

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19754 of 2021

1. Upendra Kumar Son of Mithilesh Paswan Resident of Village - Diyawa, Police Station - Karai Parsurai, District- Nalanda, at present posted as Block Teacher at Middle School, Belchchi Sharif, Bihar Sharif, Nalanda.
2. Mamta Kumari Wife of Shishupal Kumar Resident of Village - Paparnausa, Police Station - Noorsarai, District - Nalanda, at present posted as Block Teacher at Middle School, Jararpur, Bihar Sharif, Nalanda.
3. Rina Kumari Daughter of Dhananjay Kumar Resident of Village - patel nagar, District- Nalanda, at present posted as Block Teacher at Upgraded Middle School, Lalbagh, Bihar Sharif, Nalanda.
4. Shrawan Kumar Son of Jagdish Paswan Resident of Village - Maghopur, Police Station- Chandi, District- Nalanda, at present posted as Block Teacher at Upgraded Middle School, Palatpura, Bihar Sharif, Nalanda.
5. Sulekha Kumari Wife of Sunil Kumar Resident of Village - Shivnar, Ward No. 12, Police Station - Sheonar, District- Nalanda, at present posted as Block Teacher at Upgraded Middle School, Deodha, Bihar Sharif, Nalanda.
6. Jay Prakash Paswan Son of Musafir Paswan Resident of Village - Hussainpur, Police Station - Rahui, District- Nalanda, at present posted as Block Teacher at Middle School, Belchchi Sharif, Bihar Sharif, Nalanda.
7. Swarnalata Kumari Daughter of Sri Nandan Prasad Resident of Village - Rasalpur, Police Station - Bind, District- Nalanda, at present posted as Block Teacher at Upgraded Middle School, Tungi, Bihar Sharif, Nalanda.
8. Ramesh Kumar Son of Gileshwar Paswan Resident of Village - Devisarai, Police Station - Deepnagar, District- Nalanda at present posted as Block Teacher at Upgraded Middle School, Gulni, Bihar Sharif, Nalanda.
9. Mamta Kumari Daughter of Ram Nandan Paswan Resident of Village - Barara, Police Station - Noorsarai, District- Nalanda, at present posted as Block Teacher at Middle School, Magaha, Bihar Sharif, Nalanda.
10. Sanjiv Kumar Nirala Son of Bijay Gope Resident of Village - Baswan Bigha, Police Station - Biharsarif, District- Nalanda, at present posted as Block Teacher at Middle School, Tungi, Bihar Sharif, Nalanda.
11. Anil Kumar Son of Naresh Choudhary Resident of Village - Niyamatpur, Police Station - Harnauta, District- Nalanda, at present posted as Block Teacher at Upgraded Middle School, Palatpura, Bihar Sharif, Nalanda.
12. Shankar Paswan Son of Tetar Paswan Resident of Village - Kachhariya, Police Station - Chandi, District- Nalanda, at present posted as Block Teacher at Upgraded Middle School, Ramjichak, Bihar Sharif, Nalanda.
13. Sujit Kumar Son of Jagdish Paswan Resident of Village - Bikna, Police Station - Rahui, District- Nalanda, at present posted as Block Teacher at Middle School, Hargawan, Bihar Sharif, Nalanda.
14. Ajay Kumar Son of Rajendra Prasad Singh Resident of Village - Tetawan, Police Station - Manpur, District- Nalanda, at present posted as Block Teacher at Upgraded Middle School, Alaudiya Sarai, Bihar Sharif, Nalanda.
15. Pushpa Kumari Wife of Sanjay Kumar Vidyarthi Resident of Ranchi Road,



Kaghzi Mahalla, Police Station - Sohsarai, District- Nalanda, at present posted as Block Teacher at Middle School, Mahanandpur, Bihar Sharif, Nalanda.

