

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11609 of 2022

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Ritesh Kumar Son of Late Ram Bihari Das, resident of Village - Aliganj Maheshpur, Police Station- Mozahidpur, District - Bhagalpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Education, Government of Bihar, Patna.
2. The Director, Primary Education, Government of Bihar, Patna.
3. The District Magistrate, Purnea.
4. The District Education Officer, Purnea.
5. The District Programme Officer (Establishment) Purnea.
6. The Block Development Officer, Amour, District - Purnea.
7. Angad Kumar Arzoo, son of Gageshwar Paswan, resident of Village - Parora, Police Station - K. Nagar, District - Purnea.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 7070 of 2023

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Angad Kumar Arzoo S/o Jageshwar Paswan R/o Village-Parora, P.S. -K.Nagar, District-Purnea.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additinal Chief Secretary, Education Department, Government of Bihar, Patna.
2. The Additional Chief Secretary, Education Department, Government of Bihar Patna.
3. The Director, Primary Education, Education Department, Government of Bihar, Patna.
4. The District Education Officer, Purnea, District-Purnea.
5. The District Programme Officer, Establishment (Education) Purnea, District-Purnea.
6. The Secretary, Block Teacher Employment Unit-Cum-Block Panchayat Raj Officer, Amour, District-Purnea
7. The Block Education Officer, Amour, Block-Amour, District-Purnea.
8. Ritesh Kumar, S/o Late Ram Bihari Das R/o Village-Aliganj Maheshpur, P.S.-Mozahidpur, District-Bhagalpur.

... .. Respondent/s

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Appearance :



(In Civil Writ Jurisdiction Case No. 11609 of 2022)

For the Petitioner/s : Ms.Mahasweta Chatterjee, Advocate

For the State : Mr. Mrigendra Kumar, AC to GP-20

For the Respondent no.7: Ms. Nivedita Nirvikar, Sr.Advocate

(In Civil Writ Jurisdiction Case No. 7070 of 2023)

For the Petitioner/s : Mr.Mrityunjay Kumar, Advocate

For the Respondent/s : Mr.Prabhakar Jha, GP-27

Mr. Umesh Narayan Dubey, AC to GP-27

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
CAV JUDGMENT

Date : 14-09-2023

These two writ applications being connected with each other, have been taken up for consideration together and are being disposed of by this common judgment. The result of CWJC No.11609 of 2022 would guide the outcome of CWJC No.7070 of 2023.

2. In course of submissions, learned counsel for the parties have relied upon the pleadings available on the record in CWJC No.11609 of 2022, hence, this Court would briefly refer the relevant facts and the parties position from the said record hereunder.

3. The petitioner has questioned the order dated 28.04.2022 passed by Hon'ble Chairperson (Judicial), the State Appellate Authority in Appeal No.359 of 2019 (Angad Kumar Arzoo Vs. the State of Bihar & Ors.). The impugned order is Annexure- '15' to the writ application. This petitioner was respondent no.9 in the appeal preferred by the respondent no.7. The respondent no.7 in the instant case is the writ petitioner in



CWJC No.7070 of 2023.

4. By the impugned order (Annexure- '15') the appellate authority has set aside the order dated 23.09.2019 passed by the learned District Teachers Employment Appellate Authority, Purnea (hereinafter referred to as the 'District Authority') in Appeal No.13 of 2018 (300 of 2009, 05 of 2013) and has also set aside the consequential order dated 02.03.2022 by which this petitioner has been allowed to work.

Brief facts of the case

5. The facts are not much in dispute. There was an advertisement in the year 2006 inviting applications for appointment of Block Teacher in Amour Block of Purnea District in which four posts were reserved for Schedule Castes (Male) candidates. The petitioner as well as the respondent no.7 were the applicants for the post. The petitioner had obtained 53.33% marks at Intermediate level whereas the respondent no.7 had passed his Intermediate examination with 52.77% marks. Admittedly, the petitioner was placed above the respondent no.7 in the merit list which was prepared after the counselling held on 01.03.2007. The name of the petitioner appeared at serial no.5 whereas the name of respondent no.7 appeared at serial no.7 in the merit list. The petitioner, however, came to know



after some time that the respondent no.7 has been appointed as Block Teacher.

