

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4349 of 2021

-
1. Sunil Kumar S/o Dhirendar Prasad R/o Village- Kalyanpur Bali, P.S.- Jagatpur Chandi, District- Nalanda, Posted as Panchayat Teacher at Primary School, Makimpur, Chandi, District- Nalanda.
 2. Bharti W/o- Brij Bihari Singh R/o Village- Prasdih, P.S.- Nagar Nausa, District- Nalanda, Posted at Panchayat Teacher at Primary School, Kayalbigha, Chandi, District- Nalanda.

... .. Petitioner/s

Versus

1. The State of Bihar through Chief Secretary Govt. of Bihar, Patna.
2. The District Education Officer, Nalanda at Biharsharif.
3. The District Programme Officer (Establishment), Nalanda at Biharsharif.
4. The Block Education Officer, Chandi, District- Nalanda.
5. The Panchayat Secretary, Gram Panchayat Raj, Belchi, Block Chandi, District- Nalanda.
6. The Mukhiya, Gram Panchayat Raj, Belchi, Block Chandi, District- Nalanda.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.R.K.Rajesh, Adv. Mr.Ranvijay Singh, Adv.
For the Respondent/s	:	Mr.Jitendra Kumar Ray No.1, SC-13 Mr.U.K. Singh, AC to SC-13

CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL JUDGMENT

Date : 28-02-2024

Heard learned counsel for the petitioners and learned counsel for the State.

2. The present writ application has been filed for issuance of writ in the nature of certiorari to quash the order/judgment dated 26.02.2020 passed by the Chair Person of State Appellate Authority Education Department, Bihar, Patna in Appeal No.- 107/2019, whereby and whereunder the appeal is allowed in



favour of opposite party by way of illegality erroneous consideration along with non-consideration of fact as well as law by which petitioners became aggrieved.

3. The brief fact of the present case is that the petitioners were applicant for employment on the post of Panchayat Teacher in Belchhi Gram Panchayat Raj, Belchhi Block, Nalanda district in the second phase of employment, under Bihar Panchayat Elementary Teachers (Employment and Service Conditions), Rules 2006, as amended in the year 2008 but the petitioners were not employed as Primary Teacher. As per the roster and category, total 12 vacancies were available in Belchhi Panchayat and against said vacancies, total 12 Panchayat Teachers were appointed in different categories. The petitioners belong to UR and SC(F) categories. One Gajendra Kumar and Munni Kumari Sinha were employed against Roaster point 3927 (UR) and 3928 (SCF) categories. It is submitted that petitioner was not appointed on the post and the same remained vacant. Thereafter, the petitioners having seen the non-consideration of their grievance, filed case before District Teachers Employment Committee bearing Appeal No.5 of 2016, for the appointment of the petitioners on such vacant posts of panchayat teacher for which they were entitled in accordance of merit list as he



obtained their marks of 57% and 48%. The District Employment Tribunal, Nalanda, passed the order in favour of petitioner in Appeal No.5/2016 vide order dated 30.04.2016, where the respondents have appeared and placed their arguments with all relevant documents under which the learned court directed to make further appointment proceedings of such vacant post by way of counselling. The respondent Employment Committee in pursuance of order of District Employment Tribunal, Nalanda, have completed the procedure and provided the appointment letter to the petitioners and accordingly, he joined as a Panchayat Teacher at Belchhi Gram Panchayat on 04.05.2016 as Trained Teacher at Primary School, Makimpur. It is submitted that a general instruction which has been given by the Education Department that the vacant post of the concerned Panchayat should be fulfilled for the third phase employment for 2012, while as per the notification, it has been clearly indicated that under the Disputed matter concerned with the employment under Rule 2006, could be fulfilled later on under the decision of competent Authority like the District Teacher Employment Tribunal and in view of the contention of the said notification, the District Tribunal empowered to give the direction to the concerned respondent for the appointment of the panchayat



Teacher under Rule 2006 and 2008.

4. After lapse of three years, the District Education Officer, Nalanda, Bihar Sharif came before the State appellate Authority by way of challenging the order of Appeal passed in year 2016, while they were capable to come before the Appellate court before the appointment of petitioners within prescribed time, which has not been done by them and State Appellate Authority set aside the order of the District Appellate Authority and appeal was allowed.

5. A detailed counter-affidavit is filed on behalf of the respondent no.3 whereby it has been stated that it is not disputed that the second phase of Block/Panchayat teachers employment was concluded in the month of December, 2010 with specific direction that no employment shall be made after 31.12.2010 without the permission of the Education Department and vacant post was forwarded and clubbed with the subsequent vacancies third phase of employment, 2012. After a lapse of more than five years from the date of closure of the second phase of employment, the petitioners for first time filed a case before the District Appellate Authority, Nalanda vide Appeal Case No.05 of 2016. The District Appellate Authority, Nalanda without considering the departmental guidelines and after completion of



process of selection of Block/Panchayat Teachers of second phase, illegally allowed the appeal on 30.04.2016, whereby directing the Panchayat Employment Unit, Belchhi to fill up two posts of the second phase-2008, on the basis of merit list, reservation roster and following conditions laid down in the relevant employment Rules. It is submitted that the claim of petitioners should have been dismissed by the learned District Appellate Authority, Nalanda on the ground of inordinate delay itself and without considering the point of limitation, the appeal of petitioners was allowed. The District Appellate Authority has also failed to appreciate that the petitioners had submitted application for employment as per the eligibility criteria prescribed under Panchayat Teacher Employment Rule-2008 but at present scenario, the employment has been made under Bihar Panchayat Elementary Employment Rule-2012 and the process and criteria of employment of Panchayat/Block Teacher has been changed. Therefore, employment of petitioner could not be made against non existing vacancies. The said issue has been decided by this Hon'ble Court on 07.07.2015 in C.W.J.C. No.6015 of 2015 (Md. Akil vs. State of Bihar and Ors.) in which it was held that:

“This application is dismissed on the ground that no appointment can be made at



belated stage on the post which was advertised and exercise was completed in the year 2008. In addition to that rules have been changed and the qualification and eligibility criteria for appointment has been changed, any appointment now will be governed by the present rules in the play”.

6. Per contra, learned counsel for the petitioner submits that the State Appellate Authority has rightly passed the order.
7. Considering the arguments of the parties and perusal of the record, this Court is of the opinion that there is no infirmity in the order passed by the State Appellate Authority, which has passed a reasoned and speaking order and no interference is required. The order of the District Appellate Authority is set aside.
8. This writ application is accordingly dismissed.

(Anjani Kumar Sharan, J)

pallavi/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	12.03.2024
Transmission Date	N.A.

