

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5490 of 2016

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Kalpana Kumari, Wife of Dr. Sitaram Prasad, at present residing at Village - Bakaur, P.O. Paithana, P.S. - Islampur, District Nalanda and permanent resident of Patel Colony, Sanichara Asthan, Sandalpur Road, P.S. - Sultanganj, District - Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Education, Govt. of Bihar, Patna.
2. The Principal Secretary, Department of Education, Bihar, Patna.
3. The Bihar School Examination Board, Patna through its Secretary.
4. The Chairman, Bihar School Examination Board, Patna.
5. The Secretary, Bihar School Examination Board, Patna.
6. The District Education Officer, Nalanda.
7. The Block Education Officer, Islampur, Nalanda.
8. Smt. Priyanka Sinha, Wife of Shri Om Prakash Prasad, Resident of Mohalla - Yogipur (In front of Shiv Mandir), P.S. - Patrakar Nagar, District - Patna.
9. Md. Mustak Ahmad Ansari, Son of Late Jamaluddin Ansari, In - Charge Headmaster, High School Khodaganj, Nalanda, Permanent address of Village - Sarvadahadih, P.S. - Khijarsarai, District - Gaya - Cum - Convener, Sarvodaya High school, Bauridhi, P.O. - Bauri Sarai, P.S. - Khodaganj, District - Nalanda.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Satyabir Bharti, Advocate
For the Respondent/s : Mr. Raj Kishore Roy, G.P.-18
For the Board : Mr. Lalit Kishore, Sr. Advocate
Mrs. Binita Singh, Advocate
Mr. Sudhanshu Trivedi, Advocate

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT

Date: 02-04-2018

Heard Mr. Satyabir Bharti, learned counsel for the petitioner, Mr. Baxi S.R.P. Sinha, learned senior counsel for private respondent no.8, Bihar School Examination Board and learned counsel for the State.

2. Mr. Bharti learned counsel for the petitioner has challenged the decision of the District Teachers Employment



Appellate Authority, Nalanda dated 11.02.2016 passed in Appeal No. 27 of 2015. Primarily he has argued that after the notification dated 13.05.2015 the power of the District Teachers Employment Appellate Authority has undergone a change. Referring to Clause 5 of the said notification, he submits that the erstwhile notification regarding Bihar Rajkiya and Rajyakrit Parambhik, Madhyamik Avam Uchch Madhyamik Vidyalaya, Rule, 2013 stands repealed and as such the District Teachers Employment Appellate Authority was not competent to enter into the controversy and decide the case, which was ousted by virtue of notification dated 13.05.2015, which created Bihar State Teacher and Employee Grievance Redressal Rule, 2015. He has referred to Clause of the notification dated 13.05.2015, whereby Rule 2013 was repealed.

“निरसन एवं व्यावृत्ति I— (1) इस नियमावली की अधिसूचना की तिथि से “बिहार राज्य विधालय शिक्षक एवं कर्मचारी शिकायत निवारण नियमावली 2013” तथा उसके अधीन निर्गत आदेश/निदेश एवं प्रावधान एतद् द्वारा निरसित माने जायेंगे।

(2) ऐसे निरसन के होने पर भी, उक्त नियमावली के अधीन अपीलिय प्राधिकार, को प्रदत्त शक्ति के प्रयोग में किया गया कोई कार्य या की गई कोई कार्रवाई इस नियमावली द्वारा प्रदत्त शक्तियों के प्रयोग में इसके अधीन किया गया कार्य या की गयी कार्रवाई मानी जायेगी मानो



उस दिन यह नियमावाली लागू थी, जिस दिन ऐसा कार्य किया गया या ऐसी कार्रवाई की गयी।”

3. Mr. Bharti also placed clause 13 of the notification dated 13.05.2015, whereby the jurisdiction of the District Appellate Authority was modified and restricted and the earlier scheme under clause 13:

13. जिला अपीलीय प्राधिकार के कृत्य एवं शक्तियाँ।—

(1) अपीलीय प्राधिकार राज्य के राजकीय एवं राजकीयकृत प्रारंभिक, माध्यमिक एवं उच्च माध्यमिक विद्यालयों (सरकारी सहायता प्राप्त एवं अल्पसंख्यक सहित) में शिक्षकों पुस्तकालयाध्यक्षों, सरकार के अन्य नियोजित कृत्यकारियों एवं कर्मियों के नियोजन से सम्बन्धित परिवादों/अपीलों की सुनवाई करेगा और निबटारा करेगा। यह उनके सेवा शर्तों से संबंधित परिवादों/अपीलों की भी सुनवाई करेगा तथा उनका निपटारा करेगा। यह सरकार के अनुदानित कोटि के विद्यालयों के प्रधानाध्यापकों, शिक्षकों तथा अन्य कृत्यकारियों की सेवाओं तथा राज्य सरकार से प्राप्त अनुदान के वितरण से संबंधित विवादों का भी निपटारा करेगा।

(2) अपीलीय प्राधिकार का कार्यालय परिवादों/अपीलों से सम्बन्धित सभी प्रकार के दस्तावेजों का संधारण समुचित रूप से करेगा।