6. It is the case of the petitioner that being aggrieved, he approached the D.D.O. and thereafter to the District Magistrate, Purnea but they did not take notice of the grievance raised by the petitioner. Ultimately, the petitioner challenged the appointment of respondent no.7 by filing an appeal before the District Authority, Purnea vide Appeal No.300 of 2009.

7. The Appeal No.300 of 2009 was allowed but without giving opportunity of hearing to respondent no.7, therefore the respondent no.7 preferred writ application being CWJC No.1590 of 2010 before this Court seeking quashing of the order passed by the District Authority in Appeal No.300 of 2009. The learned Writ Court disposed of the writ application vide order dated 04.03.2013 pointing out the statements made in paragraph '18' of the writ application that the order of the Tribunal has been passed without hearing or notice to the petitioner. The learned Writ Court expressed it's view that if the statements made in paragraph '18' are correct, then the Annexure- '1' which was impugned in the said writ application stands quashed, but on verification if it is found that the statements made in paragraph '18' of the writ application is not



correct then the Tribunal will record so if the petitioner approaches the Tribunal.

Second round of
litigation

8. It is not in dispute that the present respondent no.7 was the writ petitioner before this Court, he preferred an Appeal No.5 of 2013 before the District Authority and this time the appeal of the respondent no.7 was allowed. From Annexure- '5' to the writ application it appears that the District Authority took note of the order of this Court in CWJC No.1590 of 2010 and on finding that the respondent no.7 was not heard, therefore the District Authority recalled its own order and directed for rehearing of the matter and take a view that because there is no direction of the High Court to rehear the matter, therefore the Authority cannot assume the jurisdiction on its own. By virtue of the order of the District Authority in Appeal No.5 of 2013, the respondent no.7 was reinstated vide letter no.419 dated 06.06.2014 (Annexure- '6'). Now the present petitioner being

High Court
direction/obser-
vation relegating
the petitioner to
State Appellate
Authority

aggrieved by the order of the District Authority in Appeal No.5 of 2013 preferred CWJC No.12739 of 2014 before this Court. This Court disposed of the writ application with an observation that the petitioner shall file an appeal before the State Appellate Authority within a period of thirty days. In compliance of the order of this Court, when the petitioner preferred Appeal No.134



of 2018 before the State Appellate Authority, the State Appellate Authority allowed the appeal vide order dated 02.11.2018 and remitted the matter back to the District Authority to pass a fresh order in Appeal Case No.300 of 2009.

Third round of
litigation

9. In the aforementioned background, the petitioner preferred another appeal vide Appeal No.13 of 2018 before the District Authority, Purnea. Both the parties were heard and the District Authority, Purnea passed the order dated 23.09.2019 whereby and whereunder the District Authority took a view that the employment unit had failed to act with impartiality. A finding was recorded that the information to the candidates as per merit list should have been sent through registered post but it was not done and the letter was sent through UPC. The District Authority, Purnea, therefore, took a view that in the matter of selection of Block Teacher, the employment unit has acted inappropriately and have taken a partisan approach whereunder the candidate who had obtained better marks and was placed higher in the merit list was ignored whereas the respondent no.7 who had been placed below the petitioner has been appointed.

10. Being aggrieved by and dissatisfied with the order of the District Authority, Purnea, the respondent no.7 moved in



appeal before the State Appellate Authority giving rise to Appeal No.359 of 2019. This appeal has been allowed vide order dated 28.04.2022 and the same is under challenge in the present writ application.

