhikar, Katihar, Mirchaibari, District-Katihar.
4. The District Education Officer, Katihar, District-Katihar.
5. The District Programme Officer, (Establishment), Katihar, District-Katihar.
6. The Block Education Officer, Samaili, Samaili, District-katihar.
7. Block Development Officer, Samaili, Samaili, District-Katihar.
8. Panchyat Sechiva, Gram Panchayat Raj, Paschami Chandpur, P.O. & P.S.-Samaili, District-Katihar.
9. Mukhiya, Gram Panchayat Raj, Paschami Chandpur, P.O. & P.S.-Samaili, District-Katihar.
10. Kumari Anita, W/o Raj Kumar, Resident of Village-Bharauli, P.O.-Pothia, P.S.-Falka, District-Katihar.
11. Gunjan Kumari, D/o Sri Anirudha Mandal, Resident of Village-Diara Chandpur, P.O.-Chandpur, P.S.-Falka, Dt.-Katihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. P.K.Jaipuriyar, Advocate Mr. Anshuman Jaipuriyar, Advocate Ms. Anukriti Jaipuriyar, Advocate
For the State	:	Smt.Binita Singh-SC-28 Mr. Nishant Kumar Jha, AC to SC-28
For Resp. Nos. 8 & 9	:	Mr. Rakesh Chandra, Advocate
For Resp. No. 10	:	Mr. Bimal Kumar, Advocate Mr. Birendra Kumar, Advocate
For Resp. No. 11	:	Mr. Arun Kumar Mandal, Advocate.

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
CAV JUDGMENT



Date : 19-04-2018

Heard learned counsel for the petitioner and learned counsel appearing on behalf of the respondents.

2. This writ application was heard on different dates and after hearing at length judgment was reserved on 13th of April, 2018.

3. The petitioner seeks quashing of the order dated 25.5.2017, passed by the State Appellate Authority in Appeal Case No. 03/2016 and the orders dated 15.7.2016 and 30.12.2015 passed by the District Teachers Employment Appellate Authority (hereinafter referred to as the 'District Appellate Authority') in Appeal Case No. 3/2016 and Appeal Case No. 34 of 2014, Annexures- 1, 2 and 3 respectively and for allowing the petitioner to continue on the post of Block Teacher at Middle School, Tikkapatti, Samaili in the district of Katihar.

4. The petitioner was appointed on the post of Panchayat Shikshak after preparation of merit list and counselling on 24.3.2007. The petitioner joined on 26th of March, 2007. After appointment of the petitioner and joining, respondent No.11 Gunjan Kumari filed an appeal before the District Appellate Authority vide Appeal Case No. 1284 of 2009. The District Appellate Authority dismissed the appeal vide order dated 12.08.2009. Gunjan Kumari filed another Appeal Case No. 1529/2009 which was decided on 25.07.2009.



5. Gunjan Kumari has also filed CWJC No. 1683 of 2008 and in the said writ petition she filed I.A. No. 6232/2009. The said writ petition was dismissed on 12.04.2010 with liberty to file two separate writ petition challenged the order passed in two appeals.

6. The Respondent No.11, Gunjan Kumari, thereafter filed a writ application, CWJC No. 10036 of 2010 and CWC No. 10194 of 2010. In both the writ applications Gunjan Kumari impleaded Kumari Anita as respondent No. 9. This petitioner was not impleaded as respondent in the aforesaid two writ applications as in the Appeal Case No. 1284 of 2009 Gunjan Kumari has impleaded Kumari Anita as party respondent and not this petitioner. In fact, Gunjan Kumari filed another Appeal No. 1529 of 2009 and in this appeal also she has not impleaded this petitioner as party. Thus Gunjan Kumari has neither impleaded this petitioner in Appeal No. 1284 of 2009 or Appeal No. 1529 of 2009 and aggrieved by the decision of the District Appellate Authority Gunjan Kumari, when filed CWJC No. 10194 of 2010 and CWJC No. 10036 of 2010, she has not impleaded the present petitioner as party respondent. Both the writ applications were disposed of vide order dated 21.8. 2015 by a co-ordinate Bench of this Court. The Writ Court did not approve the decision of the District Appellate Authority. The Court held out that both the



