

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16953 of 2022

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1. Surendra Prasad Yadav S/o ram Prasad Yadav, R/o Village- Bihari, P.O.- Bihari, P.S.- Palasi, Distt- Araria.
 2. Md. Waris S/o Md. Ashahabuddin, R/o Village- Songora, P.O.- Main Hat, P.S.- Palasi, Distt- Araria.
 3. Hareram Mandal S/o Late Sahat Lal Mandal, R/o Village- Pipara, P.O.- Sohendar, P.S.- Palasi, Distt- Araria.
 4. Rajesh Kumar S/o SHobhan Lal Mandal, R/o Village- Brahkumba, P.O.- Brahkumba, P.S.- Palasi, Distt- Araria.
 5. Poonam Kumari W/o Asmod Kumar, R/o Village- Kodheli, P.O.- Palasi, P.S.- Palasi, Distt- Araria.
 6. Amarnath Das S/o Bhola Dash, R/o Village- Dahati South, P.O.- Dahati South, P.S.- Palasi, Distt- Araria.
 7. Om Prakash Mandal S/o Dharmnath Mandal, R/o Village- Sohendra Hat, P.S.- Palasi, Distt- Araria.
 8. Ravindra Kumar Yadav S/o Vijay Kumar Yadav, R/o Village- Karor Dighali, P.O.- Kankhudia, P.S.- Palasi, Distt- Araria.
 9. Arun Kumar Yadav S/o Late Doman Lal Yadav, R/o Village- Karod Dighali, P.O.- Kanarvudia, P.S.- Palasi, Distt- Araria.
 10. Manoj Kumar Mandal S/o Sri Mayanand Mandal, R/o Village- Chauri, P.O.- Urlaha, P.S.- Palasi, Distt- Araria.
 11. Kapil Kumar Mandal S/o Pawan Lal Mandal, R/o Village- Deep Nagar, P.O.- Tarri, P.S.- Palasi, Distt- Araria.
 12. Vijay Kumar Mandal S/o Late Shyam Lal Mandal, R/o Village- Karaiha Tola Khapara, P.O.- Sohandar Hat, Via-Joky Hat, P.S.- Palasi, Distt- Araria.

... .. Petitioner/s

Versus

1. The State of Bihar through its Principal Secretary Cum Commissioner, Department of Education, State of Bihar, Patna.
2. The Director (Primary Education), Education Department, State of Bihar, New Secretariat, Patna.
3. The District Magistrate, Araria.
4. The Presiding Officer, District Appellate Authority, Araria.
5. The District Education Officer, Araria.
6. The District Program Officer, (Establishment), Araria.
7. The Block Development Officer, Palasi, Distt- Araria.
8. The Block Education Officer, Palasi, Distt- Araria.

... .. Respondent/s

Appearance :



For the Petitioner/s : Mr. Basant Kumar Choudhary, Sr. Adv.
Mr. Shashi Bhushan Kumar, Adv.
Mr. Nidhi Kumari, Adv.
For the State : Mr. Subhash Chandra Mishra, SC 16
For the Respondent No. 6 : Mr. Rakesh Prashant, Adv.

CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH SHARMA
ORAL JUDGMENT

Date : 17-01-2023

1. The petitioners have preferred this writ petition assailing the order passed by the District Programme Officer(Establishment), Araria dated 01.11.2022, whereby the appointment of the petitioners have been canceled as a Block Teacher with immediate effect directing the Employment Unit not to allow the petitioners to perform their duties.

2. Learned senior counsel appearing for the petitioner has submitted that the petitioners had preferred appeal before the State Appellate Authority challenging the legality of an order passed on 15.12.2017 by the District Teachers Employment Appellate Authority, whereby the District Teachers Employment Appellate Authority had refused to grant relief to the petitioner on the ground that the post had now to be treated as vacancies under the new selection and, therefore, the post cannot be filled as there was no vacancy available. The State Appellate Authority has noticed that there were several posts in different categories existing for recruitment and a document in this regard had been produced under the Right to Information Act. As the litigation was continuing against these posts. In view



thereof, the State Appellate Authority disposed of the appeals with direction to the Block Employment Unit, Palasi to consider the case of the appellants afresh in accordance with law against those vacancies. And, it further observed that if the Employment Unit of the concerned Block decides to take steps for employment/engagement in the categories to which the appellants belong against the unfilled vacancies if any, the Respondent Employment Unit shall consider the case of the appellants in accordance with law.”

3. The learned counsel for the petitioner further submits that a meeting was held of the Employment Unit on 24th May 2018 and it was decided to proceed further with the employment process against the unfilled vacancies. And in this regard, the Block Education Officer, who was asked to make available the details relating to the vacant post.

4. Learned counsel for the petitioner has also taken this Court to Annexure 7, a document received under R.T.I. dated 17.05.2018 which was relied upon by the State Appellate Authority wherein, it is mentioned that points from 100 to 124, there were 12 posts lying vacant on account of the complaints/disputes pending in the Court.

5. The appointment was thereafter, offered to the



petitioners on 24th May, 2018 and since then, the petitioners have been continuously performing their duties. The petitioners thereafter, filed writ petition before this Court as their salary was not being released. The cases were heard together with other similar matters by this Court and a general direction was issued to release the salary of all the teachers who are working.

6. Learned counsel for the petitioners submits that thereafter, the District Programme Officer (Establishment), Araria has issued an order on 01.11.2022 directing that the amount of salary be released up to August 2022 of the petitioners and thereafter, it restrained the Employment Unit to continue the services of the petitioners and further warning was issued that if the appointments are cancelled, their salary and accountability shall wholly rest with the Employment Unit and the Block Education Officer, Palasi. In the said order, it was also stated that all the vacancies after the recruitment process of 2008 was over, got absorbed in the recruitment year 2012 and thereafter, in recruitment year 2014 and therefore, there was no vacancy available on which the petitioners could have been appointed.