Submissions on behalf of the petitioner

11. Ms. Mahasweta Chatterjee, learned counsel for the petitioner submits that the District Authority, Purnea has categorically recorded in its order contained in Annexure- '8' to the writ application that the employment unit had shown issuance of ten letters seeking consent of the candidates from the merit list for the one post which had remained to be filled up in the Schedule Castes (Male) category. This was done ignoring the merit list. Admittedly this petitioner was placed at serial no.5 above the respondent no.7. The employment unit claims that the letters were sent to the candidates under Certificate of Posting (UPC). Out of ten letters which are being claimed to have been sent by the employment unit, only respondent no.7 received the letter. The District Authority has, upon perusal of the minute book, recorded that in the minute book the consent of the respondent no.7 has been shown received on 15.04.2007. It was observed that in the minute the date was mentioned as 05.04.07 but thereafter figure '1' was prefixed before '5'.



12. It is submitted that the information to the candidates should have been sent through registered post. The District Authority, Purnea has observed that the employment unit acted in an illegal and inappropriate matter. It is submitted that admittedly this petitioner is more meritorious and he would get precedence over respondent no.7.

13. Learned counsel submits that after passing of the order dated 23.09.2019 by the District Authority, Purnea in Appeal No.13 of 2018 (Annexure- '8') the petitioner approached the competent authority to allow him to join whereupon the Block Education Officer vide his letter no.314 dated 03..10.2019 directed the In-charge Headmaster of the Secondary School, Salta to accept the joining of the petitioner and stopped respondent no.7 from making attendance. The petitioner joined in the school but soon thereafter, at the instance of respondent no.7 the then District Education Officer, Purnea wrote to the Block Education Officer, Amour, Purnea that in view of the order of the District Authority, Purnea passed on 23.09.2019, only after any decision of the Block Employment Unit, Amour this petitioner could have been allowed to join and the attendance of respondent no.7 should have been stopped. The District Education Officer, Purnea directed that till issuance



of any order by the Block Employment Unit, the respondent no.7 shall continue to be present in the school. The letter of the District Education Officer, Purnea as contained in letter no.1365 dated 25.11.2019 (Annexure- '10' to the writ application) was marked to the Block Development Officer-cum-Secretary, Block Employment Unit, Amour for taking necessary action in the light of the order of the District Authority, Purnea but no action was taken by the concerned employment unit only to favour the respondent no.7 who was shown continued in the school despite his termination by order of the District Authority, Purnea. As a result of this communication (Annexure- '10'), the Block Education Officer issued a consequential order allowing respondent no.7 to continue and the petitioner was not allowed to continue.

14. The petitioner continued in his efforts to persuade the authorities but no action was being taken, hence, he submitted an application on 09.08.2021 to the Secretary of the Block Employment Unit inviting his attention towards the order of the District Authority and about 7 months thereafter the office order vide memo no.05 dated 02.03.2022 was issued by the Secretary, Block Teachers Employment Unit calling upon the petitioner to join within 30 days.



15. It would be evident from Annexure- '13' to the writ application that respondent no.7 continued for about 2½ years even though his appointment had been cancelled by the District Authority, Purnea and there was no stay on the operation of the order of the District Authority, Purnea by the State Appellate Authority. It is submitted that this conduct of the concerned employment unit is to be considered keeping in view the findings of the District Authority as to how the employment unit had acted inappropriately and took a partisan approach in the matter of providing employment to the respondent no.7 who was much below in the merit list.

Submissions on behalf of the respondent no.7

16. Ms. Nivedita Nirvikar, learned senior counsel for the respondent no.7 would submit that the State Appellate Authority has interfered with the order of the District Authority and rightly so for the reason that there was an inordinate delay on the part of this petitioner in approaching the District Authority by filing Appeal No.300 of 2009. Learned senior counsel would submit this appointment was made in the year 2007, at the relevant time a person aggrieved could have preferred an application before the Deputy Development Commissioner or the Block Development Officer as the case



may be. The Bihar Panchayat Primary Teachers (Employment and Service Conditions) Rules, 2006 (hereinafter referred to as the 'Service Rules') was amended vide memo no.1056 dated 03.07.2009. Rule 18 was substituted. The substituted provision provided for an appeal before a Tribunal comprising one or more than one members at District level who will be hearing the grievances. It is submitted that after constitution of the Tribunal in accordance with Rule 18 of the Service Rules, all the complaints which were pending before the competent authority under old Rule '18' were transferred to the Tribunal. According to learned senior counsel for the respondent no.7, the petitioner has not brought on record any material to show that he had raised a grievance before the competent authority with regard to the appointment of respondent no.7 prior to coming into force of New Rule 18 of the Service Rules. Thus, it is submitted that the District Authority, Purnea could not have entertained the appeal preferred by the petitioner two years after the appointment of respondent no.7.

