

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Letters Patent Appeal No.1239 of 2018**

**In**  
**Civil Writ Jurisdiction Case No.18786 of 2008**

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Kumari Ragini, Wife of Sri Devendra Prasad, C/o Birendra Prasad, New Area  
Jakki Bigha Sheo Mandir Gali, P.O.- Dalmia Nagar, P.S.- Dehri-on-Sone,  
District- Rohtas.

... .. Appellant/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Human Resources, Development Department,  
Government of Bihar, Patna.
3. The Director, Secondary Education, Government of Bihar, Patna.
4. The District Education Officer, Rohtas.
5. The Zila Parishad Rohtas through its Chief Executive Officer, Rohtas.
6. Ram Naresh Pandey, Son of Gaytari Nath Pandey, Resident of Village+PO-  
Waar, P.S.- Madanpur, District- Aurangabad.
7. Deepak Bharti, Son of Sheo Bachan Bharti, Resident of Village- Kudaari,  
PO- Dhav Pokhar, PS- Karamchat, District- Kaimur.

... .. Respondent/s

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**Appearance :**

|                       |   |                                                            |
|-----------------------|---|------------------------------------------------------------|
| For the Appellant/s   | : | Mr. R.K.Sinha-2, Advocate<br>Mr.Ajay Kumar Sinha, Advocate |
| For the State         | : | Mr. Priyadarshi Matin Sharan, AC to AAG-15                 |
| For the Zila Parishad | : | Dr. Anand Kumar, Advocate                                  |

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**CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI**  
**and**  
**HONOURABLE MR. JUSTICE ARUN KUMAR JHA**  
**ORAL JUDGMENT**  
**(Per: HONOURABLE MR. JUSTICE ARUN KUMAR JHA)**

**Date : 20-03-2023**

**In I.A. No.6749 of 2018**

Heard learned counsel for the respective parties on the  
point of limitation.

2. This interlocutory application has been filed for  
condoning the delay of 71 days in preferring the present appeal.



3. For the reasons mentioned in this interlocutory application, we are satisfied that the appellant was prevented from sufficient cause in preferring this appeal within time.

4. Accordingly, this interlocutory application is allowed and the delay in filing this appeal is hereby condoned.

**In L.P.A. No. 1239 of 2018**

Heard learned counsel for the appellant and learned counsel for the respondents.

2. The present L.P.A. is directed against the order dated 20.04.2018 passed in CWJC No. 18786 of 2008 so far as the appellant is concerned, by the learned Single Judge of this Court whereby and whereunder the civil writ petition filed by the appellant has been disposed of in terms of letter dated 12.04.2018 issued under the signature of the District Education Officer, Rohtas (respondent no.4) in which it has been mentioned that the services of the petitioners namely, Pramod Kumar Upadhyay, Raj Jee Pandey, Kanhaiya Lal Singh, Manoj Kumar Singh in CWJC No.17715 of 2008 and Vinda Kumari in CWJC No.8724 of 2009 would not be disturbed.

3. The writ petitioner-appellant herein along with Ram Naresh Pandey and Deepak Bharti, both the respondent no. 6 and 7 filed the writ petition for “issuance of an appropriate writs/directions for quashing the order contained in letter



No.1778 dated 20.10.2008 issued by the Director, Secondary Education, Patna and follow up order bearing letter No.1448 dated 11.11.2008 issued from District Education Officer, Rohtas, Sasaram so far it relates to the petitioners whereby and whereunder respondents have decided to remove petitioners from the post of teachers of Secondary Schools in the district of Rohtas and further to direct the Respondents not to disturb the petitioners in discharging their duties in their respective High Schools and also grant any other reliefs for which the petitioners were found entitled in the facts and circumstances of the case”.