(3) सभी प्रकार की परिवादों/अपील उसके उत्पन्न होने की तिथि से 30 दिनों के भीतर जिला अपीलीय प्राधिकार के समक्ष दायर किये जायेंगे। 30 दिनों के बाद प्राप्त परिवाद / अपील के दायर करने में हुए विलंब को युक्तियुक्त आधार पर अपीलीय प्राधिकार माफ कर सकगा।

(4) जिला अपीलीय प्राधिकार को किसी मामले की



जाँच पड़ताल और किसी मामले की सुनवाई करते समय वहीं शक्तियाँ होगी जो दीवानी प्रक्रिया संहिता, 1908 के अधीन किसी वाद का विचारण करते समय निम्नलिखित विषयों के संबंध में, सिविल न्यायालय में निहित हो यथा :—

(क) व्यक्तियों को सम्मन और उनकी उपस्थिति सुनिश्चित करने और उन्हें शपथ पर मौखिक या लिखित साक्ष्य देने और दस्तावेजों को प्रस्तुत करने के लिए बाध्य करने

(ख) दस्तावेजों की खोज और निरीक्षण की अपेक्षा करने

(ग) शपथ पर साक्ष्य लेने

(घ) साक्षियों या दस्तावेजों का परीक्षण हेतु सम्मन जारी करने।

(5) अपीलीय प्राधिकार के पीठासीन पदाधिकारी प्रत्येक परिवाद/ विवाद की जाँच पड़ताल एवं सुनवाई करेगा तथा आदेश पारित करेगा।

(6) अपीलीय प्राधिकार सम्बन्धित जिला के शिक्षा विभाग के किसी पदाधिकारी या किसी अन्य प्रशासनिक पदाधिकारी से मामले की जाँच पड़ताल करवा सकेगा।

(7) अपीलीय प्राधिकार सामान्यतः अपील/परिवाद प्राप्ति की तिथि से 90 दिनों के भीतर किसी अपील/परिवाद/विवाद का निपटारा करेगा।

4. Mr. Bharti, learned counsel for the petitioner submits that the notification dated 13.05.2015 was published in the official gazette on 06.08.2015 and as such it was effective with effect from the date it was published in the official gazette. The appeal was filed on behalf of respondent on 18.09.2015 after notification dated



13.05.2015 and the official gazette publication dated 06.08.2015 and as such the Appellate Authority was not competent to decide the appeal preferred by respondent no.8. He submits that the action of the District Teachers Employment Appellate Authority was totally without jurisdiction and as such the order has to be treated as nullity and deserve to be quashed.

5. Mr. Baxi, learned senior counsel for private respondent no.8 submits that the writ petitioner has submitted to the jurisdiction of the appellate authority and as such he cannot be allowed to question the jurisdiction, as the question of jurisdiction has not been raised at the very first instance. He submitted that once the petitioner participated in the proceeding, he is precluded from questioning the jurisdiction of the Tribunal.

6. The issue of jurisdiction is a question of law, which can be raised at any stage in view of the fact that 2013 notification was repealed by subsequent notification dated 13.05.2015 and the same was published in official gazette publication on 06.08.2015. This court is of the considered view that submission to the jurisdiction will not create any jurisdiction in view of the repeal clause whereby 2013 Rule was repealed and in place of 2013 Rule new Rule was placed and under the new Rules, the Tribunal was vested with limited jurisdiction indicated in the amended Rule itself.



7. It is now well settled that the Tribunals are Forum of limited jurisdiction and it cannot enlarge its scope and jurisdiction, since the notification itself confines the jurisdiction, the Tribunal cannot exercise jurisdiction beyond what is conferred under the notification dated 13.05.2015. Mr. Bharti, learned counsel appearing on behalf of the petitioner submits that in view of the subsequent change, now the forum is available before the Appellate Authority created under the Rules i.e. Bihar Anudanit Dhikshan Sansthan Pradhikar Niymabali, 2015.

8. Mr. Baxi, learned senior counsel in the aforesaid circumstance submits that the writ application may be disposed of with liberty to the parties to approach the forum available under the Bihar Anudanit Dhikshan Sansthan Pradhikar Niymabali, 2015.

9. Considering the nature of controversy, he submits that the Tribunal may be directed to dispose of the appeal filed by the parties at the earliest so that the kind of controversy involved in the present writ application may be disposed of at the earliest.

10. Considering the totality of the facts situation and nature of controversy as to approval of the Professor incharge, the Court is of the view that it would be appropriate for the Appellate Authority that on filing the appeal the same would be decided on priority basis preferably within a period of four months from the date



of filing of such appeal in view of the fact that the present writ application remained pending before this Court for more than two years. The Court grants liberty to the parties to approach the Tribunal by filing appeal along with a copy of this order. In case, such appeal is filed by the parties, the Tribunal is required to condone the delay in filing the appeal and decide the same on its own merit within the time frame indicated hereinabove.

11. In view of the above, the order as contained in Annexure-10 is held to be without jurisdiction and it is accordingly quashed.

12. The writ application is allowed to the extent indicated hereinabove.

(Anil Kumar Upadhyay, J)

Uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.04.2018
Transmission Date	