17. Learned senior counsel further submits that so far as the continuance of respondent no.7 for about 2½ years after the decision of the District Authority, Purnea (Annexure- '8') is concerned, the then District Education Officer had rightly taken



a view that it was the concerned employment unit who had to issue the consequential order after the order of the District Authority. The Block Education Officer was not competent to allow joining of the petitioner or to stop respondent no.7 from making attendance. It is submitted that the petitioner himself approached the employment unit only after about two years because at the relevant time the petitioner had not obtained Diploma in Education which had been made essential for continuance after 31.03.2019. The submission is that the learned State Appellate Authority has rightly relied upon the judgment of this Court in the case of Manohar Prasad Vs. The State of Bihar & Ors. reported in 2016 (2) PLJR 474 wherein a challenge to the appointment of a teacher after about four years from the year of appointment was held not entertainable by the Tribunal on the ground of delay and laches.

18. Learned senior counsel has further relied upon a Division Bench judgment of this Court in LPA No. 579 of 2013 to submit that even if Rule 18 prescribes no time limitation, it has been held in the case of **Rajni Bara Vs. the State of Bihar & Ors.** reported in **2011 (4) PLJR 846** that the appeal has to be filed within a reasonable time of three to four months. In the said case, the appellant had moved the Tribunal two years later,



hence there was an inordinate delay. The Hon'ble Division Bench distinguished the judgment in Rajni Bara with that of judgment in the case of Amarjeet Kumar Singh Vs. the State of Bihar & Others (LPA No.1526 of 2009) and held that the said judgment was rendered on its own facts and no law was laid down. Learned senior counsel, therefore, submits that the writ application has no merit and it is fit to be dismissed.

19. Respondent no.5 has filed a counter affidavit, however, the respondent no.6 has not filed any counter affidavit in this case.

Consideration

20. Having heard learned counsel for the parties and on perusal of the records, this Court finds that the first and foremost question which would arise in course of testing the challenge to the impugned order passed by the State Appellate Authority would be as to whether the State Appellate Authority has rightly taken a view that the petitioner in this case had moved the District Authority, Purnea with a delay and laxity on his part so as to make the District Authority not competent to decide the dispute raised by the petitioner.

21. An answer to the aforementioned issue is to be found only with reference to the facts which are available by



way of pleadings on the record. In this case, the appointment of respondent no.7 was made by the Block Teachers Employment Unit in the month of April, 2007. From the facts emerging in the order dated 06.07.2009 passed by the District Authority, Purnea (Annexure- '2') in Appeal No.300 of 2009 it would appear that the allegations in the matter of selection of Block teacher by the employment unit were first enquired into by the Block Education Extension Officer, Amour who submitted his enquiry report to the District Authority. This enquiry seems to have been conducted prior to introduction/substitution of Rule 18 in the Service Rules. As noticed above, Rule 18 came by way of substitution vide memo no.1056 dated 03.07.2009. Therefore, it is crystal clear that a complaint/grievance with regard to the appointment of respondent no.7 by the Block Teachers Employment Unit had been made and the same was under enquiry.

22. It further appears that in paragraph '8' of the writ application there is a categorical statement that the petitioner had approached the D.D.O. and thereafter to the District Magistrate, Purnea but no notice was taken by the respondent authorities regarding the grievance raised by the petitioner. Earlier under Rule 18, in case of a Block teacher the competent



authority to entertain a grievance was the Deputy Development Commissioner.