4. Brief facts of the case are that the applications were invited from public at large for appointment to the post of Zila Parishad Secondary/Higher Secondary Teachers in the district of Rohtas. Pursuant to the said advertisement, the appellant being eligible candidate applied for her appointment. After due selection process, merit list was published in which the name of the appellant was mentioned. Thereafter, the appellant was appointed on the post of Zila Parishad Secondary/Higher Secondary Teacher on 10.04.2007 and posted at High School, Chaap. The appellant submitted her joining in High School, Chaap on the post of Hindi Teacher. The appellant performed her duty for about 18 months and salary for the aforesaid period



had been paid to her. But all of a sudden, the Director, Secondary Education, Government of Bihar vide letter bearing Memo No.1778 dated 20.10.2008 directed the District Education Officer, Rohtas to remove 14 High School Teachers including the appellant and consequently, the District Education Officer, Rohtas vide letter no.1448 dated 11.11.2008 issued consequential order. Out of 14 persons, 8 persons jointly filed CWJC No.17715 of 2008, 3 persons including the appellant filed CWJC No.18786 of 2008, and two other writ petition vide CWJC No.8724 of 2009 and CWJC No.8239 of 2010 had been filed by Vinda Kumari and Shashikant, respectively. In CWJC No.17715 of 2008 and CWJC No.8724 of 2009, interim orders were granted but in other two writ petitions, no order was passed, though in CWJC No.18786 of 2008, the appellant filed interlocutory application bearing I.A. No.8465 of 2010 for interim order but no order had been passed on that interlocutory application filed by the appellant. All four writ petitions were taken up together for admission and an affidavit had been filed on behalf of the respondent no.4 mentioning therein that in view of letter dated 12.04.2018 issued under the signature of the District Education Officer, Rohtas (respondent no.4) in which it has been mentioned that the services of the petitioners namely



Pramod Kumar Upadhyay, Ram Jee Pandey, Kanhaiya Lal Singh, Manoj Kumar Singh (in CWJC No.17715 of 2008) and Vinda Kumarii (in CWJC No.8724 of 2009) would not be disturbed and rests of the candidates have either resigned from the service or left the job as they got employment elsewhere.

5. In terms of the letter dated 12.04.2018, the learned Single Judge went on to dispose of all the writ petitions on undertaking by the respondent that the services of five petitioners who were still working would not being disturbed, Hence, the present L.P.A.

6. The learned counsel for the appellant has submitted that while issuing the aforesaid letter dated 12.04.2018, the respondent-authorities failed to consider that the appellant had filed CWJC No.18786 of 2008, but due to absence of interim order in CWJC No.18786 of 2008, the appellant was not allowed to perform her duty and due to this reason, she did not get a chance to perform her duty. The District Education Officer, Rohtas in his letter dated 12.04.2018 adopted the pick and choose procedure, which is illegal, arbitrary and against the equity and the law. The learned counsel further submitted that the learned Single Judge without disposing the application for interim order vide I.A.No. 8465 of 2010 passed the impugned



order, which is not permissible in law. The learned counsel further submitted that vide order dated 20.04.2018 passed in CWJC No.18786 of 2008, the learned Single Judge without assigning any reason and without considering the issue involved in the writ applications disposed of the writ petitions in terms of letter dated 12.04.2018 issued under the signature of the District Education Officer, Rohtas (respondent no.4) in which it has been mentioned that the services of the petitioners namely, Pramod Kumar Upadhyay, Ram Jee Pandey, Kanhaiya Lal Singh, Manoj Kumar Singh (in CWJC No.17715 of 2008) and Vinda Kumari (in CWJC No.8724 of 2009) would not be disturbed without considering the fact that the appellant has also moved before this Court with the same grievance and the matter was pending for disposal as well as in absence of interim order, the appellant was not allowed to perform her duty and due to this reason, she was not performing her duty. The learned counsel further submitted that impugned letter dated 20.10.2008 issued by the Director, Secondary Education, Patna is without jurisdiction. The learned counsel further submitted that the appellant was duly selected and appointed and, as such, she has a right to hold her post as teacher and she cannot be removed/terminated without giving a reasonable opportunity of



hearing in view of settled principles of law. The learned counsel further submitted that the respondents have no right to punish the appellant by way of termination for their own fault or irregularity committed, if any, in the process of selection. The select list prepared by the respondent nos. 4 & 5 was approved by the respondent no.3 after due consideration of all relevant papers. The learned counsel emphasized that the impugned orders have been passed without any notice, without show cause and without giving opportunity of hearing to the petitioner and, as such, it is violative of the principles of natural justice.