authorities proceeded without giving opportunity to the persons likely to be adversely affected by such order. The Co-ordinate Bench quashed the order of the BDO dated 6.9.2007 and the District Appellate Authority, Katihar vide decision dated 25.7.2008 and the Court granted liberty to Gunjan Kumari as well as Kumari Anita to approach the District Teaches Employment Appellate Authority raising their respective grievances and the District Appellate Authority was directed to give notice to the parties and pass order in accordance with law.

7. In the meanwhile, in the year 2012 the school, where the petitioner was working, was upgraded to Middle School. Accordingly, the petitioner was upgraded as Prakhanda (Block) Teacher and his pay scale was upgraded in terms of Rule 4 of the Bihar Panchayat Primary Teachers Appointment and Service Condition Rules.

8. After the decision in CWJC No. 10194 of 2010 and CWJC No. 10036 of 2010, Gunjan Kumari filed Appeal No. 34 of 2014 on 19.9.2014 which was allowed by the District Appellate Authority against Kumari Anita respondent No. 9 on 30.12.2015. To the dismay of the petitioner Gunjan Kumari has not impleaded this petitioner either in appeal before the Appellate Authority or in CWJC Nos. 10036 of 2010 and 10194 of 2010 and even not



impleaded in Appeal No. 34 of 2014. The District Teaches Employment Appellate Authority has not considered the issue of non-joinder of necessary party and allowed Appeal No. 34 of 2014 vide order dated 30th of December 2015. Notwithstanding the issue raised by Kumari Anita in Appeal No.34 of 2014, in which this petitioner was not made party that she (this petitioner) was below in the merit list in the category of extremely backward class, the District Appellate Authority instead of giving notice to this petitioner to contest the case directed removal of Kumari Anita and in her place appointment of Gunjan Kumari. The District Appellate Authority ordered that in case the respondent No.9 Kumari Anita has better merit position than any other applicant, who was appointed, she may file case impleading that candidate as party. Pursuant to the aforesaid liberty Respondent No. 9 Kumari Anita filed Appeal Case No. 3/2016 in which she impleaded this petitioner as opposite party. The Appellate Authority allowed the appeal vide order dated 15.7.2016 and thereafter cancelled the employment of the present petitioner and directed reinstatement of Kumari Anita, Respondent No.9. This petitioner against the aforesaid order dated 15.7.2016 of the District Appellate Authority, filed Appeal Case No. 3/2016 before the State Appellate Authority and the State Appellate Authority perpetuated the same illegality



and after recording the reasoning and findings in paras 10 and 11, dismissed the appeal of the petitioner vide order dated 25.5.2017.

Paragraphs 10 and 11 of the order is quoted below:

10. (i) First issue raised by the appellant and the State respondents is that appeal no 34 of 2014 filed by the respondent No. 9 before the District Authority is hit by principle of res-judiscata. The appeal no.1284/2009 filed by the respondent no.9 before the District Authority challenging her non-employment as Panchayat teacher was dismissed by the District Authority on the ground that she had not appeared in the counseling. Now the respondent no.9 could not file Appeal no.34/2014 before the District Authority seeking the same relief.

From the record, it is clear that the respondent no.9 filed Appeal no.34/2014 in pursuance of the order passed by the Hon'ble Patna High Court on 21.08.2014 in CWJC No.10194 of 2010 and 10036 of 2010. Therefore, the appeal no.34/2014 filed by the respondent no.9 does not attract the principle of res-judiscata.

(ii) The appellant and the State respondents have raised another issue that employments made 8 years ago cannot be reopened and cancelled and even if made in the year 2007 during the first phase of teachers employment is cancelled, fresh employment against the post cannot be made without the permission of Education Department.



