

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6840 of 2022

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Md. Yasin Ansari Son of Abdul Karim Ansari, Resident of Village- Jokar, Post
- Dhenabaghchalla, P.S. - Azamnagar, District- Katihar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Bihar, Patna.
2. The Principal Secretary, Education Department, Government of Bihar, Patna.
3. The Director (Primary Education) Education Department, Government of Bihar, Patna.
4. The District Magistrate, Katihar.
5. The District Education Officer, Katihar.
6. The District Programme Officer, Katihar.
7. The Block Development Officer, Azamnagar, District- Katihar.
8. The Block Education Extension Officer, Azamnagar, District- Katihar.
9. The Mukhia, Gram Panchayat Raj Mukuria, Block - Azamnagar, District- Katihar.
10. The Panchayat Secretary, Gram Panchayat Raj Mukuria, Block - Azamnagar, District- Katihar.
11. The Principal, Primary School Madanpur, Dariyapur, Block - Azamnagar, District - Katihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Md. Imtiyaz Hussain, Adv.
For the Respondent/s	:	Mr.Umesh Narayan Dubey, AC to GP XXVII

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CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH SHARMA

ORAL ORDER

2 21-07-2022 Heard the parties.

The petitioner by way of this writ petition assails the order passed by the State Appellate Authority, dated 14.01.2022 whereby the petitioner's appeal along with appeals filed by Rajiv Kumar @ Rajeev Kumar, Amna Khatoon and Laxmi

Kumari @ Lakshmi Kumari. This Court in the writ petition filed by Rajiv Kumar challenging the said order, dated 14.01.2020, vide its judgment, dated 6th July, 2022, passed in C.W.J.C. No. 5317 of 2022 held as under :

“From perusal of the aforesaid, it is thus apparent that the State Appellate Authority has minutely examined the dispute at its own level. No jurisdictional error can be said to have been committed by the State Appellate Authority. The scope of interference under Article 227 with the orders passed by the State Appellate Authority is limited to the jurisdictional error or perversity committed in the order. This Court would not substitute its findings arrived at by the State Appellate Authority on facts.

No illegality thus is committed. Interference is therefore not warranted.

The writ petition is accordingly dismissed.”

Learned counsel submits that the case of the petitioner is different from that of Rajiv Kumar and he had appeared in the counselling earlier held on 28.02.2009. The same argument was taken by the petitioner before the State Appellate Authority as noticed in paragraphs 7 and 8 of the said order order this Court notices that the aspect has been dealt with at length by the State Appellate Authority in paragraph 11 as under :

“11 : The appellant Md. Yasin Ansari has further stated that he was not a party in appeal case no. 50 of 2013 but his salary was stopped since July, 2015

and for that reason he approached District Appellate Tribunal for payment of salary and his case was registered as appeal no. 7 of 2016. After filing this appeal appellant Ansari came to know that his appointment had been cancelled vide letter no. 02 dated 06.02.2016 and he challenged cancellation of his appointment in appeal case no. 15 of 2016 in District Appellate Authority. The appellant Md. Ansari has further stated that case no. 7/2016 both of which had been filed by the appellant Md. Yasin Ansari was held along with revived appeal case no. 50 of 2013 which had been given a new no. 29 of 2017. Vide a common order passed on 28.11.2020 these appeals were dismissed holding that appointment of appellant Md. Yasin Ansari and others was illegal. A photo copy of this order which is impugned order of this case has been filed. A perusal of this order shows that the ground on which appointment of four appellants was held to be illegal as in case no. 50 of 2013. The learned Authority held that the counselling which was held on 12.08.2010 was illegal because it was not held on a date fixed by the Govt. Mr. Rajiv Kumar and Md. Yasin Ansari were the appellants of these cases and Mr. Rajiv Kumar had impleaded Amna Khatoon and Laxmin Kumari as respondents in his case no. 50 of 2013 @ 29 of 2017. Thus apart from the appointment of two appellants Md. Yasin Ansari and Rajiv Kumar appointment of other two appellants Amna Khatoon and Laxmi Kumari was also presented for examination of legality by making them respondents.”

The counselling held on 28th February, 2009 was cancelled as is apparent in the counter affidavit filed by the concerned Panchayat Secretary. There were two merit lists prepared, first is dated 28.02.2009 whereas the second merit list, dated 12.08.2010. These aspects have already been dealt with by this Court in the order passed in the case of Rajiv Kumar (supra).

Keeping in view that the State Appellate Authority has examined the case of the petitioner, Md. Yasin Ansari, that a finding of fact arrived at as regards him.

I do not find any reason to interfere with the said findings of fact while exercising my jurisdiction under Article 226 of the Constitution of India as the findings can not be said to be in any manner perverse or arbitrary.

Admittedly, the petitioner did not participate in the second counselling conducted which was to be conducted on 13.08.2010 and 14.08.2010 held it is not explained as to why the counselling was conducted on 12.08.2010. It was not publicized while, admittedly, the petitioner appeared on 28.02.2009, in the counselling he was under list no. 1 in the merit list as held by the State Appellate Authority as under :

“.....Only one of the appellants, viz. Md. Yasin Ansari appeared on 28.02.2009 but Authority finds that in his category his position was third among the present

candidates and there was only one vacancy available in that category. Therefore, he also cannot be held to be entitled for appointment on the basis of was ouot the scope of consideration for District Authority. The Authority notices that her appointment had been cancelled by Panchayat Secretary after which she went to Hon'ble High Court. High Court remanded case back to the District Authority placing case of appointment of appellant before it for consideration. Thus Authority concludes that the contention that termination of service of the appellant was not an issue before District Appellate Authority cannot be accepted.....”

In view thereof, no interference is warranted. The writ petition of the petitioner is dismissed.

(Sanjeev Prakash Sharma, J)

Shamshad/-
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