

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8123 of 2020

1. Md. Quamer Alam, Son of Md. Salimuddin Resident of Village Manikpur, Post Office Araria Basti, Police Station Bairgachi, District- Araria.
2. Md. Tarique Jawed, Son of Md. Shamsuzzaman Resident of Village Satbita, Post Office Araria Bairgachi, Police Station Bairgachi, District- Araria.
3. Shawal Ahmad alias Shawwal Ahmad, Son of Riyazuddin Resident of Village Belwa Ghat Tola, Post Office Gaiyari, Police Station Araria, District- Araria.
4. Md. Azad Hussain, Son of Md. Fakhruddin Resident of Village Manikpur Tola, Post Office Araria Basti, Police Station Bairgachi, District- Araria.
5. Md. Ghufraan Alam, Son of Md. Salimuddin Resident of Village Belwa, Post Office Gaiyari, Police Station Araria, District- Araria.
6. Md. Afroz Alam, Son of Md. Muslim Resident of Village Manikpur, Post Office Araria Basti, Police Station Bairgachi, District- Araria.
7. Md. Maqutur Alam, Son of Md. Quasim Reza Resident of Jagindra, Post Office Ghairki, Police Station Mahalgaon, District- Araria.
8. Md. Umar Shakir, Son of Md. Salimuddin Resident of Belwa, Post Office Ghairyari, Police Station Araria, District- Araria.
9. Md. Rehan Alam, Son of Md. Salimuddin Resident of Belwa, Post Office Ghairyari, Police Station Araria, District- Araria.
10. Gulshan Ara, Daughter of Md. Ashraf Ali Resident of Village Belwa, Post Office Ghairyari, Police Station Araria, District- Araria.
11. Bibi Mariam, Daughter of Haji Maqbool Resident of Village Belwa, Post Office Ghairyari, Police Station Araria, District- Araria.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Government of Bihar, Patna.
2. The Director Primary Education, Government of Bihar, Patna.
3. The District Education Officer, Araria.
4. The District Programme Officer (Establishment), Araria.
5. The Block Development Officer Member Secretary Block Teachers Employment Committee, Araria, District- Araria.
6. The Block Education Officer, Araria Sadar, District- Araria.
7. The Block Education Extension Officer, Block Araria, District- Araria.
8. The Pramukh Araria, District- Araria.
9. The Up- Pramukh Araria, District- Araria.
10. The Member of Shiksha Committee Block Teacher Employment Committee, Araria.



... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Syed Firoz Raza, Advocate
For the Respondent/s : Mr.Madanjeet Kumar, GP-20
Mr. Mrigendra Kumar, AC to GP-20

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 05-07-2021

Heard learned counsel for the parties online because of COVID-19 pandemic restrictions.

2. Following is the relief which the petitioners have sought for in the present writ application filed under Article 226 of the Constitution of India:-

“1. That this writ application is being filed for quashing order issued vide Memo No. 483 dated 06.06.2020 duly signed by Block Development Officer-cum-Member Secretary Block Teacher Employment Committee, Araria and Letter No. 705 dated 02.06.2020 issued by the District Education Officer, Araria whereupon the Memo No. 483 dated 06.06.2020 was issued whereby the appointment of the petitioners has been cancelled despite the order dated 15.07.2019 passed by the District Teachers employment Appellate Tribunal, Araria on the basis of the direction passed by the Hon’ble High Court in C.W.J.C. No. 975 of 2016 which



had directed for disposal of pending application of the petitioners before the said Appellate Tribunal.”

3. Facts of the case are not at all in dispute. Pursuant to an advertisement published in the year 2008 for filling up the vacancies on the post of Block Teacher, Araria the petitioners had applied. A merit-list was prepared on 30.12.2008 in which the names of these petitioners figured as successful candidates. As the matter of appointment of these petitioners was getting delayed and other similarly situated persons were given appointment, the petitioners approached the District Appellate Authority, Araria in 2011. As the matter was not being adjudicated upon by the Appellate Authority, some of the persons approached this Court by filing writ application giving rise to CWJC No. 945 of 2016, which was disposed of by an order dated 26.09.2018 with a direction to the Appellate Authority to dispose of the appeals relating to non-appointment of the candidates despite they having been declared successful.