In this regard, it is a matter of record that respondent no.9 has been challenging her non-employment and employment of respondent no.8 having lesser merit marks than respondent no.9 before different authorities. First time she filed representation before BDO, Samaili on which BDO, Samaili had cancelled the 7th-8th panels. She has been approaching District Appellate Authority and Hon'ble High Court for redressal of her grievances. Therefore, the employment of Panchayat teacher under EBC category in Paschim Chandpur Panchayat has been under dispute ever since the appellant and respondent no.8 were employed. Entire judicial process has taken time and therefore, the plea that employment made 8 years ago cannot be cancelled is not correct. Obtaining permission of Education Department before employing respondent no.9 is only a formality which Panchayat Employment Unit has to comply.

(iii) Respondent no.9 has raised the issue that she had already appeared in first counseling in the year 2006 and therefore, she should have been considered for employment as per rules and she should not be deprived of employment on the ground that she has not appeared in the 5th and subsequent counsellings.

In this regard the team of officers constituted by the District Magistrate, Katihar has submitted in its report filed on 3rd may, 2017 that 17-20 October,2006 was the date fixed for verification of academic and training certificates and mark sheets. Subsequently, first panel of candidates was prepared and counseling



for the first panel was held on 08.01.2007. Subsequently, 2nd to 8th panels were prepared and counseling dated were fixed for counseling of candidates in the 5th panel schedule on 11-12/3/2017, 6th panel on 16-17.03.2007, 7th panel on 21.03.2007 and 8th panel on 31.03.2007. Therefore, the contention of the respondent no.9 that after appearing in the 1st counseling during 17-18 October, 2006, she should have been considered for employment is not correct.

(iv) Most crucial issue is whether effective notice was given to respondent no.9 for the counseling of candidates included in the 5th panel in which name of respondent no.9 was also included. The appellant as well as the State respondents have claimed that general notice was pasted on the notice board of Panchayat office and information was also sent to the Block. A team of officers constituted by the District Magistrate in para 3 of the report has stated that no clear evidence of pasting of 5th provisional panel in Panchayat and Block offices has been found. Mukhiya and Panchayat Secretary have informed the team that 5th provisional panel was pasted on the wall of the Panchayat Bhawan by the then Panchayat Secretary. BDO and BEO, Samaili informed the team that from the perusal of documents, it appears that merit list of the concerned Panchayat was published on the notice board of the Block office. They could not categorically confirm the publication of 5th provisional panel and subsequent panels. On the other hand, respondent no.9 has been claiming before



different authorities including the BDO, Samaili, District Authority and Hon'ble High Court that she did not get information about counseling of 5th panel. The respondent no. 9 has been approaching the authorities including the BDO, District Appellate Authority and Hon'ble High Court for her employment. There is no reason why she would not appear in 5th and subsequent counsellings, if she had information about the counseling.

(v) Learned District Appellate Authority in its impugned order passed on 30.12.2015 in Appeal case no.34/2014 filed by respondent no.9 (appellant before the District Authority) has observed that Panchayat Employment Unit had issued notice for 5th panel on 09.03.2007 in which the name of respondent no.9 was called on 11.03.2007 for counselling giving only two days notice. Information of counselling was not given to the respondent no.9 by any effective means. Learned District Authority has referred to order passed by Hon'ble Patna High Court on 16.03.2012 in CWJC No. 4517 of 2011 in which the Hon'ble High Court has ruled that Panchayat is obliged to send the letter of employment by registered post to the selected candidates and their turning up personally before the Panchayat is not a pre-requisite.

Learned District Authority has further observed that the Panchayat Employment Committee in its meeting held on 26.03.2007 decided to issue employment letter to the appellant and respondent no.8 on the



basis of their counselling on 21.03.2007. But employment letter was issued on 24.03.2007 itself.

Learned District Authority has also held that respondent no.9 (appellant before the District Authority was present on 19.10.2016 in the first counselling and she had merit marks 60.66% which was higher than respondent no.8 (respondent no.4 the District Authority). Therefore, respondent no.9 had better claim than the respondent no.8.

