

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1378 of 2018

In

Civil Writ Jurisdiction Case No.16957 of 2015

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Sudhir Kumar Thakur Son of Janardan Thakur, Resident of Village-Manibhakurahar, Police Station-Sarai, District-Vaishali at Hajipur.

... .. Appellant/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Education Department, Government of Bihar, Patna.
3. The Director Secondary Education, Bihar, Budh Marg, Patna.
4. The Bihar School Examination Board, through its Secretary Bihar School Examination Board, Patna.
5. The Presiding Officer, District Appellate Authority, Vaishali.
6. The District Magistrate, Vaishali at Hazipur.
7. The Managing Committee, Mahanth Shiv Ratan Das Sarvodaya College, Ismailpur, Bidupur RS Vaishali, Son of Ram Chandra Singh, Resident of Village-Bahuara, Post Office-Bidupur, R.S. Police Station-Rajapakar, District-Vaishali
8. The Principal-Cum-Secretary, Mahanth Shiv Ratan Das Sarvodaya College, Ismailpur, Bidupur R.S., Va

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Rohit Mishra, Advocate
For Respondent Nos.7&8:		Mr. Siyaram Shahi, Advocate
		Mr. Vishwambhar Prasad, Advocate
For BSEB	:	Mr. Gyan Shankar, Advocate

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE RAJIV ROY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 13-07-2022

In the instant appeal, appellant has assailed the order of the learned single Judge dated 14.08.2018 passed in C.W.J.C. No. 16957 of 2015.

2. Appellant Sudhir Kumar Thakur was working as



a lecturer. On the alleged allegations of remaining unauthorized absent, his services were terminated.

3. Feeling aggrieved by the order of penalty, he approached the presiding officer, District Appellate Authority, Vaishali. His appeal was allowed. In the result, the Managing Committee- Mahant Shiv Ratan Das Sarvoday College, Ismailpur, Bidupur (R.S.), Vaishali represented by its Secretary filed C.W.J.C. No. 16957 of 2015 questioning the validity of the order dated 31.08.2015 passed in Case No. M.V.-9/2014 by the Presiding Officer, District Appellate Authority, Vaishali. The learned single Judge allowed the writ petition on 14.08.2018. Thus, the appellant, Sudhir Kumar Thakur presented this appeal.

4. Respondent- Managing Committee contended before the learned single Judge that the District Appellate Authority, Vaishali has no jurisdiction to decide the appellant's appeal as the Management was in respect of intermediate. Therefore, District Appellate Authority has no jurisdiction to deal with the employees of the intermediate institutions.

5. Learned counsel for the appellant vehemently contended that intermediate institution would also fall under the Bihar State School Teachers and Employees Disputes Redressal Rules, 2013 (For short 'Rules 2013'). In support of the aforesaid



contention learned counsel for the appellant tried to impress this Court with reference to the Bihar Intermediate Education Council Repeal Act, 2007. Further, Bihar School Examination Board (Amendment) Act, 2007 vide Section 2(j). So also Annexure-2 to the Original Petition stating that certain grants have been extended. The respondent resisted the aforesaid contention and submitted that Intermediate Institution Employees cannot invoke District Appellate Authority in respect of their service conditions under Rules 2013. It is further submitted that Rules, 2013 there is not even *iota* of reference that the District Appellate Authority is empowered to deal with the service conditions of the employees of the Intermediate Institutions.

6. Heard learned counsels for respective parties.

7. Crux of the matter in the present appeal is whether appellant-employee of Intermediate Institution is entitled to invoke remedy under Rules, 2013 for the purpose of redressing his service condition or not? Undisputed facts are that the Appellant-employee of the Intermediate Institution remained unauthorized absent his services were terminated. The appellant has invoked remedy before the District Appellate Authority under Rules, 2013 in questioning the order of



termination. Order of termination was set aside. Feeling aggrieved by the order of the District Appellate Authority, Management preferred writ petition. Writ petition was allowed in which it is stated that District Appellate Authority has no jurisdiction to deal with the service conditions of the appellant who is an employee of the Intermediate Institution.

