

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.929 of 2016

-
1. Manoj Kumar , aged asbout 31 years S/o Rajendra Yadav Resident of Village- Paliwar, P.O. Rati, Block- Raj Nagar, District- Madhubani , at Present working as Panchayat Teacher in Navshrijit Primary School, Nand Nagar, Chakdah, Sohrela Tola, P.S. Raj Nagar, District- Madhubani.
 2. Ram Naresh Singh S/o Shrikant Kumar Singh Resident of Village- Gangasagar, P.O. Bhoura, Block Rahika, P.S. Madhubani, District- Madhubani (at Present working in Navshrijit Primary School , Brhamtara Ranti, P.S. Rajnagar, District- Madhubani.
 3. Nitu Kumar W/o Shri Saroj Ranjan Kumari Resident of Village- Kanail, P.O. Nazipur, Block Rahika, District- Madhubani, at Present working in Navshrijit Primary School, T.P. Centre Ranti, P.S. Raj Nagar, District- Madhubani.
 4. Baby Kumari Munda W/o Paras Prasad Resident of Village +P.O. Laukha, P.S. Laukha, Block- Rahika, District- Madhubani, at present working in Navshrijit Primary T.P. Centre Ranti, P.S. Raj Nagar, District- Madhubani.
 5. Gopal Krishna Kalyan Son of Shri Ram Prit Paswan Resident of Mohalla- Ambedkar Nagar Colony, Santu Nagar, Ward No. 2, Madhubani , at Present working in Navshrijit Primary School, Brahmotra Ranti Mushari Tola, P.S. Rajn Nagar, District- Madhubani.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Government of Bihar, Patna.
2. The District Teacher's Employment Appellate Authority, Madhubani.
3. The District Education Officer, Madhubani.
4. The District Programme Officer(Establishment), Madhubani.
5. The Block Education Officer, Block Raj Nagar , District-Madhubani.
6. The Panchayat Secretary, Gram Panchayat Raj Ranti Raj Nagar, Block- Raj Nagar, District- Madhubani.
7. The Mukhiya, Gram Panchayat Raj Ranti, Raj Nagar, Block- Raj Nagar, District- Madhubani.
8. Sudha Kumari W/o Laxmi Nath Mishra Resident of Village- Chakdah, Post- Ranti, P.S. Ranti Nagar, District- Madhubani.
9. Renuka Kumari W/o Pankaj Kumar Choudhary R/o Vill- Chakdah, P.S. Raj Nagar, Distt. Madhubani.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 12204 of 2017

Sudha Kumari wife of Laxmi Narayan Mishra resident of village Chakdah, P.S. Rajnagar, District Madhubani.



... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Govt. of Bihar, Patna.
2. The District Teacher's Employment Appellate Authority, Madhubani.
3. The District Education Officer, Madhubani.
4. The District Programme Officer (Establishment), Madhubani.
5. The Block Education Officer, Block Rajnagar, Madhubani.
6. The Panchayat Secretary, Gram Panchayat Raj Ranti, Rajnagar, Madhubani.
7. The Mukhia, Gram Panchayat Raj Ranti, Rajnagar, Madhubani.
8. Renuka Kumari wife of Pankaj Kumar Choudhary resident of village Chakdah, P.S. Rajnagar, District Madhubani.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 14112 of 2016

Renuka Kumari Wife of Pankaj Choudhary Resident of Village - Chakdah,
P.S. - Rajnagar, District - Madhubani.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Director, Primary Education, Government of Bihar, Patna
3. The District Magistrate, Madhubani.
4. The District Education Officer, Madhubani.
5. The District Programme Officer (Establishment), Madhubani.
6. Block Development Officer, Madhubani.
7. The Block Education Officer, Madhubani.
8. The Presiding Officer, District Teachers Employment Appellate Authority, Madhubani.
9. The Mukhiya, Ranti Gram Panchayat, Rajnagar, Madhubani.
10. The Panchayat Secretary, Ranti Gram Panchayat, Rajnagar, Madhubani,'
11. Sudha Kumari Wife of Laxminath Mishra Resident of Chakdah, P.S. - Rajnagar, District - Madhubani.

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 929 of 2016)

For the Petitioner/s : Mr. Rajeev Kumar Singh

For the Respondent/s : Mr. Gp19- Rajesh Kumar

(In Civil Writ Jurisdiction Case No. 12204 of 2017)

For the Petitioner/s : Mr. Anju Mishra

For the Respondent/s : Mr. Smt. Shilpa Singh -Ga12

(In Civil Writ Jurisdiction Case No. 14112 of 2016)

For the Petitioner/s : Mr. Satish Chandra Jha-3

For the Respondent/s : Mr. Jitendra Kr. Roy No. 1- Sc13

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY



ORAL ORDER

2 16-05-2018 Heard learned counsel for the petitioners and the counsel appearing on behalf of the State.