23. The State through its District Programme Officer (Establishment), Purnea has filed a counter affidavit. Paragraph '8' of the writ application has not been specifically denied. In paragraph '8' of the counter affidavit, it is stated that the authority for redressal of grievance as per the Service Rules was the Block Development Officer to whom the petitioner has never approached. It is evident that the deponent of the counter affidavit is not correct as regards the competent authority under Rule 18 in case of a Block teacher. This Court, therefore, finds that on the one hand there is no specific denial of the fact that the petitioner had approached the D.D.O., Purnea and D.M., Purnea for redressal of his grievance, the respondent State through District Programme Officer (Establishment), Purnea has not taken note of the fact that the Block Education Extension Officer had been entrusted with an enquiry into the matter and he had forwarded a copy of the enquiry report vide his letter no.90 dated 06.04.2009 to the District Authority, Purnea. It appears that the counter affidavit filed by respondent no.5 is only a half-hearted approach to justify the appointment of respondent no.7.



24. In the aforementioned facts, this Court finds that when the petitioner approached the District Authority, Purnea immediately after its constitution under Rule '18' of the Service Rules which came by way of substitution w.e.f. 03.07.2009, no objection as to the entertainability of the appeal was taken by the State or the employment unit who had participated in course of hearing of Appeal No. 300 of 2009. Later on, when the order passed by the District Authority, Purnea at first instance in Appeal No.300 of 2009 was recalled and a fresh hearing took place, then also neither the State nor the employment unit or the respondent no.7 took any objection as to the entertainability of the appeal on the ground of delay.

25. This Court, agrees with the judicial pronouncements that even if there is no period of limitation, an aggrieved party must avail his remedy within a reasonable period and that reasonable period as has been held by the Hon'ble Division Bench in Rajani Bara (supra) shall be about three to four months but having said so, in the opinion of this Court, in a given case reasonable period may depend upon the facts of the said case. Even, if an appeal has not been preferred within a period of three or four months, in an appropriate case the Tribunal or a Court may entertain the lis as it is well said



that where there is a wrong, there would be a remedy. The latches on the part of the party seeking his remedy at a belated stage is to be considered on the case to case basis as it is well said that a substantial justice is better than a technical one.

26. This Court finds that the facts of this case are not similar much less identical to the facts of Rajani Bara's case or Manohar Prasad's case. In the case of Manohar Prasad (supra), the appointment had taken place in the year 2007 which was sought to be challenged only in the year 2011 and there was no contemporaneous record to show that there was any matter pending before the B.D.O.

27. In the case of Rajani Bara (supra) the view was that the reasonable period would be three to four months for preferring an appeal under Rule 18. In the said case, the appellant had moved the Tribunal two years later. In the present case, however, the appellant-petitioner has moved the Tribunal immediately after its constitution.

28. To this Court, it appears that the case of the petitioner would be nearer to the facts of Amarjeet Kumar Singh (supra). In the said case, the appellant before the Hon'ble Division Bench was aggrieved by and dissatisfied with the order passed by the District Authority, Khagaria on 08.07.2009 by



which the appointment of the appellant as a Panchayat Teacher was set aside. The respondent no.12 in L.P.A. had questioned the appointment of the appellant on the ground that the appellant having obtained lesser percentage of marks had been appointed as Panchayat Teacher. The learned Single Judge confirmed the order of the District Authority, Khagaria.

29. In appeal before the Hon'ble Division Bench it was contended that the Tribunal was not right in setting aside the appointment of the appellant for the reason that neither respondent no.12 had appeared for the interview nor he was available at the time of selection process and the complaint was lodged after merely a period of two years. On behalf of the respondent no.12, it was contended that there is no period of limitation prescribed under the Rules of 2006 for lodging a complaint and hence if the Tribunal has entertained such complaint, there cannot be any objection for lodging such complaint before the Tribunal. Taking note of the new Rules which did not prescribe any period of limitation, the Hon'ble Division Bench held as under:-

“In view of the fact that the new Rules do not prescribe any period of limitation, it has to be observed that the complaint has to be lodged within a reasonable time and the complainant cannot have any opportunity to file such



complaint beyond a reasonable time.