7. Learned counsel for the petitioner submits that the said aspect was already dealt with by the State Appellate



Authority and the District Programme Officer (Establishment) had no authority to override the observations of the State Appellate Authority and take a different view.

8. This Court vide order dated 15.12.2022, stayed the operation of the order passed by the District Programme Officer dated 01.11.2022 and also directed the concerned officer to remain present on the next date. He has filed a counter affidavit and states that the order passed by the State Appellate Authority has not given any direction to give employment to the petitioner rather it was conditional mentioning that if Employment Unit so decides, and if there is any unfilled vacancies and in accordance with law, then the appointments will be made. It has been further stated that the Block Selection Unit, Palasi, offered engagement without considering the three conditions issued employment letters to the petitioners which is bad in law and against the spirit of the State Appellate Authority. It is stated that the Block Selection Unit was not empowered to give fresh employment to any applicant and could have only given employment in compliance of order of this Court or Appellate Authority's order. It is reiterated that there is no vacancy left for the petitioner by the authority. It has further been stated that they were never informed to the D.P.O., (Establishment), that



the petitioners' case is pending for adjudication and for that reasons the posts have been kept vacant. In absence of the same, the vacant posts merged with the selection process of 2012. The officer, therefore, re-asserts his stand and supports the order passed by him.

9. Learned counsel appearing for the respondent has taken this Court to the orders passed by the District Education Officer dated 20.10.2014, 29.06.2020, 7.01.2016 and 29.06.2020 to submit that the posts which remained unfilled in 2008 selection process merged in 2012 selection process and as the posts of the concerned Employment Units were not filled in 2008 up to 2010, the posts would automatically been taken to have been merged in 2012.

10. I have reflected on the submissions, while it is noticed that the selection process conducted in the year 2008 which ended in 2010, the posts which remained unfilled were to be merged in 2012 Selections, as the new rules had come into force. This Court has also held in several judgments passed from time to time that no claim can be made against such posts which stood merged in the 2012 selection.

11. However, in the present case, the situation is found to be completely different. The District Appellate Authority had



taken a view as similar to what the present District Programme Officer has mentioned in his impugned order dated 01.11.2022. The view of the District Appellate Authority was however, found to be not sustainable in the facts of the case as a document was produced before the State Appellate Authority under Right To Information Act about there being several posts still existing for recruitment in the concerned Employment Unit. The document produced under Right to Information Act, placed on record before this Court in Annexure 7 reflects that the officers of the respondent has stated about there being 12 posts lying vacant since beginning on account of various disputes and cases pending.

12. The said document issued by the Block Education Officer, Palasi dated 17.05.2018, having being issued in a nature of information under the Right To Information Act, has to be treated as correct and cannot be doubted. The State Appellate Authority has taken into consideration the said document and further directed as above. The Employment Unit of the concerned Block was, therefore, empowered to consider the case of the appellants against the unfilled vacancies. The concerned Employment Unit has accordingly followed the procedure in accordance with the extant Rules of 2008 and



appointed the petitioners. Their appointment, therefore, has to be treated as in terms of the selections conducted in 2008 and cannot be a subject matter for afresh dispute being raised by the District Programme Officer who was also party to the proceedings before the State Appellate Authority.

13. The order passed by the District Programme Officer dated 01.11.2022, therefore, is found to be vitiated and bad in law and is accordingly quashed and set aside.

14. This Court notices that with regard to the same dispute, the District Programme Officer has again initiated proceedings without there being any authority available with him. Once the State Appellate Authority's order has been passed, where the District Programme Officer was a party, he had no jurisdiction to sit over the orders of the State Appellate Authority and pass an order afresh. There has been a complete non application of mind and the petitioners have been forced to pursue this litigation afresh.

15. The order dated 01.11.2022 is found to be a direct violation of the order passed by State Appellate Authority. The State Appellate Authority has been constituted under **The Bihar State Teaching Institutions Teachers and Employees(Disputes Redressal & Appeal) Rules, 2020**, and



an order passed by the said authority is a judicial order which cannot be tinkered with by the officers of the Education Department in a casual manner. If they had any grievance they could have challenged it before this Court.

16. Any action taken by them contrary to the directions of the State Appellate Authority would amount to flouting of the said order for which they are liable to be punished in terms of **Rule 16 of Bihar State Teaching Insitutions Teachers and Employees(Dispute Redressal & Appeal) Rules of 2020** which reads as under:

“16. Power to impose Punishment:-

In case of non-compliance of the order/direction or in case of any complaints by the party for compliance of the order:-

(i) The Appellate Authority shall impose punishment against-concerned party but he will be given adequate opportunity of hearing before imposing punishment.

(ii) The Appellate Authority may impose penalty upto Rs. 50,000/- (Fifty thousand only) upon the answerable party. The amount of penalty shall be deposited in the Treasury under the head indicated by the Department. The amount of penalty shall be recoverable by way of Public demand.

(iii) The Appellate Authority shall have



jurisdiction to make recommendation to the concerned Department to initiate Departmental proceeding or to take necessary action against the delinquent employee under the provisions of Bihar Service Code/Bihar Panchayat Raj Act 2006/Bihar Municipal Act 2007 and other relevant provisions.”

17. The State Appellate Authority has the power to initiate proceedings against the District Programme Officer including imposing of fine and departmental proceedings. This Court leaves it open for the State Appellate Authority to take appropriate action at its own wisdom.

18. With the said observations, the writ petition is allowed. The petitioners shall be allowed to continue on the post.

(Sanjeev Prakash Sharma, J)

Suraj/-
Item No. 14

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