2. The present dispute is an offshoot of decision of this court in C.W.J.C. No. 14195 of 2012 dated 24.9.2013 the writ court while setting aside the order of the Tribunal remanded the matter back for reconsideration of the entire case of the petitioner vis-a-vis respondent no.11. The order passed in C.W.J.C. No. 14195 of 2012 dated 24.9.2013 reads as follows:-

“The Court would accordingly set aside the impugned order passed by the Tribunal and remit the matter back for reconsideration of the entire case of the petitioner vis-a -vis respondent no. 11 with specific reference to the entire selection procedure of Panchayat teacher in terms of Rule 9 of the Rules. The Tribunal will firstly look into as to whether a merit list prepared after publication of the draft merit list in as much as the register which has been produced before the Tribunal for effective reconsideration by the Tribunal, will go to show that at no point of time any draft merit list was prepared. In fact there is also no proof of even preparation of final merit list and its being published and therefore the Tribunal in all fairness will be required to go into the entire gamut of the process of selection and appointment of not only this petitioner but also all of others who were selected in the same selection process namely, Nitu Kumari, Manoj Kumar, Ramnaresh Singh, Kamalnath Paswan, Baby Kumari, Gopal Krishna, about whom there



is reference of selection and appointment in the proceeding dated 13.08.2010, 28.12.2010 and 29.12.2010.

The Tribunal will also examine the experience certificate of the petitioner by not only calling for the report from the District Mass Education Officer, Madhubani but would also look into the documents produced by the petitioner as referred in her experience certificate such as her selection appointment and training as an Instructor in Non-Formal Education coupled with the proof of her actual working as an Instructor in the light of payment of remuneration made to her. After these documents are filed by the petitioner they will be sent to the District Mass Education Officer, Madhubani for its verification and the final decision on the merit point awarding of 20 weightage marks for experience to the petitioner will be taken by the Tribunal after considering all these materials.

Finally the Tribunal will find out that if the appointment of the petitioner was vitiated on account of an invalid experience certificate which would took away 20 weightage marks and reduce her to 57.44% , it would not be required to go into the large exercise of examining the appointment of others but if it finds the experience certificate of the petitioner is valid it may go to the large issue by examining the entire selection procedure which may not only be confined to the case of the petitioner but all aforementioned persons who were appointed along with the petitioner and are still continuing on the basis of same selection process. If the Tribunal decided to take this recourse it would be necessary to issue notice to the aforementioned persons who are continuing on the basis of the same selection process as adopted



as in the case of the petitioner.

In the event, the Tribunal will find that the appointment of the petitioner is bad on account of award of 20 weightage points, to which she will not be entitled on account of the inadmissible experience certificate, the Tribunal will also look that as who is the best candidate for filling of these vacancies created on account of removal of respondent no. 11 and the petitioner. All this exercise will be completed by the Tribunal within a period of six months from the date of receipt of this order.

The Panchayat Secretary, Ganga Prasad who is present in the Court is hereby directed to produce all the records before the Tribunal which has been kept in a sealed cover with a period of one week and the Tribunal shall commence its exercise as directed above on receipt of the copy of this order.

The impugned order passed by the Tribunal accordingly is set aside but it is made clear that since the petitioner was allowed to continue by an interim order of staying the operation of the order of the Tribunal, even though the petitioner may continue in service her salary shall be withheld till the final decision is taken by the Tribunal as directed above.

With the aforesaid observations and direction this application is disposed of.”

3. The order dated 24.9.2013 is very specific that the matter is remanded to the Tribunal for decision only vis-à-vis petitioners Renuka Kumari and Sudha Kumari respondent no.11 in the said writ petition. After the remand the District Teachers Employment Appellate Authority has widen the scope of the enquiry on remand contrary to the restricted remand by the writ



court and enter into the validity of the appointment of all selectees which was never the intention of the writ court to the contrary in specific term when the writ court remanded the matter back qualified the examination of the issue by the Tribunal i.e. qua petitioner and respondent no.11 Renuka Kumri and Sudha Kumar yet the Tribunal which is a forum of limited jurisdiction has widen the jurisdiction as if it has plenary power. The issue of qualified remand for consideration by the Tribunal to examine the case of the petitioner vis-à-vis respondent no.11 is obvious for the reason that only petitioner and respondent no.11 were party in the said writ petition and this court has reason to believe that the court confined remand only to be examined by the Tribunal with respect to the interest of petitioner and respondent no.11 and not other selectees who were not party in that proceeding. The Tribunal which is forum limited jurisdiction cannot widen the horizon of enquiry on remand and the offending part of the consideration by the Tribunal is apparent from the fact that the Tribunal has while interfering selection of others have passed the following order:-

“It is the contravention of the statutory rules. So void ab-initio it is not necessary to issue show cause notice to each selectee. Only way out would be to cancel the whole selection.”