7. On the other hand, the learned counsel for the respondents has submitted that on the basis of relevant record maintained by the Department, it transpires that certain complaints were received in respect of recruitment of 14 candidates including the writ petitioner (appellant herein) to the effect that although they were below in merit position subject-wise and category-wise and without following the reservation roster, they were recruited as Zila Parishad Secondary Teacher in the district of Rohtas. In fact the last candidate in the subject of Hindi of unreserved category was selected having merit point 62.925, but the petitioner (appellant herein) had secured merit point 62.490 and hence, she was found beyond the zone of



consideration. Accordingly the Director, Secondary Education constituted a two member fact finding Committee headed by the Regional Deputy Director of Education, Patna Division, Patna and Deputy Director, Secondary Education, Development Department Human (Now Resources Education Department) Govt. of Bihar as member and directed the said committee to enquire into the matter. Accordingly, the two member committee conducted enquiry and having found the said allegation to be true made a recommendation for removal of the aforesaid 14 candidates including the writ petitioner and similarly situated other candidates who were recruited without following the norms as is evident from enquiry report dated 04.01.2008 contained in letter No. 315 sent by the Regional Deputy Director of Education, Patna Division, Patna. After considering the report submitted by the enquiry Committee, the Director, Secondary Education, Bihar, Patna directed the District Education officer, Rohtas to remove the 14 candidates who were recruited at the cost of genuine candidates and accordingly, he directed to recruit those 14 candidates who were arbitrarily deprived to be recruited as is evident vide letter No. 1778 dated 20.10.2008. The learned counsel further submitted that the writ petitioner and other 13 candidates who were not eligible to be



recruited were recruited ignoring the claim of other genuine candidates and hence they were removed and, thus, there was no infirmity in the said order. The learned counsel further submitted that the writ petitioner and others moved this Hon'ble Court by preferring CWJC No. 18786/2008 and others analogous cases, but the learned Single Judge considering the facts and circumstances was pleased to dispose of the said case on 20.04.2018 having found no merit/substance in the said case which has been impugned in this case. The learned counsel further submitted that since the writ petitioner (appellant herein) and other similarly situated persons were recruited without following the norms as well as eligibility criteria as their merit point was below in the merit list and hence they have got no *locus standi* to challenge the impugned order. The learned counsel also submitted that this appeal is devoid of merit and hence the same is fit to be dismissed outright by this Court.

8. At this stage, learned counsel for the appellant submitted that the respondents have published a notice on 03.04.2007 in which subject-wise cut off merit marks was fixed. For Hindi, cut off merit marks was 60.27, whereas the petitioner (appellant herein) had secured merit point of 62.490, which shows that the appellant had more than marks fixed by the



authorities.

9. Having considered the material available on record and further considering the rival submission, it appears that the core issue involved in the *lis* is whether the removal of the appellant by District Education Officer on the direction of the Director, Secondary Education could be said to be correct and whether the District Education Officer was competent authority for removal of the appellant. This Court on 27.02.2023 passed the following order :

*“5<sup>th</sup> respondent-Mr. Chandra Shekhar Prasad Singh, Chief Executive Officer, Zila Parishad, Rohtas is present in the Court.*