8. It is necessary to read Rule 13 of Rules, 2013 which is part of Chapter -3.

Rule 13 of Rules 2013 reads as under:-

“13. Powers and functions of the District Appellate Authority – (1) The Appellate Authority shall hear and dispose the complaints/ appeal related to employment of Niyojit teachers, librarians and other Niyojit functionaries of Government / Nationalised elementary, secondary and higher secondary schools (including government aided/ minority schools). It shall also hear and dispose the disputes/ appeals related to their service conditions. It shall also dispose the disputes of headmasters, teachers and other functionaries of private aided schools related to their services and distribution of grant received from the State Government.

(2) The office of the Appellate Authority shall maintain properly all types of documents related to complaint/ appeal.

(3) All types of complaints/ appeals shall be filed before the Appellate Authority within 30 days from the date of its occurrence. The Authority may condone the delay in filing the complaint/ appeal which is received by the Authority after 30 days on reasonable grounds.

(4) The District Appellate



Authority, while enquiring into any matter and hearing into any matter, have the same powers as are vested in a civil court while trying a suit under the code of civil procedure 1908, in respect of the following matters, namely:-

- (a) Summoning and enforcing the attendance of persons and compel them to give oral or written evidence on oath and to produce documents and things;*
- (b) Requiring the discovery and inspection of documents;*
- (c) Receiving evidence on affidavit;*
- (d) Issuing summons for examination of witnesses or documents;*

(5) The Presiding Officer of the Appellate Authority shall enquire and hear each complaint/ dispute and shall pass order.

(6) The Appellate Authority may get the matter enquired by the officers of education department or by any other administrative officer of the district;

(7) The Appellate Authority may dispose off a complaint/ dispute within 90 days from the day of receiving in general.”

9. Perusal of the aforesaid statutory rule it is evident that Intermediate Institution is not part and parcel to establish that District Appellate Authority has jurisdiction to redress the grievance of the employees of the Intermediate Institutions. In the result, reliance on other statutes like the Bihar Intermediate Education Council Repeal Act, 2007, Bihar School Examination Board (Amendment) Act, 2007 read with



the fact that certain grants have been extended would not enure the District Appellate Authority to have jurisdiction in respect of an employee of the Intermediate Institution to redress the grievance of employee.

10. Learned counsel for the appellant submitted that certain observations have been made by the learned single Judge on merit. It is to be noted that once the authority has lack of jurisdiction, in such circumstances if any further development on merits, the same would not enure to the benefit of appellant or management, in other words, matter is required to be decided afresh by the competent jurisdictional forum. In the light these circumstances the appellant has not made out a case so as to interfere with the order of the learned single Judge dated 14.08.2018 passed in C.W.J.C. No. 16957 of 2015.

11. Accordingly, the present Letters Patent Appeal stands rejected reserving liberty to the appellant to approach the jurisdictional forum within a period of three months from today. In the event of invoking competent jurisdictional forum by the appellant, the competent jurisdictional forum is requested to take note of belated filing of such litigation with reference to Section 14 of the Limitation Act. If there is any delay the same shall be condoned while invoking Section 14 of the Limitation



Act.

12. At this juncture, learned counsel for the appellant submitted that in para 8 of the order of the learned single Judge Memo No. 11/Vi. Ko.06-14/2014.244 dated 08.10.2014 was set aside which has affected the appellant's right. On the other hand, Management Counsel Mr. Siyaram Sahi submitted that whatever is due to the appellant, it has been paid.

13. In the light of the submission made by the learned counsel for the Management setting aside the Memo No. 11/Vi. Ko.06-14/2014.244 dated 08.10.2014 in para 8 of the order of the learned single Judge is set aside while upholding the Memo No. 11/Vi. Ko.06-14/2014.244 dated 08.10.2014

(P. B. Bajanthri, J)

(Rajiv Roy, J)

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CAV DATE	
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