4. Mr. Rajendra Prasad Singh, learned Sr. counsel



appearing on behalf of the petitioners submitted that the Tribunal has no jurisdiction to entertain any objection firstly when there is no specific challenge. Secondly when law of limitation applies in the matter of challenge under the rules 30 days time limitation is prescribed for filing appeal. The petitioner Manoj Kumar and others were appointed in 2010 and for six long years there was no clamour as to the appointment of Manoj Kumar and others by any person and in 2016 the Tribunal passed order cancelling the appointment and as such the Tribunal has no jurisdiction to entertain time barred petition. Tribunal has no jurisdiction to pass order in collateral proceeding cancelling the appointment of the petitioner Manoj Kumar and others.

5. Under the aforesaid circumstances, Mr. Singh submits that the order so far as it affects the interest of Manoj Kumar and others by no stretch of imagination can sustain.

6. Learned counsel appearing on behalf of the petitioner in C.W.J.C. No. 12204 of 2017 has fairly conceded that she has not challenged the appointment of Manoj Kumar and others and in the writ petition there was dispute between the Renuka Kumari and Sudha Kumari and the same was the position even before the Tribunal. The dispute was between the Renuka



Kumari and Sudha Kumari and she has never questioned appointment of the Manoj Kumar and others. She has also conceded that the blanket order was passed by the Tribunal without opportunity of hearing cancelling the entire selection is unsustainable in law.

7. Learned counsel appearing on behalf of the State has supported the order of the Tribunal but has failed to substantiate how the Tribunal can pass order adversely affecting the person not party in the proceeding before the Tribunal.

8. It is elementary principle of law that no order visiting civil or evil consequences can be passed against the person who is not party before the Tribunal. Unfortunately, the Tribunal acted in breach of principle of natural justice and passed order cancelling the entire selection including the person who was neither party before the writ court nor before the Tribunal and even without giving any opportunity of hearing the order was passed against the interest of the selectees who were neither party in the writ court nor before the Tribunal and as such the order cancelling entire selection cannot sustain particularly in the light of the limited remand vide order passed in C.W.J.C. No. 14195 of 2013.

9. Considering the totality of facts situation, the



court finds substances in the submission of Mr. Singh firstly that they were neither party before the writ court nor before the Tribunal and as such without opportunity of hearing the order cancelling appointment of the petitioner in C.W.J.C. No. 929 of 2016 cannot sustain. The order cancelling appointment of the petitioner of C.W.J.C No. 929 of 2016 cannot sustain and accordingly the order contained in Annexure-6 dated 25.11.2016 is accordingly quashed in view of the fact that the court is of the view that the Tribunal action is totally uncalled for and without jurisdiction. The Tribunal has not decided the lis as per order of remand and as such the order cannot sustain.

10. In the aforesaid facts and circumstances, the court has no hesitation in holding that the order passed by the Tribunal affecting the selectees not party before Tribunal is totally without jurisdiction.

11. Mr. Satish Chandra Jha learned counsel for the petitioner in C.W.J.C. No. 14112 of 2016 would submit that on remand it transpire that Sudha Kumari has not appeared in counselling whereas Ms. Anju Mishra submitted that Renuka Kumari has used forged experience certificate is procuring selection.

12. In the totality of facts situation discussed



hereinabove and considering the order passed by the writ court in C.W.J.C. No. 14195 of 2012 the order of the Tribunal is quashed and the matter is remitted back for decision afresh after opportunity of hearing to the Sudha Kumari and Renuka Kumari. The Tribunal is required to consider the issue as to the claim of the petitioners Sudha Kumari and Renuka Kumari on verification of record and as to participation of the petitioner Sudha Kumari in the counseling and if it transpires from the record that Sudha Kumari has participated in the selection process, the Tribunal is required to adjudicate the issue as to the merit position of the petitioner Sudha Kumar. In the event if it is found that Sudha Kumari has not participated in the counseling the other enquiry is now academic and is not required to be taken into account. The Tribunal is required to examine the case of the petitioners Sudha Kumari and Renuka Kumari and liberty shall be available to the petitioner Sudha Kumari and Renuka Kumari to raise all objection including the issue of participation in the counseling in the matter of selection including the forged certificate experience certificate and participation in the counseling.

13. In view of the above, the C.W.J.C. No. 14112 of 2016 and C.W.J.C. No. 12204 of 2017 is disposed of and the



matter is remitted back to the Tribunal for decision afresh after opportunity of hearing to the petitioner Sudha Kumari and Renuka Kumari.

14. With the aforesaid, CWJC No. 929 of 2016 is allowed and C.W.J.C. 14112 of 2016 and CWJC No. 12204 of 2017 the writ petition stands disposed of.

(Anil Kumar Upadhyay, J)

Ravi/-

U			
---	--	--	--