*3<sup>rd</sup> respondent-The Director, Secondary Education, Government of Bihar, Patna is hereby directed to file an affidavit as to under which authority of law he issued the communication dated 20.10.2008 to 4<sup>th</sup> respondent- The District Education Officer, Rohtas, Sasaram who in turn issued memo No.1448 dated 11.11.2008 for the reasons that Section 88 of Bihar Panchayat Raj Act, 2006 relates to functions of the Chief Executive Officer and other officers and Section 88 (c) is relating to control the officers and servants of Zila Parishad subject to the General Superintendence and control of the Adyaksh and such rules as may be*



*prescribed.*

*In other words, whether action of Director, Secondary Education, Government of Bihar, Patna in the present case is without authority of law or not is required to be examined. Such affidavit be filed before the next date of hearing.*

*Re-list this matter on 20.03.2023.*

*Personal appearance of Mr. Chandra Shekhar Prasad Singh, Chief Executive Officer, Zila Parishad Rohtas stands dispensed with until further orders”.*

10. In terms of the aforesaid order dated 27.02.2023, a supplementary counter affidavit on behalf of respondent no.3- the Director, Secondary Education, Education Department, Bihar, Patna has been filed. It would be relevant to quote paragraph nos.5 to 12 for reference :

*“5. That in this context it is humbly stated that the Human Resources Development Department, Govt. of Bihar. (Now known as Education Department) framed Bihar Zila Parishad Madhyamik Awam Seva Sart) Niayamawali, 2006 (Bihar District Council Secondary and Senior Secondary Teachers (Recruitment and Service Condition) Rules, 2006 (Amended from time to time) exercising powers conferred under Article 243 G (Section 73 of Bihar Panchayati Raj Act, 2006 read with Article*



*146 of the Constitution of India for the purpose of Niyojan (recruitment) of teachers in Govt/ Nationalised Secondary Schools in the rural areas of the State.*

*6. That it is humbly stated that admittedly the appellant was recruited as a teacher under the provisions of Recruitment Rules. 2006.*

*7. That it is relevant to state here that for the purpose of recruitment of teachers of District Council of Secondary and Senior Secondary Teachers a four members committee headed by the Chairman of the District Council was constituted whereas the District Education Officer concerned was the member secretary of the said Selection Committee as is evident from Rule 6 (vi) of the Recruitment Rules, 2006.*

*8. That under Rules 7 of the said Rules it has been provided to get the certificates of the candidates verified.*

*9. That under Rule- 15 of the said Rules the Regional Deputy Director of Education, concerned was empowered to decide and resolve the issues pertaining to recruitment, transfer and service condition of the recruited teachers.*

*10. That so far as the pertinent case is concerned it transpires that certain complains were received and accordingly a two member committee constituted by the Deputy Director, Secondary Education and the Regional Deputy Director of Education, Patna Division, Patna,*



*submitted an enquiry report vide letter No. 315 dated 04.10.2008 to the effect that 14 candidates have been selected who were lower in merit position and as per recommendation to the said Committee the then Director, Secondary Education directed the District Education Officer concerned (The member Secretary of the Committee) to terminate the aforesaid teachers as is evident from Annexure- A to this Counter Affidavit filed earlier.*

*11. That it is pertinent to state here that the Director, Secondary Education is the immediate controlling officer of the Regional Deputy Director of Education and hence considering the enquiry report submitted by the Regional Deputy Director of Education, Bihar, Patna, the then Director, Secondary Education directed the District Education Officer concerned to terminate the services of the petitioner in the capacity of Member Secretary of the recruitment unit.*

*12. That it is humbly stated that the Director, Secondary Education being immediate controlling officer of the Regional Deputy Director of Education had directed the District Education Officer to pass the impugned order”.*

11. Thus, from the aforesaid paragraphs of the supplementary counter affidavit filed on behalf of respondent no.3, it appears that admittedly the appellant was recruited as a



teacher under the provisions of Recruitment Rules, 2006 and under Rule- 15 of the said Rules, the Regional Deputy Director of Education concerned was empowered to decide and resolve the issues pertaining to recruitment, transfer and service condition of the recruited teachers and the Director, Secondary Education being immediate controlling officer of the Regional Deputy Director of Education had directed the District Education Officer to pass the impugned order.