The team of officers constituted by District Magistrate, Katihar has also reported that the meeting of the Panchayat Employment Committee was held on 19.03.2007 and thereafter, on 26.03.2007 in which it was decided to issue employment letters to candidates who had appeared in counselling on 21.03.2007. But the employment letter was issued on 24.03.2007 itself.

11. In view of the above, I do not find any error in the impugned order of District Appellate Authority in Appeal Case no.34/2014.

The order passed by the District Authority on 15.07.2016 in Appeal Case no.3/16 filed by the respondent no.8 making the appellant as respondent no.1 is corollary to the order passed in Appeal Case No.34/2014. In Appeal Case No.34/2014 the appellant was not made a party. Therefore, Appeal No.34/2014 was allowed in favour of respondent no.9 in which learned District Authority cancelled the employment of respondent no.8 and directed Panchayat



Employment Unit to employ respondent no.9 who was the appellant before the District Authority.

Aggrieved by the impugned order of the District Authority in Appeal Case No.34/2014 respondent no.8, Kumari Anita filed Appeal case No.3/2016 before the District Authority praying therein that the appellant, Renu Kumari had lesser merit marks than the respondent no.8 (appellant before the District Authority) and therefore, employment of the appellant (respondent no.1 before the District Authority) should be cancelled and respondent no.8 (appellant before the District Authority) should be adjusted against one of the two posts available under EBC (F) category and the District Authority has rightly allowed the appeal.

9. Mr. P.K.Jaipuriar, learned counsel appearing on behalf of the petitioner submitted that in the aforesaid backdrop of the fact the order passed by the Appellate Authority in Appeal Case No. 34 of 2014 is unsustainable for non-joinder of necessary party. The order whereby liberty was granted to Kumari Anita to challenge the appointment of this petitioner after approximately 7 long years is unsustainable. Moreover, granting liberty behind the back of the petitioner is violative of principles of natural Justice and fair play. Since Gunjan Kumari has made a pick and choose in challenging the order of appointment, the case before the appellate authority



was not maintainable. He submitted that throughout Gunjan Kumari has misled the courts including the High Court. Even the order which adversely affect this petitioner has been passed behind the back of the petitioner as she was not made party in any of the proceedings initiated at the instance of Gunjan Kumari either before the District Appellate Authority or the Writ Court.

10. Mr. Jaipurkar submitted that pursuant to the liberty granted by the Appellate Authority vide order dated 30th of December 2015 Kumari Anita filed Appeal Case No. 3 of 2016 in which she impleaded this petitioner as opposite party and vide order dated 15.7. 2016, the District Appellate Authority allowed the appeal of Kumari Anita and directed cancellation of the employment of the present petitioner and reinstatement of Kumari Anita. Mr Jaipurkar submitted that the District Appellate Authority has limited jurisdiction and has absolutely no jurisdiction to review the earlier decision. He submitted that this issue was raised before the District Appellate Authority by Kumari Anita in Appeal Case No. 34 of 2014 as well as by this petitioner in Appeal Case No. 3 of 2016 but the District Appellate Authority allowed Appeal Case No. 34 of 2014 by adopting a reasoning which is not permissible. In Appeal No. 34 of 2014 the District Appellate Authority has proceeded that the earlier Appeal No. 1284 of 2009 was rejected as



the appellant has failed to produce any document regarding her participation in the counselling and in view of the fact that now she has produce that document her appeal was allowed. Appeal Case No. 3 of 2016 the District Appellate Authority was justified the action of reviewing the earlier order of dismissal of Appeal No. 1254 of 2009 relying the judgment of the Apex Court in the case of **Budhia Swain Vs. Gopinath Deb: (1999) 4 SCC 396**. The reasons are indicated in as follows:

“In our opinion a tribunal or a court may real an order earlier made by it if

- (i) The proceedings culminating into an order suffer from the inherent lack of jurisdiction is patent,
- (ii) There exists fraud or collusion in obtaining the judgment,
- (iii) There has been a mistake of the court prejudicing a party, or
- (iv) a judgment was rendered in ignorance of the fact that a necessary party had not been served at all or had died and the estate was not represented.”