But however, as the question with regard to lodging of the complaint within a 'reasonable time', this Court is of the opinion that the reasonable time has to be interpreted as per facts depending upon the facts of each cases. We are of the opinion that as respondent no.12 has approached the appellate tribunal merely after a period of 2 years, the same cannot be termed as 'reasonable time' with regard to the facts of this case. But however, on merits, as contended by the learned counsel appearing for the respondent no. 12 that the appellants stood at serial no.171 having lesser mark which remain undisputed, we are of the opinion that there is no explanation forthcoming from the State how a person having shown at Serial no. 171 have been accommodated within the post which are eleven in number when other candidates are available having obtained higher marks. In absence of such explanation forthcoming from the State and also having perused the merit list, we are of the opinion that the appellant ought not have been accommodated as a candidate among eleven having seemed lesser marks. On that ground the case of the appellant fails." (underline is mine)

30. This Court finds from the judgment of the Hon'ble Division Bench in the case of Amarjeet Kumar Singh (supra) that the appellant was appointed on 24.11.2007. There was nothing by way of pleading before the learned writ Court that



the respondent no.12 had lodged any complaint with the authorities under the Service Rules prior to substitution of Rule 18, still, the District Authority, Khagaria held the appointment of the petitioner illegal, the writ application failed and in the Letters Patent Appeal also the Hon'ble Division Bench took a view that the appellant was wrongly accommodated as a candidate because he had obtained lesser marks. What is important to note is that the Hon'ble Division Bench has taken a view that the "reasonable time has to be interpreted as per facts depending upon the facts of each cases." In the said case, even though the respondent no.12 had approached the Tribunal after a period of two years, the Hon'ble Division Bench considered the case on merit and upheld the judgment of the District Authority, Khagaria as well as learned Writ Court.

31. To this Court, it appears that the Tribunal has erred in applying the judgment of the Hon'ble Division Bench in the case of Manohar Prasad (supra). In the said case the facts were completely different from the facts of the present case inasmuch as in the said case the appointment took place in the year 2007 and it was challenged before the Tribunal only in the year 2011. There was no contemporaneous records to show that the petitioner of the said case had immediately represented or



protested before the B.D.O. whereas in the present case from the order of the District Authority, Purnea passed in Appeal No.300 of 2009 itself it would appear that the allegations made by the appellant had been enquired into through the Block Education Extension Officer. In fact the Block Education Extension Officer, Amour vide his letter no.90 dated 06.04.2009 made available a copy of the enquiry report also to the District Authority, Purnea.

32. In the case of **Bharat Petroleum Corporation vs. N.R. Vairamani and Anr.** reported in **(2004) 8 SCC 579**, the Hon'ble Supreme Court has observed that the judgment of the Court should not be cited like an Euclid's theorem because a slight change in the facts of the case would make sea difference in the judgment of the Court.

33. This Court would conclude at this stage that in the facts of the present case, the petitioner had been pursuing his remedy diligently and it is not one of those cases in which he may be ousted on the ground of filing of the appeal with inordinate delay. The petitioner has a clinching case on merit as it is not denied that he has obtained better marks than the respondent no.7 and was placed at serial no.5 in the merit list whereas the respondent no.7 as placed at serial no.7.



34. This Court further finds the views expressed by the District Authority, Purnea after perusal of the records that instead of sending the information for consent to the candidates by registered post, the employment unit proceeded to send the communication under 'UPC' but it was surprising that the said communication was received only by respondent no.7. In the opinion of this Court, in the matter of public employment, the employment unit is always supposed to act in such a manner that ensures transparency and fair play in action. It is difficult to understand that for filling up one remaining post in the Schedule Castes (Male) category the employment unit chose to issue information seeking consent from ten candidates but the communication was received only by respondent no.7 who was at serial no.7. This does not speak well about the approach of the Block Employment Unit. This Court finds no reason to disturb the finding of the District Authority, Purnea on these issues.

