

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.308 of 2023

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Asha Kumari @ Asha Rani W/o Late Madan Prasad, D/o Late dedar Nath Gupta. R/o Mohalla- P and T Colony, Barmasia, P.O.- Katihar, P.S.- Sahayak Katihar, Dist.- Katihar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Director Primary Education, Bihar, Patna.
2. The Director Primary Education Bihar, Patna.
3. The Collector Cum Dist. Magistrate, Katihar.
4. The District Education Officer, Katihar.
5. The District Programme Officer (Establishment), Katihar.
6. The Block Development Officer, Block- Amdabad, Dist.- Katihar.
7. The Block Education Officer, Block- Amdabad, Dist.- Katihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dilip Kumar Roy
For the Respondent/s : Mr. Madan Jeet Kumar (Gp 20)

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CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH SHARMA

ORAL ORDER

2 20-01-2023 The petitioner has challenged the order passed by the State Appellate Authority dated 07.09.2022.

It is stated by the petitioner that she participated in the selection process conducted for appointment as Block Teacher and her name figured in the provisional merit list. Counseling was conducted on 24.01.2009 and the petitioner appeared but could not sign the register and she was assured that her appointment letter will be issued but no appointment was offered to her till date.

Learned counsel for the petitioner submits that



similarly situated other aggrieved aspirants preferred an appeal before the District Appellate Authority in the year 2010 and the same was rejected in 2012 by the District Appellate Authority, against which the writ petition was preferred before the High Court, which was remanded back to the District Appellate Authority and the same was re-heard and allowed with a direction to offer the appointment letters. Learned counsel submits that the petitioner although did not file any appeal before the District Appellate Authority at the relevant time but she has similar case. It is submitted that the same relief ought to have been granted to the petitioner.

Learned counsel for the State submits that the Appellate Authority has not erred in not granting the similar relief to the petitioner.

I have considered the submission and carefully perused the Appellate Authority Order and the findings of the State Appellate Authority, which are as under:-

“From submissions of both the parties it is demonstrably apparent that the appellant did not file any objection against her restraining from participating in the counselling. No litigation was filed by her before the appropriate Forum to challenge any such action of the Employment Authority and seeking direction for consideration of her case for appointment on the basis of the merit list said to have been drawn by the Employment Unit. The dispute in this regard was



first preferred by her in 2016 which was only to challenge the first order dated 09.05.2012 passed by the learned DA in which the appellant was not the appellants. There is no assertion that pursuant to the order of the learned DA any one has been appointed by the Employment Unit. The Rule provisions provide limitation for filing such dispute. The process of selection and counselling thereunder was held, even according to the appellant, in 2009. Neither any objection was filed before the local authority nor any dispute was filed by her before the learned DA. The long and unexplained delay in filing the dispute by the appellant demonstrates her complete laxity in pursuing the course of remedy available to her. Learned DA on appraisal of materials placed before it found and held that she had not participated in the two counsellings conducted by the Employment Unit on 24.01.2009 and 27.02.2009. There is some explanation offered by the appellant with respect to the counselling held on 24.01.2009 but the appellant is silent so far the counselling conducted on 27.02.2009. The respondents on the basis of the documents have asserted that the appellant had not participated either in the first counselling or in the second counselling. On the strength of the facts noted above the appellant is not eligible for being considered for appointment. She is not entitled to the relief prayed for.”

Findings of fact arrived at a judicial authority need not be interfered under Article 227 of the Constitution of India, the scope of interference under Article 227 of the Constitution of India has been recently reiterated by the Supreme Court in the case of Sameer Suresh Gupta vs. Rahul Kumar Agarwal as reported in 2013 (9) SCC 374 as under:-

“6. In our view, the impugned order is liable to be set aside because while deciding the writ petition filed by



the respondent the learned Single Judge ignored the limitations of the High Court's jurisdiction under Article 227 of the Constitution. The parameters for exercise of power by the High Court under that article were considered by the two-Judge Bench of this Court in *Surya Dev Rai v. Ram Chander Rai* [(2003) 6 SCC 675] . After considering various facets of the issue, the two-Judge Bench culled out the following principles: (SCC pp. 694-96, para 38)

“(1) Amendment by Act 46 of 1999 with effect from 1-7-2002 in Section 115 of the Code of Civil Procedure cannot and does not affect in any manner the jurisdiction of the High Court under Articles 226 and 227 of the Constitution.

(2) Interlocutory orders, passed by the courts subordinate to the High Court, against which remedy of revision has been excluded by CPC Amendment Act 46 of 1999 are nevertheless open to challenge in, and continue to be subject to, certiorari and supervisory jurisdiction of the High Court.

(3) Certiorari, under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction i.e. when a subordinate court is found to have acted (i) without jurisdiction — by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction — by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied: (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear



ignorance or utter disregard of the provisions of law, and
(ii) a grave injustice or gross failure of justice has occasioned thereby.

(6) A patent error is an error which is self-evident i.e. which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view, the error cannot be called gross or patent.

(7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred thereagainst and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in re-appreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

(9) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari, the High Court may annul or set aside the act, order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only



give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the case.”

In view of above, I find that no interference is warranttd in the order passed by the State Appellate Authority.

This writ petition is dismissed.

(Sanjeev Prakash Sharma, J)

Brajesh Kumar/-
Item no.29

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