11. Mr. Jaipuriar submitted that against the decision in Appeal Case No. 3 of 2016 and Appeal Case No. 34 of 2014 this petitioner had filed Appeal No. 3 of 2016 before the State Appellate Authority and the State Appellate Authority perpetuated the same illegality and for the reason recorded in in the order, the State



Appellate Authority recorded its finding in paragraph 10 and 11 of the order and thereafter dismissed the appeal of the petitioner.

12. Mr. Jaipurkar submitted that in view of the fact and circumstances indicated in the writ petition the orders contained in Annexures 1,2 and 3 are unsustainable and fit to be quashed for the reasons that the Tribunal has no jurisdiction to review its order and as such the order passed in Appeal No.1284/2009 has become final and not open to review against this petitioner as this petitioner was not made party in Appeal Case No. 1284 of 2009, Appeal Case No. 1529 of 2009, CWJC No. 1683 of 2008 CWJC No. 10194 of 2010 and CWJC No. 10036 of 2010. She was not even made party in Appeal No. 34 of 2014 and as such the challenge of appointment of the petitioner collaterally is impermissible and against all canons of law and pleading.

13. He next contended that the District Appellate Authority proceeded on the basis that Case No. 1284 of 2009 was dismissed because Gunjan Kumari has not produced any material or evidence to support her case that she participated in the counseling. He submitted with reference to Annexure 7, the report of the two men committee and the so-called counselling register on which heavy reliance was placed by the respondent No. 9 and contended that the document which was taken as counselling register to maintain



that counselling of Gunjan Kumari was done on 19.10. 2006 was not the counselling register but register as to verification of document. He contended that counselling follows the verification of the document and preparation of merit list. In fact, on 19.10.2006 verification of the document of the candidates was done and not the counseling. In fact counseling was done for the first time in between 7.1.2007 to 9.2.2007 after the preparation of the merit list. The merit list was prepared after verification of the record/ document of the candidates between 17.10. 2006 to 20.10. 2006. During verification of the record 419 candidates appeared and thereafter merit list was prepared. First counselling was held on 8.1.2007 and as such there was no question of counselling of the petitioner on 17.10 2006 as it was the date of verification of regard and counselling are done only after verification of the regard and preparation of the merit list. He next submitted that the State Appellate Authority has miserably failed to appreciate the report contained in Annexure-7 in its true perspective and dismissed the appeal.

14. Mr Rakesh Chandra appearing on behalf of the respondent No. 10 Kumari Anita has in fact supported the submission of the writ petitioner and contended that the so-called counselling register is not a counselling register but register with regard to



verification of the document and certificate of the candidate who participated in the verification in between 17th to 20th October. He also supported the contention of the petitioner that the respondent No.11 Gunjan Kumari never participated in the counseling. He has also argued on the same line that the decision in Case No. 1284 of 2009 has attained finality and the Tribunal has no jurisdiction to review the decision in the absence of any power of review which is creature of the Statute.

15. Mr. Rakesh Chandra submitted that Gunjan Kumari never participated in the counselling and respondent no. 10 and the petitioner were appointed after following the process of selection in accordance with rule and there is no infirmity in the appointment of the petitioner and Kumari Anita. The challenge of Gunjan Kumari on the basis of so called participation in the counselling is contrary to record as the document on which Gunjan Kumari relies as a counselling register is not a counselling register. He submitted that counselling are done after verification of the document and preparation of the merit list. Admittedly, when the verification of the document was scheduled from 17.10.2006 to 20th of October 2006 there was no question of counselling on 19.10.2006 .