4. The petitioners have relied on a communication dated 09.04.2011 made by the Block Education Officer, Araria, addressed to the District Superintendent of Education, Araria mentioning therein that first phase of counselling for appointment was completed and engagement/ employment for the second



phase of selection was in abeyance. The matter relating to 32 successful candidates was pending before the Appellate Authority/ Court and the Block Education Extension Officer was in receipt of an order issued by the Department to keep the posts vacant in respect of which the matters were pending for adjudication. He accordingly requested the District Superintendent of Education, Araria to keep 22 posts of Urdu Teachers and 10 posts of General Teachers (total 32), whose matters were pending before the Appellate Authority, so that any order passed by the authority or the Court may be complied with.

5. It is the specific case of the petitioners that though they had approached the Appellate Authority in 2011 itself, all the cases were numbered as 47 of 2018 subsequent to order of this Court dated 26.09.2018, passed in CWJC No. 945 of 2016, by clubbing all such grievances relating to refusal on the part of the respondents to issue appointment letters, despite the petitioners having been declared successful.

6. In the proceeding before the Appellate Authority the concerned Appointment Committee was noticed who filed its response. From the order of the Presiding Officer, District Appellate Authority, Araria dated 05.07.2019, it appears that a plea was taken on behalf of the concerned Appointment



Committee that the appellants before the Appellate Authority were selected for appointment against the posts in question and they were required to be issued appointment letters accordingly by 28.12.2010 in view of departmental orders. But before the appointment letters could be issued in favour of the appellants before the authority and other selected candidates, the Education Department issued a guideline that appointment letter should be issued in favour of only such selected candidates in respect of whom the Appointment Committee had received verification report apropos their certificates, from the concerned Board/ University and other institutions. Since in respect of the appellants before the authority, the verification report from the Board/ University could not be received before the date i.e. 28.12.2010, by which the appointment letters were required to be issued, no appointment letters could be issued in favour of the appellants after the said cut-off-date. Member Secretary of the Appointment Committee-cum-Block Development Officer, Araria in his reply before the Appellate Authority accepted that complaining non-issuance of the appointment letter on the date fixed, the appellants, in addition to preferring an appeal before the Appellate Authority, had represented before the Appointment Committee that till disposal of their appeals, the vacancies,



against which they were selected, should not be filled up.

7. On examining the claim of the appellants and the stand of the Appointment Committee, the Appellate Authority recorded following findings in its order dated 15.07.2019 :-

“(i) The appellants were selected for appointment after following due selection procedure.

(ii) They had filed appeals before the Appellate Authority within time complaining non-issuance of appointment letters.

(iii) The appellants had requested the Appointment Committee not to fill up the posts against which they were selected.

(iv) In past, the selected candidates were issued appointment letters without verification of certificates after obtaining an affidavit regarding genuineness of such certificate.

(v) The appellants could not be blamed for non-verification of their certificates by the Department within stipulated time.”

8. Taking the aforesaid facts, *inter alia*, into account the Appellate Authority directed the Block Teachers Appointment Committee, Araria (hereinafter referred to as “the Appointment Committee”) to issue appointment letters in favour of the appellants. The Appellate Authority further clarified that the



appellants shall be entitled for payment of salary after verification of certificates, if the same had not been verified so far.

9. The petitioners have brought on record the response filed by the Appointment Committee to contend that after filling up the vacancies in first phase, about 89 vacancies had remained unfilled. They have also brought on record a letter dated 27.10.2018, written by the Block Development Officer to the Director, Primary Education, Bihar mentioning therein that the Appointment Committee in its meeting held on 22.09.2018 had taken a decision that awaiting decision of the Appellate Authority, the vacancies in dispute shall not be filled up.

10. In compliance of the order of the Appellate Authority the District Education Officer, Araria issued a letter on 03.01.2020 asking the Block Development Officer-cum-Member Secretary of the Appointment Committee to ensure compliance of the said order. Accordingly appointment letters were issued to the petitioners on 09.01.2020 by the Block Education Officer, Araria, which have been brought on record by way of Annexure-9 series to this application.

