

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9957 of 2022

Praveen Kumar Son of Sri Vidya Bhushan Pandey, Resident of Mundipur,
P.O. - Huleshra, P.S. - Bhagwanpur Hat, District - Siwan.

... .. Petitioner/s

Versus

1. The State of Bihar through the Director, Primary Education, Govt. of Bihar, New Secretariat, Patna.
2. The District Education Officer, Siwan.
3. The District Programme Officer (Establishment), Siwan.
4. The Block Education Officer, Bhagwanpur Hatt, P.O. and P.S. - Bhagwanpur Hatt, District - Siwan.
5. The Panchayat Secretary, Gram Panchayat Raj, Shankarpur Block and P.S. - Bhagwanpur Hatt, District - Siwan.
6. The Headmaster, New Primary School, Koirgawan, Tola- Mishrawalia, Block - Bhagwanpur Hatt, District - Siwan.
7. Jai Prakash Tiwari Son of Sri Bhola Tiwari, Resident of Village - Harpur Kothi, Panchayat Raj - Dandashpur, Block - Lahladpur, P.O. - Panditpur, P.S. - Janta Bazar, District - Saran at Chapra.

... .. Respondent/s

Appearance :

For the Petitioner	:	Mr.Bipin Bihari Singh, Adv.
For the State	:	Mr.Narendra Kumar, AC to GP 20
For respondent no. 7	:	Mr. Ravi Bhushan Verma, Adv.

CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH SHARMA

ORAL ORDER

3 12-01-2023 Heard the parties.

The petitioner by way of this writ petition assails the order passed by the State Appellate Authority dated 29th June, 2022, whereby the State Appellate Authority has cancelled the petitioner's appointment from the initial date itself and has directed to remove him from service within fortnight and also to make recovery of his entire salary.



Learned counsel for the petitioner submits that the order has been passed keeping in mind a prejudice that all appointments are being made fraudulently in the various employment units in Panchayat Raj hence the order passed by the State Appellate Authority is vitiated in law and deserves to be set aside.

I have considered the submissions.

The State Appellate Authority has to act independently of any personal knowledge it may have relating to selections being conducted in the State of Bihar and has to examine cases on the facts which have come on record. In the impugned order there are certain observations made in the order relating to making general remarks relating to selection being done generally and also referring to certain allegations of fraud being committed.

However, this Court notices that while such general observations have been made the State Appellate Authority, it also has examined the case of the petitioner on merits. It reached to the conclusion that so far as petitioner is concerned, the directions issued by the District Appellate Authority in his favour directing the respondents to appoint him on the post which had fallen vacant after the resignation of the selected candidate is erroneous. An appeal preferred by another candidate, who was also an aspirant for the post, found on facts



that one Ramjeet Yadav who was selected as a teacher in the selection conducted for Panchayat Raj in 2006 relinquished his post by resigning on 15.06.2012. The District Appellate Authority treating the said post to have become vacant from the year 2006 retrospectively, directing the petitioner to be appointed treating him to be the next in the panel. The State Appellate Authority has found the order to be erroneous on the ground that once the concerned person Ramjeet Yadav has resigned, the post would fall vacant only in 2012 and can not relate back in 2006. Selection process and implementation thereto stands already concluded in 2006 and the action of the District Appellate Authority in directing for appointing the petitioner has been found to be unjustified.

Keeping in view aforesaid, the State Appellate Authority has held the appointment of the petitioner to be liable to be cancelled from the date he was appointed and also to make recovery.

While the view taken by the State Appellate Authority with regard to the decision being erroneous is found to be justified and correct as vacancies which had fallen on account of resignation can not be treated to be retrospectively available for a person who was originally in the panel, the view further taken by the State Appellate Authority of treating the appointment as fraudulent and to make recoveries of salary paid to the petitioner



is found to be erroneous. The appointment of the petitioner was in terms of an order passed by the District Appellate Authority and therefore it can not be said to have been made by fraud or by forgery.

In view thereof, his appointment from initial date can not be treated to be cancelled. Once the State Appellate Authority reaches to the conclusion that the order passed by the District Appellate Authority was erroneous, it has to be quashed as on the date of passing of the judgment. As during the intervening period the petitioner has been appointed and has worked, there is no occasion to make recovery of the salary which he has already drawn or to treat his appointment as cancelled ab initio.

The said part of the order therefore is set aside. While upholding the view taken by the State Appellate Authority that the petitioner could not have been appointed by the District Appellate Authority the recovery part of the order is, accordingly, quashed and set aside.

The writ petition is, accordingly, disposed of with the aforesaid observations.

(Sanjeev Prakash Sharma, J)

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