16. Mukesh Kumar Son of Nawal Kishore Prasad Resident of Village - Katari, Police Station - Harvilapur, District- Nalanda, at present posted as Block Teacher at Upgraded Middle School, Dariyapur, Bihar Sharif, Nalanda.
17. Sanjay Paswan Son of Bansri Paswan Resident of Village - Gulni, Police Station - Hilsa, District- Nalanda, at present posted as Block Teacher at Upgraded Middle School, Dariyapur, Bihar Sharif, Nalanda.
18. Shanti Bhushan Kumar Son of Sujendra Thakur Resident of Village - Chanduara, Police Station - Punpun, District- Nalanda, at present posted as block Teacher at Upgraded Middle School, Majidpur, Bihar Sharif, Nalanda.
19. Nishant Kumar Son of Sharwan Kumar Resident of Village - Jaranpur, Police Station - Deep Nagar, District - Nalanda, at present posted as Block Teacher at Upgraded Middle School, Nawinagar Tungi, Bihar Sharif, Nalanda.
20. Ranjana Sinha Wife of Kamlesh Prasad Resident of Village and P.S. Maghra, District- Nalanda, at present posted as Block Teacher at Upgraded Middle School, Dumrawan, Bihar Sharif, Nalanda.
21. Brajesh Kumar Son of Rainandan Prasad Resident of Village - Gabspur, Post Office - Bauri Sarai, Islampur Police Station - Devisarai, District- Nalanda, at present posted as Block Teacher at Middle School, Tetrawan, Bihar Sharif, Nalanda.
22. Anamika Kumari Wife of Tinku Kumar Chandrawanshi Resident of Village - Alamganj Pulpar Sihuli, Post Office- Chandaura, Police Station - Laheri Thana, District- Nalanda, at present posted as Block Teacher at Middle School, Singthu, Bihar Sharif, Nalanda.
23. Amit Kumar Bharti Son of Sambhu Prasad Resident of Village - Mehtrava, Police Station - Tharthari, District- Nalanda, at present posted as Block Teacher at Middle School, Singthu, Bihar Sharif, Nalanda.
24. Misha Kumari Daughter of Mangal Paswan Resident of Village - Nikat Kanya Madhya Vidhayal Sangat Tola, Police Station - Biharsharif, District- Nalanda, at present posted as Block Teacher at Upgraded Middle School, Dumrawan, Bihar Sharif, Nalanda.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Government of Bihar, Patna.
2. The Principal Secretary, Education Department, Government of Bihar, Patna.
3. The State Appellate Authority, through its Chairman, Education Department, Bihar, Patna.
4. The District Magistrate, Nalanda.
5. The District Education Officer, Nalanda.
6. The District Programme Officer (Establishment) Nalanda.



7. The Block Development Officer, Biharsharif.
8. The Block Education Officer, Biharsharif.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Jay Prakash Sharma, Adv.
For the State : Mr. Mrigendra Kumar (AC to GP20)

**CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH
SHARMA**

ORAL ORDER

4 19-09-2022 1. Matter comes upon an application on mentioning by the petitioner for passing orders on IA to restrain the respondent from passing any coercive orders to remove the petitioners.

2. Learned counsel for the petitioner has advanced arguments on merits also learned counsel appearing for the State was heard and considering the short controversy the case was heard finally on merits.

3. This is a writ petition preferred by the petitioner assailing the order dated 18.10.2021 passed by the State Appellate Authority whereby the order passed by the District Appellate Authority dated 2nd February 2016 was interpreted to mean that the appointments were not to be given to the appellants before the District Appellate Authority. The State Appellate Authority therefore directed to cancel all the appointments made in pursuance of the



directions of the District Appellate Authority and further held that all the post would stand merged with the third phase selection of the employment unit of Nalanda Bihar Sharif.

4. Learned counsel appearing for the petitioner submits that the petitioner was placed in the merit list and counselling was done on the dates fixed by the State. However on the third day of the counselling the concerned District Programme Officer Chairman of the committee employment unit failed to participate and thereafter proceeded to make backdoor entries of persons on the post of Block Teachers without following the merit list. The petitioners therefore preferred an appeal before the District Appellate Authority. After having heard the petitioner and the Block Education Officer the District Appellate Authority examined the case on merits and found that there were 67 posts which were marked for different categories. The selection was to be done as per 2008 Rules and after having noticed the order passed by the Block Education Officer dated 21.01.2016 which sanctioned for appointment of the candidates, it directed the employment unit to fill up the



posts as per the merit and category-wise by following the requisite rules within period of 15 days and further directed the District Education Officer Nalanda to approve such appointment orders.

