

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.6565 of 2019**

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Md. Shamshad Alam Son of Late Saidur Rahman, resident of Village and P.O. Kakan, P.S. Jokihat, District- Araria.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Govt. of Bihar, Patna.
2. The Director, Primary Education, Education Department, Govt. of Bihar, Patna.
3. The District Education Officer, Araria, District- Araria.
4. The District Programme Officer (Establishment), Araria, District- Araria.
5. The Block Development Officer, Joikihat, District- Araria.
6. The Block Education Officer, Araria, District- Araria.
7. The Mukhiya, Gram Panchayat Raj, Kakan, Block and P.S. Jokihat, District- Araria.
8. The Panchayat Secretary, Gram Panchayat Raj, Kakan, Block and P.S. Jokihat, District Araria.
9. The District Teacher Employment Appellate Authority, Araria, through its Member, District- Araria.
10. Md. Shoaib Alam, Son of Md. Kabiruddin, resident of Village Baghmara, P.O. Jokihat, P.S. Jokihat, District Araria.

... .. Respondent/s

with

**Civil Writ Jurisdiction Case No. 7532 of 2019**

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Md. Nasiruddin Son of Late Mahifuzur Rahman Resident of Village and P.O.- Kakan, P.S. Jokihat, District Araria.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Govt. of Bihar, Patna.
2. The Director, Primary Education, Education Department, Govt. of Bihar, Patna.
3. The District Education Officer, Araria, District Araria.
4. The District Programme Officer (Establishment), Araria, District Araria.
5. The Block Development Officer, Jokihat, District Araria.
6. The Block Education Officer, Araria, District Araria.
7. The Mukhiya, Gram Panchayat Raj, Kakan, Block and P.S. Jokihat, District Araria.



8. The Panchayat Secretary, Gram Panchayat Raj, Kakan, Block and P.S. Jokihat, District Araria.
9. The District Teacher Employment Appellate Authority, Araria, through its Member, District Araria.
10. Md. Shahnawaz Alam Son of Md. Saliluddin Resident of Village-Balua, P.O. Kakan, P.S. Jokihat, District Araria.

... .. Respondent/s

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**Appearance :**

(In Civil Writ Jurisdiction Case No. 6565 of 2019)

For the Petitioner/s : Mr. Bipin Bihari Singh, Advocate  
Mr. Uday Shankar Pandey, Advocate  
Mr. Akhilesh Kumar Singh, Advocate  
Mr. Shambhu Sharan Kumar, Advocate  
For the Respondent/s : Mr. Prabhakar Jha (Gp27)  
Mr. S.B.K. Mangalam, Advocate  
Ms. Silpa Keshri, Advocate

(In Civil Writ Jurisdiction Case No. 7532 of 2019)

For the Petitioner/s : Mr. Bipin Bihari Singh, Advocate  
Mr. Uday Shankar Pandey, Advocate  
Mr. Akhilesh Kumar Singh, Advocate  
Mr. Shambhu Sharan Kumar, Advocate  
For the Respondent/s : Mr. Madanjeet Kumar (Gp20)  
Mr. S.B.K. Mangalam, Advocate  
Ms. Silpa Keshri, Advocate

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**CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR**  
**ORAL JUDGMENT**

**Date : 23-11-2021**

Heard Mr. Bipin Bihari Singh, learned Advocate for the petitioners and Mr. S.B.K. Mangalam for the respondent nos. 10 in both the writ petitions. The State is represented by Mr. Prabhakar Jha, learned GP-27 and Mr. Madanjeet Kumar, GP-20 respectively.

In the camp interview which was held on 18.11.2016 in Kakan Panchayat, Jokihat Block in the district of Araria, respondent nos. 10 in both the writ petitions viz. Md. Shoaib Alam and Md. Shahnawaj Alam respectively were appointed as Teachers in Urdu subject. Their appointments were challenged by the writ petitioners



before the District Teachers Appellate Authority, Araria *vide* Cases No. 5/16 and 13/16 respectively.

It is the case of the writ petitioners that despite their having more marks than respondent nos. 10 in both the writ petitions, they were not appointed because they were never called for counselling even though they were present.

They made a complaint regarding the same but nothing was done in that regard. Per force, they had to prefer an appeal before the District Teachers Appellate Authority, Araria challenging the appointment of respondent nos. 10 in both the writ petitions.

The District Teachers Appellate Authority, Araria by order dated 27.02.2018, found the selection process to be highly irregular and consequently found the appointment of respondent nos. 10 *viz.* Md. Shoaib Alam and Md. Shahnawaj Alam to be bad in the eyes of law. Hence, their appointment/selection was set aside and the writ petitioners were appointed as Teachers in their places.

This decision of the District Teachers Appellate Authority was challenged by the respondents before the State Appellate Authority, where the finding of the District Teachers Appellate Authority was reversed and it was found that the respondents herein had a rightful claim to such posts.



The learned counsel for the petitioners has drawn the attention of this Court to an earlier order passed by the predecessor Bench on 05.04.2021 which records as follows:

*"In pursuance to the order dated 15.03.2021, the Block Development Officer, Jokihat, Araria and the Panchayat Secretary, Jokihat Block are present.*

*The Block Development Officer concedes that the register produced in this proceeding does not inspire any confidence as it is not dully paginated and maintained.*

*The register submitted by the respondents is kept on record.*

*The Block Development Officer, Jokihat, Araria is directed to make a detailed enquiry into the matter and adopt all corrective measures. The Panchayat Secretary is directed to extend full cooperation in the enquiry to be conducted by the Block Development Officer, Jokihat.*

*The personal appearance of the Block Development Officer, Jokihat, Araria is dispensed with.*



*The Panchayat Secretary shall ensure his physical presence before this Court on 3<sup>rd</sup> of May, 2021.*

*Put up this case on 3<sup>rd</sup> of May, 2021.*

*Until further order, the order passed by the State Appellate Authority shall be kept in abeyance."*

With the aforesaid order of stay over the implementation of the order passed by the State Appellate Authority, the petitioners are continuing on such posts. It is the case of the writ petitioners that they have more marks than the respondents and that deliberately their names were not called out in the selection process.