35. It appears that the State Appellate Authority has recorded that the respondent had not shown from the rule any provisions mandating issuance of any notice/communication in any particular mode. This Court is of the opinion that even if no particular mode was mentioned in the Service Rules, the



conduct of the employment unit must be fair, reasonable and purposive. By sending the communication under 'UPC', the employment unit cannot absolve itself from its responsibility to ensure that the communication duly reaches to the candidates from the merit list. In this digital era adopting a mode of communication which does not ensure service upon the addressee cannot be approved.

36. In this case the employment unit has certainly failed to act fairly in the matter of communication of information to the candidates.

37. This Court cannot remain oblivious of another fact which is emerging from the records that even though the District Authority, Purnea allowed Appeal No.13 of 2018 vide order dated 23.09.2019 and the Block Education Officer directed the petitioner to join whereas the respondent no.7 was stopped from making attendance, the then District Education Officer, Purnea prevailed upon the Block Education Officer, Amour and issued memo no.1365 dated 25.11.2019 whereunder he directed that until issuance of an order by the Block Employment Unit, Amour in this regard the respondent no.7 shall be deemed to be present in the school. This kind of letter/communication by the District Education Officer, Purnea was not warranted and it was



in the nature of circumventing the order of the District Authority if not permanently, at least for some time. By virtue of this order of the District Education Officer, Purnea the respondent no.7 was allowed to continue for next 2½ years as the Block Employment Unit remained sitting over the matter.

38. The contention of learned senior counsel for the respondent no.7 that the petitioner approached the Block Employment Unit belatedly would not appeal to this Court for the simple reason that once a copy of the memo no.1365 dated 25.11.2019 issued by the District Education Officer had been communicated to the Block Development Officer-cum-Secretary of the Block Employment Unit, Amour with a further direction to take further suitable action and the same was once again reiterated vide memo no.366 dated 05.12.2019 issued by the Block Education Officer, Amour, the Block Development Officer who was Secretary of the Block Employment Unit had no reason to remain sitting over the matter for about two and half years. In this manner, he has only conferred undue monetary benefits to respondent no.7. Whether the petitioner would have been allowed to complete his DL.Ed after joining or would have been removed for that reason was a different issue.

39. This Court has been informed that during this



period even though the respondent no.7 had preferred an appeal before the State Appellate Authority, there was no order of stay. If this was the position, the conduct of the Block Employment Unit is seriously questionable.

40. Having regard to the aforementioned discussions, this Court is of the considered opinion that the impugned order passed by the State Appellate Authority is unsustainable. The merit must prevail and any attempt to oust a meritorious candidate by playing hide and seek is required to be rejected and discouraged.

41. The impugned order dated 28.04.2022 passed in Appeal No.359 of 2019 is, therefore, set aside.

42. The petitioner shall be reinstated in service. He will be entitled for the consequential benefits to the extent he was kept out of service after passing of the order dated 23.09.2019 by the District Authority, Purnea in Appeal No.13 of 2018 (Annexure- '8') till the date of passing of the impugned order by the State Appellate Authority on 28.04.2022.

43. The role of the then District Education Officer, Purnea and the Block Development Officer who was also Secretary of the Employment Unit as well as the entire employment unit is required to be thoroughly examined by the



District Magistrate, Purnea. The Block Employment Unit, Amour despite being aware of the judgment of the District Authority, Purnea failed to act in terms of the said order and remained sitting over the matter conferring undue benefit to respondent no.7, let the entire amount paid to the respondent no.7 during the period he was allowed to continue after the order of the District Authority, Purnea vide Annexure- ‘8’ till his removal later on vide order dated 02.03.2022 be recovered from the erring officials after conducting an appropriate enquiry and fixing responsibility in accordance with law.

44. It will be an independent enquiry and the observations of this Court, if any, shall not be considered to the prejudice of the concerned officers.

45. This writ application (C.W.J.C. No. 11609 of 2022) is allowed to the extent indicated hereinabove.

46. As a result of the aforementioned judgment, CWJC No.7070 of 2023 would automatically fail, hence, CWJC No.7070 of 2023 stands dismissed.

(Rajeev Ranjan Prasad, J)

arvind/-

AFR/NAFR	AFR
CAV DATE	11.09.2023
Uploading Date	14.09.2023
Transmission Date	