5. Learned counsel submits that accordingly the petitioners were appointed as per their merit and category following the roster by the Block Education Officer cum Development Officer, Biharsharif the said order of appointment was passed in terms of the directions issued by the District Education Officer, Nalanda dated 11.02.2016. Learned counsel submits that in the aforesaid background the observation of the State Appellate Authority is wholly perverse and the order passed by the State Appellate Authority deserves to be set aside.

6. Learned Counsel for the State submits that the State Appellate Authority have directed to make appointments in terms of the Rules and Regulations and therefore fresh counselling was required to be done.

7. I have considered the submissions.

8. This Court notices that the District Appellate Authority directed the vacancies of the concerned



employment unit to be filled in terms of the advertisement of 2008 and the posts were to be sanctioned. It directed to fill the post as per the merit list already prepared and as per the respective category.

9. Accordingly the District Education Officer issued directions to the employment unit to proceed with the appointment vide his order dated 11.02.2016 and the Block Education Officer therefore prepared the list following the merit and the roster. However, the State Appellate Authority did not find favour with such procedure. It is interesting to note the observations of the State Appellate Authority as under:

“13: It has also been seen that the second phase of appointment had closed in December, 2010 itself and the third phase of appointment had already started. The vacancies remaining in 2nd phase had been carried over to third phase and clubbed with vacancies of that phase and in fact appointment had already started in third phase also. In third phase additional conditions for eligibility had been



introduced. In passing any order the Authority should have considered the policies of the Department as well and tried to limit its order within the frame work of that policy. It is obvious that they failed to do so.

14: Besides this Authority observes that the employment unit and BDO took undue advantage of the order of the authority. Authority had never passed an order to appoint the appellants of case no. 35 of 2015. The DEO also had not given any such direction that the appellants (of that case) should be appointed. But as the respondents have themselves accepted the respondents of this case were appointed taking advantage and deriving wrong meaning of the orders of the Authority and stating that the Authority had passed an order to appoint all the appellants. Besides the authority had directed that due procedure should be followed but no where the respondents have claimed that any counselling had been held in



compliance of the orders of the authority, any merit list had been prepared and published and consent had been asked for. They have simply said that appointments were made in compliance of the orders of the authority. Thus this Authority finds that the appointments made were not in true compliance of the orders of the DAA. Rather appointments were made in violation of all rules taking advantage of an deliberately misinterpreting orders of District Authority.”

10.This Court finds that such observations are totally beyond the scope of the case and the State Appellate Authority has proceeded to take notice of facts which are not required to be considered for the disposal of the appeal. There was no direction by the District Appellate Authority or observation that the selection process of 2008 stands closed nor it was the case that the posts have merged with the third phase of selection. When the petitioners had already joined no case of shifting of vacancies to next selection process can be presumed. Such presumptions



drawn by the State Appellate Authority is found to be without basis. Observations as in para 13 noticed above are based on extraneous considerations. In the opinion of this court the State Appellate Authority has gone beyond its jurisdiction.

11. Further this Court also notices that the interpretation of the order of the District Appellate Authority as taken by the State Appellate Authority is also mis-conceived. The District Appellate Authority has rightly directed to consider the case of the petitioners for appointments. Appointments could not have been directed to be made by the authority as the appointment is the exclusive domain of the employing unit.

12. Further, there is no requirement of counselling when a final merit has already been prepared and on the said basis candidates who are placed in the merit cannot be deprived of their right for consideration for employment. The State Appellate Authority has failed to take notice that appointments were already made and the candidates had already started working on the post, their appointments cannot be said to be illegal or fraudulent. In view thereof,



the order passed by the State Appellate Authority is found to be without basis. The judgments cited by the State Appellate are based on a wrong interpretation of the order of the District Appellate Authority and therefore would have no application. The order therefore deserves to be set aside and is accordingly set aside. The order of the District Appellate Authority is upheld. The appointments made in pursuance thereof need not be interfered. The petitioners shall be allowed to continue in the posts.

13. The writ petition is accordingly allowed with all consequential benefits. No costs.

(Sanjeev Prakash Sharma, J)

shaswat/shamshad
Item no. 3

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