16. Mr. Arun Kumar Mandal counsel appearing on behalf of the respondent 11 has supported the decision of the District Appellate Authority in Appeal Nos. 34 of 2014 and 3 of 2006 as well as the decision of the State Appellate Authority. He submitted that since the new document was discovered by the petitioner that is counselling register and on the basis of that counselling register she filed subsequent case and the Appellate Authority has committed no wrong in allowing the Appeal No. 34 of 2014. He submitted that there was no occasion to challenge the appointment of this petitioner in Appeal No. 34 of 2014 as she was only interested against one post and Kumari Anita was junior in merit list and as such Gunjan Kumari challenged the appointment of Kumari Anita, he has not disputed the fact that at no point of time Gunjan Kumari has impleaded the writ petitioner in any of the proceeding either before the appellate authority or before the writ court. He submitted that in the totality of the facts situation for the ends of Justice the District Appellate Authority as well as the State Appellate Authority have passed order and there is no infirmity. Referring to Annexure-7 he submitted that there appears to be overwriting in sending the appointment letter to writ petitioner. On being enquired by the court whether rule permits counselling in the midst of verification of the record and whether counselling can



precede the preparation of merit list, he failed to answer as admittedly counseling are not allowed before verification of record and before preparation of the merit list.

17. The Court finds substance in the submission of learned counsel for the petitioner that non-joinder of this petitioner in any of the appeals or writ applications is also fatal and the entire proceeding in which this petitioner was not made party for nearly 9 long years, cannot be reopened against the petitioner and as such the collateral challenge is impermissible. The Court does not find substance in the reasoning of the Appellate Authority in reviewing the order. The scope as discussed in the appeal by the Appellate Authority in Appeal No. 3 of 2015 does not apply in this kind of review. In the present case there is absolutely no question of rectification of mistake when the earlier decision was on the merit of the case and after five years review of the order contained in Annexure-4 dated 12.8.2009 is unsustainable and that too which adversely affect this petitioner, who was not even party in the proceeding..

18. For this added reason, the Court cannot approve the action of the Appellate Authority and accordingly the orders contained in Annexures 2, and 3 are unsustainable on fact as well as on law and held to be without jurisdiction and being contrary to law of



pleading and violative of principles of natural Justice and fair play. The Court also find substance in submission of the petitioner that challenge to the appointment of the writ petitioner after nine long years is impermissible and as such the Court is of the view that there is no justification to unsettle the appointment of the petitioner which was settled for all practical purposes and in terms of sub-rule (4) of Rule 12, the petitioner was granted the upgraded pay scale on upgradation of his status from panchayat teacher to Block Teacher.

19. In the conspectus of the entire facts and circumstances discussed above, the Court finds that when the document, which was taken by all concerned, as merit list to interfere with the appointment of Renu Kumari and Kumari Anita, is not a counselling register, the entire exercise by the District Appellate Authority and the State Appellate Authority in Appeal No. 34 of 2014, Appeal No. 3 of 2016 and the State Appellate Authority in Appeal No. 3 of 2016 is based on misconstruction of document i.e treating verification registered as counselling register. Accordingly the finding recorded by the District Appellate Authority in Appeal No. 34 of 2014, Appeal No. 3 of 2016 and the State Appellate Authority in Appeal No. 3 of 2016 is unsustainable and as said the Court does not find any substance in



the contention of the respondent 11 that she has better merit and participated in the counselling while the claim of the respondent No. 11 counselling based on counselling register is found unsustainable, interference by the District Appellate Authority in Appeal Case No. 34 of 2014 and Appeal Case No. 3 of 2016 is unsustainable and the final decision of the State Appellate Authority in Appeal No. 3 of 2016 is also unsustainable and accordingly the order contained in Annexures, 1, 2 and 3 dated 30.12.2015, 15.7.2016 and 25.5.2017, are hereby quashed. The petitioner, who is continuing on the post in terms of the interim order passed by this Court on 10.7.2017 shall continue to hold the post and the interim order dated 10.7.2017 is hereby made absolute.

20. The writ application is, accordingly, allowed.

(Anil Kumar Upadhyay, J)

spandey/-

AFR/NAFR	NAFR
CAV DATE	13.04.2018
Uploading Date	01.05.2018
Transmission Date	