Now, Rule 15 of the Bihar District Council Secondary and Higher Secondary Teachers (Recruitment and Service Condition) Rules, 2006 reads as under :-

**“15. शिकायत:-**

इस नियमावली के अधीन नियोजन, स्थानान्तरण अथवा सेवाशर्त संबंधी मामलों में क्षेत्रीय उप शिक्षा निदेशक के यहाँ अधिकतम 15 दिनों के अन्दर कोई भी शिकायत की जा सकेगी तथा उनका निर्णय अंतिम माना जायेगा। क्षेत्रीय उप शिक्षा निदेशक प्राप्त शिकायत पर अधिकतम दो माह के अन्दर अपना निर्णय संसूचित कर देंगे।”

12. Thus, the RDDE is only competent to decide and resolve the grievance pertaining to engagement, transfer and service condition of the recruited teachers. The said Rule does not provide for any role to Director, Secondary Education, though it prescribes the role of member Secretary of the selection panel to the District Education Officer vide Rule 6



(vi) of the said Rules.

13. Further, Section 88 of Bihar Panchayat Raj Act, 2006 relates to functions of the Chief Executive Officer and other Officers. Relevant clause of Section 88 reads as under :-

*“88. Functions of the Chief Executive Officer and other Officers - (1) Save as otherwise expressly provided by or under this Act, the Chief Executive Officer shall:-*

*(a)...*

*(b)...*

*(c) control the officers and servants of the Zila Parishad subject to the general superintendence and control of the Adhyaksha and such rules as may be prescribed”*

14. Thus, Section 88 (c) of the Bihar Panchayat Raj Act, 2006 provides that the Chief Executive Officer shall control the officers and servants of the Zila Parishad subject to the general superintendence and control of the Adhyaksha and such rules as may be prescribed. Thus, it is the Chief Executive Officer who has been entrusted with the superintendence and control of the officer and staff of the Zila Parishad subject to general superintendence and control of the Adhyaksha. Furthermore, the appointment letters were issued to the appellant by the Chief Executive Officer, Zila Parishad, Rohtas and in absence of any provision for removal/dismissal



in the Rule, Section 16 of General Clauses Act provides that the appointing authority will be the terminating authority. Therefore, the action of the Director, Secondary Education, Government of Bihar, Patna and the District Education Officer in the present case is without authority of law.

15. Moreover, the learned Single Judge without assigning any reason and without considering the issue involved in the writ applications disposed of the writ petitions in terms of letter dated 12.04.2018 issued under the signature of the District Education Officer, Rohtas (respondent no.4) in which it has been mentioned that the services of the petitioners namely, Pramod Kumar Upadhyay, Ram Jee Pandey, Kanhaiya Lal Singh, Manoj Kumar Singh (in CWJC No.17715 of 2008) and Vinda Kumari (in CWJC No.8724 of 2009) would not be disturbed without considering the fact that the appellant moved this Court and the matter was pending for disposal as well as in absence of interim order, the appellant was not allowed to perform her duty. The respondents have completely failed in this regard to show that how the case of the present appellant was different from the other writ petitioners who were allowed to continue in the service vide letter dated 12.04.2018, which was mentioned in the impugned order.



16. In the light of discussion made hereinabove and under the facts and circumstances of the case, the present L.P.A. deserves to be allowed and is accordingly allowed. The judgment of learned Single Judge dated 20.04.2018 passed in CWJC No.18786 of 2008 and other analogous cases, so far as it relates to the present appellant is concerned, is quashed and set aside. The respondents are directed to allow the appellant to join and continue her service and they will also accord her all consequential service and monetary benefits and the same shall be disbursed within four months from today, failing which the appellant is entitled to litigation cost of Rs.50,000/-.

**(P. B. Bajanthri, J)**

**( Arun Kumar Jha, J)**

V.K.Pandey/-

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