11. Five months thereafter, on 06.06.2020, a notice was placed on the official website bearing signature of the Block



Development Officer-cum Member Secretary of the Appointment Committee with reference to a letter dated 02.06.2020, issued by the District Education Officer, Araria to the effect that the vacancies of 2008 were no more available and, therefore, the appointments of the petitioners were not valid. It is the petitioners' case that pursuant to the appointment letters issued on 09.01.2020, they had joined their respective posts and the impugned notice has been issued without giving the petitioners any opportunity of hearing.

12. Mr. Syed Firoz Raza, learned counsel appearing on behalf of the petitioners has argued that the petitioners were admittedly declared successful for their appointment as Block Teachers in the year 2008. It is not the case of the respondents that the certificates, which were submitted by the petitioners, were not genuine. The petitioners had no role to play in getting the certificates verified from the concerned Board/ University/ Institution, in the scheme of the process of selection for appointment. He contends that for the delay on the part of the Board/ University or for that matter the respondents in obtaining a verification report from the Boards/ Universities regarding genuineness of the certificates of these petitioners within a time frame, the petitioners cannot be blamed. He has contended that



the persons, in respect of whom the respondents received the verification report, have been appointed and the petitioners have been denied such benefit on flimsy ground in violation of Articles 14 and 16 of the Constitution of India.

13. A counter affidavit has been filed on behalf of the State of Bihar sworn by the District Project Officer (Establishment), Araria wherein it has been admitted that the petitioners were successful in the process of selection and their documents were sent to the concerned Board for verification but neither the same was verified within the time nor the selection unit had made any request to keep the vacancies reserved. The selection of third phase started after modifying selection process in the year 2012 and vacancies of 2008 merged with 2012 vacancies and, therefore, no vacancy of 2008 was left to be filled up. It has been stated that the decision of the Appointment Committee to keep the posts vacant, which were subject-matter before the Appellate Authority, was never communicated to the higher authority. It is the case of the respondents that the Block Development Officer issued the appointment letters in favour of the petitioners against the posts which were not vacant.

14. In paragraph 9 of the counter affidavit following statement has been made :-



“That in reply to statement made in Para-11 it is stated that in normal circumstances there is no need to obtain permission in complying the order of Hon’ble High Court or of any Tribunals. But in special circumstances permission is necessary.”

15. It can be easily inferred from the aforesaid facts that selection of the petitioners for the posts in question is not being disputed. No laches on the part of the petitioners has been alleged which could have been a reason to deny their claim to be treated equally in the matter of their engagement/ appointment. They did not have any role to play in verification of the testimonials/ certificates which they had submitted in support of their qualification etc. Denial of appointment on the ground that the certificates could not be got verified within a time frame fixed by the respondents, in the Court’s opinion, is wholly arbitrary and violative of Articles 14 and 16 of the Constitution of India. The respondents had a duty either to ensure that such verification reports were obtained within the time frame prescribed from the Universities/ Boards/ Institutions or to adopt such other reasonable procedure in conformity with Articles 14 and 16 of the Constitution of India. The respondents, in Court’s opinion, miserably failed to discharge their obligation of being fair in their



action. It is well-settled principle that a party cannot take advantage of its own fault. In the Court's opinion, the petitioners have rather been harassed by respondents in making them fight for their cause for years together and despite specific direction issued by a statutory body for appointment on the basis of materials available before such Appellate Authority, they have come out with the impugned notice, without questioning the correctness of the order of the Appellate Authority.

16. For the reasons noted above, this application deserves to be allowed and is accordingly allowed. The impugned notice dated 06.06.2020 is set aside. The petitioners shall accordingly be treated to have been validly appointed against the posts which are vacant as on date and they shall also be entitled to receive emoluments which must be paid to them without any further loss of time.

17. It will be open, however, for the respondents to verify the genuineness of the documents/ testimonials/ certificates submitted by the petitioners for their appointment. The respondents shall be at liberty to take appropriate action in accordance with law if any adverse verification report is received in respect of their documents from the concerned Board/ University/ Institution.



18. For the harassment meted out to the petitioners, which can be easily inferred from the facts noted above, in my opinion, a case for imposition of cost is made out, which is assessed at Rs. 10,000/- for each of the petitioners. The said cost must be paid to the petitioners within two months from today by Respondent No. 4.

(Chakradhari Sharan Singh, J)

Rajesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	26.07.2021
Transmission Date	NA

