

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20953 of 2021

=====

Jai Prakash Chandra Son of Laldev Kumar Yadav Resident of Village-
Anjanwa, Police Station- Madanpur, District- Aurangabad.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department,
Govt. of Bihar, Patna.
2. The District Programme Officer, Aurangabad.
3. The District Programme Officer, Aurangabad.
4. Nagar Panchayat Teacher Selection Committee through its Chief Executive
Officer, Rafiganj Nagar Panchayat, District- Aurangabad.
5. The Executive Officer, Rafiganj Nagar Panchayat, District- Aurangabad.
6. Kailendra Kumar Kant Son of Jagdish Chandra Yadav Resident of Village-
Ibanpur, P.O.- Kapasia, Police Station and District- Aurangabad, at present
working as Assistant Teacher in Girls High School, Nagar Panchayat,
Rafiganj, District- Aurangabad.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Jitendra Prasad Singh, Adv.
For the Respondent/s	:	Mr. Jitendra Kumar Roy (Sc13)

=====

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

ORAL ORDER

2 14-10-2022

1. Heard the parties through video conferencing.

2. The petitioner by way of this writ petition assails
the order passed by the State Appellate Authority, whereby the
authority has refused to accept the contention of the petitioner
with regard to rejecting the candidature of the respondent no.6.

3. Learned counsel for the petitioner submits that the
application filed by the respondent no.6 was defective and
therefore he ought not have been called for counselling. Learned
counsel submits that the defects could not have been ignored

and the respondent who has been selected, although having higher merit than the petitioner, ought to have been ousted and the posts ought to have been given to the petitioner.

4. I have considered the submissions.

5. This court is sitting in writ jurisdiction of supervisory nature under Article 227 of the Constitution. If there can be two views possible, the view already taken by a judicial forum need not be interfered unless it is found that there is essential perversity or that the order is without jurisdiction. For the purpose para-8 of the judgment passed by the State Appellate Authority needs to be quoted:-

“The issue to be determined is whether the defects in the application of respondent were serious enough to warrant rejection of the application and cancellation of his candidature. In opinion of this Authority out of three defects which have been brought on record the first namely discrepancy in father’s name and the second i.e. difference in registration number are immaterial. With use of a little common sense the Executive Officer could have easily ignored these defects. Only defect that merits consideration is failure to mention subject of B.Ed degree. In this connection this Authority notes that the purpose of rejecting incomplete or defective application is that due to these defects it is not possible to take required decision about selection and employment. It does not appear that the purpose is to give applicant some sort of

punishment. Applicants who are seeking jobs are often nervous and sometimes when they are in hurry they can make some silly mistakes. If despite these mistakes the authority can construct a complete case and is able to take required decision, these mistakes should be ignored. Since the respondent had filed certificate of B.Ed. examination, it was possible to confirm that he had indeed a training degree in the subject he had applied for. This may have been the reason that the employment unit decided to hold counselling of respondent also. This Authority does not want to turn back the wheel of time when it finds that the mistake made was not material and it did not cause any problem in taking a decision on employment. As a result, the impugned order is upheld and the appeal is disallowed. With this the appeal is disposed of.”

6. From perusal of the aforesaid, it is apparent that the State Appellate Authority has examined all the aspects and reached to the particular conclusions, which cannot be said to be perverse and there can be a possible view taken as above. Since this court is not sitting in appeal, no interference is therefore warranted.

7. The Supreme Court in the case of Sameer Suresh Gupta V. Rahul Kumar Agarwal as reported in (2013) 9 Supreme Court cases 374 reiterated the principles stating parameters for exercise of power of High Court under Article

227 of the Constitution of India.

6. In our view, the impugned order is liable to be set aside because while deciding the writ petition filed by the respondent the learned Single Judge ignored the limitations of the High Court's jurisdiction under Article 227 of the Constitution. The parameters for exercise of power by the High Court under that Article were considered by the two-Judge Bench of this Court in Surya Dev Rai v. Ram Chander Rai. After considering various facets of the issue, the two-Judge Bench culled out the following principles:

“(1) Amendment by Act No. 46 of 1999 with effect from 1.7.2002 in Section 115 of Code of Civil Procedure cannot and does not affect in any manner the jurisdiction of the High Court under Articles 226 and 227 of the Constitution.

(2) Interlocutory orders, passed by the Courts subordinate to the High Court, against which remedy of revision has been excluded by the CPC Amendment Act No. 46 of 1999 are nevertheless open to challenge in, and continue to be subject to, certiorari and supervisory jurisdiction of the High Court.

(3) Certiorari, under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction, i.e. when a subordinate Court is found to have acted, (i) without jurisdiction - by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction - by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby

occasioning failure of justice.

(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate Courts within the bounds of their jurisdiction. When the subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied : (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby.

(6) A patent error is an error which is self-evident, i.e. which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate Court has chosen to take one view, the error cannot be called gross or patent.

(7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and

circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate Court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred there against and entertaining a petition invoking certiorari or supervisory jurisdiction of High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not covert itself into a Court of Appeal and indulge in re-appreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

(9) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English Courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari the High Court may annul or set aside the act, order or proceedings of the subordinate Courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High

Court may not only give suitable directions so as to guide the subordinate Court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate Court as the Court should have made in the facts and circumstances of the case.'

8. By applying Principles (4), (6) and (7) enunciated in Surya Dev Rai v. Ram Chander Rai to the facts of this case, we hold that the learned Single Judge was not at all justified in interfering with the order passed by the competent authority declining to frame preliminary issue. The course adopted by the competent authority was consistent with the object underlying the amendment made by Parliament in the Code of Civil Procedure i.e. expeditious disposal of the civil cases without interference by the higher/superior courts at interlocutory stages of the cases.

8. Accordingly, the writ petition is found to be devoid of merit and is accordingly dismissed.

(Sanjeev Prakash Sharma, J)

amit/-
Item no.34

U			
---	--	--	--