As opposed to the aforesaid contention, Mr. Mangalam, learned Advocate appearing for the respondents has submitted that the Appellate Authority took note of the fact that the writ petitioners had more marks but by referring to the procedure adopted in camp interviews, found that the writ petitioners were not present when their names were called out.

The State Appellate Authority has found, on the contrary, that the respondents had appeared in the camp interview and had submitted their original certificates and therefore, they were selected and employed. The Block Development Officer and the Block Education Officer, Jokihat had reported, on the conclusion of the camp on



18.11.2016 to the District Education Officer, Araria that all the instructions in respect of the selection process at the camp site was followed.

It has also been urged by the learned Advocate for the respondents that the closing of the counselling register was signed by the Block Development Officer and Block Education Officer, Jokihat and Mukhiya and Panchayat Secretary also. There was an independent observer who was deputed to oversee the entire process.

It has also been contended that the Block Education Officer, Araria conducted an inquiry and submitted a report to the District Education Officer. In all such reports, no finger was ever raised with respect to the process adopted in the camp being arbitrary. The State Appellate Authority, therefore, found that the District Teachers Appellate Authority went by the optics and took a decision which has resulted in the ouster of the respondents and induction of the writ petitioners on the post of Teachers.

This Court, as noted above, had directed the Block Development Officer, Jokihat to make a detailed inquiry in the matter, as the register of the process was not found to have been maintained properly. The pages of the register were not paginated. The register was thus kept on record. This Court had also directed the Panchayat



Secretary to extend full cooperation to the Block Development Officer in the inquiry.

The inquiry report dated 30.06.2021 has been submitted before this Court.

After noting the details of the process adopted for selection at the camp site and the requirement of calling ten candidates per post, the report indicates that on 18.11.2016 the time of counselling was fixed from 10:30 A.M. to 04:30 P.M.

In the counselling register, the name of the writ petitioners was not entered and therefore, no counselling was given to them. Because of this, the report indicates that there was a pandemonium in the High School premises where the camp was organized because the writ petitioners had more marks than four of the persons who were selected in the first round.

They had made a complaint to the Block Development Officer, Jokihat who had directed for an inquiry in the matter by Block Panchayat Raj Officer, Jokihat. The writ petitioners had also filed an application before the SDO, Araria who, on taking cognizance of the entire dispute had stayed the process of selection temporarily. Despite that stay, the process was continued and culminated.

In the EBC category, only four persons were shown to have presented themselves which included two of



the writ petitioners herein and two others viz. Mahenoor Begum and Sadaf Darkhashan.

With respect to respondent nos. 10 in both the writ petitions, the report indicates that Md. Shahnawaj Alam is the son of a Ward Member-cum-Teachers-Employment Committee and his marks obtained in TET certificate also is under dispute. The other respondent viz. Md. Shoaib Alam is the brother-in-law of the Chairman of the Employment Committee. The two other respondents are also related to the local Mukhiya and the Teacher on deputation for overseeing the process of selection. The report therefore concludes by observing that this fact itself makes the entire process suspicious.

Apart from this, the documents viz. the objection petition, the order passed by the Block Development Officer directing the Block Education Officer to conduct an inquiry and the order of stay over the process of selection by the SDO, Araria was also taken into account for coming to the aforesaid conclusion.

Thus, for all practical purposes, the report supports the claim of the writ petitioners that they have rightly been appointed as Teachers under the direction of the District Teachers Appellate Authority, Araria.

Mr. Mangalm, learned Advocate for the respondents has argued that the entire process of camp interview was based on the principle first come - first



served. He has submitted that there is no relevance of higher or lower marks of the aspirants so far as the camp interview was concerned.

He has further argued that there is no evidence whatsoever on record to demonstrate that the writ petitioners were present when their names were called out. The report about which reference has been made above also is not worth accepting as it does not disclose the source of information to the maker of the report. The earlier report before the authority concerned was filed by another BDO. This report, it has been argued, is of 30.06.2021, when the aforesaid officer was already on transfer. He has, therefore, raised serious doubts about the correctness of this report and has alleged that this report is anti-dated.

The aforesaid allegation has not been substantiated. Even if it is found that the concerned Block Development Officer was on transfer, he was under a bounden duty under the orders of this Court to prepare a report and submit it to the Court.

True it is that since he was not present at the time of camp interview, he ought to have disclosed the source of information on which he has based his opinion but merely because the source is not indicated, the report cannot be thrown off-board.



What is rather surprising is that in the OBC category, only four persons were shown to have been present and all four of them including the respondents were directly related to persons holding responsible position, so far as the selection process was concerned.

Though the process cannot be adversely commented upon only for optical reasons but in the present case there is no doubt that the process was not conducted properly. There could have been no reason for the writ petitioners having higher marks and they being aspirants for the post, not to remain present on the date of interview.

The respondents have not demonstrated any evidence which could prove the contrary.

For the reasons aforesaid, the order passed by the State Appellate Authority does not appear to be sustainable in the eyes of law and the same is set aside. The order by the District Teachers Appellate Authority, Araria is hereby upheld.

Both the writ petitions succeed.

No order as to costs.

**(Ashutosh Kumar, J)**

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