

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10380 of 2019

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Md. Aslam Ali Quadri alias Md. Aslam Ali Kadri Son of Haroon Rasid
Ansari, Resident of Village- Chakka, P.S.- Baheri, District- Darbhanga.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Primary Education, Govt. of Bihar, Patna.
2. The District Programme Officer, Darbhanga.
3. The Block Development Officer, Baheri, P.S. Baheri, District- Darbhanga.
4. The Block Education Officer, Baheri, P.S.- Baheri, District- Darbhanga.
5. The Panchayat Secretary, Gram Panchayat Raj Baghouni, P.S. and Block Baheri, District- Darbhanga.
6. The Mukhiya Gram Panchayat Baghouni P.S and Block Baheri, District- Darbhanga.
7. Wakil Ahmad, Son of Abdul Hakim, Resident of Village- Kumai, P.O.- Nari, P.S.- Ghanshyampur District- Darbhanga.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Jagdish Prasad Singh, Adv.
For the State	:	Mr.Shashi Shekhar Tiwary AC to AAG-15
For the Resp. No.7	:	Mr.M.S.Hoda, Adv.
		Mr.Anuj Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
CAV JUDGMENT

Date :08-05-2024

Heard learned counsel for the petitioner, learned counsel
for the State and learned counsel for the private respondent.

2. The petitioner has filed this writ application for issuance
of an appropriate writ or direction in the nature of certiorari for
setting aside order dated 01.04.2019 in Appeal No.144/2018
passed by State Appellate Authority, Patna whereby and where
under order dated 08.12.2009 in Case No.674 of 2009 passed by
District Teachers Employment Appellate Authority, Darbhanga



has been quashed on the ground of lack of jurisdiction and employment of the Private Respondent (petitioner) has been cancelled and Panchayat Employment Unit has been directed to hold fresh counselling inviting appellant (respondent no.7) private respondent (petitioner) and other candidates above them in merit list intimating the date, time and venue of counselling. Petitioner also prays for an appropriate order for confirming the order dated 08.12.2009 passed by District Panchayat Teachers Employment Appellate Authority, Darbhanga in Case No.674/2009.

3. The brief facts of the case is that pursuant to advertisement in the year, 2006, petitioner (Urdu) and others applied for appointment as Panchayat Teacher in Gram Panchayat, Baghouni within Baheri Panchayat. Total 14 posts of teachers were notified by advertisement out of which 10 seats were for Hindi Teacher and 4 seats were for Urdu Teacher. The respondent Panchayat prepared merit list on 30.09.2006 according to marks of applicants. Petitioner was at serial no.37 whereas private respondent was at serial no.36 having marks as 60.54% and 60.33% respectively. Respondents issued 1st panel for which counselling was done on 18.12.2006 and 20 persons including serial no.36 were called for counselling including



respondent no.7. The persons who completed their counselling on 18.12.2006 were allotted school on the basis of counselling and consent on 18.12.2006. Only 6 persons turned up for certificate verification and to submit consent accordingly, they were issued joining letter on 19.12.2006. Remaining 8 seats were declared vacant and accordingly 2nd panel was prepared for 8 persons including petitioner on 10.01.2007. The petitioner was in 2nd panel and after counselling, verification of certificate and consent, respondent Panchayat issued appointment letter to the petitioner vide letter no.1 dated 16.01.2007 and accordingly, petitioner submitted joining on 16.01.2007 itself.

4. The petitioner was then transferred on 03.04.2008 to another Primary School. Thereafter, all of a sudden on 23.01.2008, respondent no.7 submitted application to respondent Block Development Officer, Baheri, who without asking show cause to petitioner and hearing him, passed order dated 04.04.2008 behind the back of the petitioner, whereby and where under selection of petitioner was cancelled and Authorities were directed to appoint respondent no.7 though the order was issued through memo no.1059 dated 08.05.2008 (annexure-3 to the writ petition).

5. Aggrieved by the same, petitioner filed CWJC No.10269



of 2008 challenging memo no.1059 dated 09.05.2008 and the said writ application was disposed of by this Court with liberty to approach District Appellate Authority. In view of the order dated 28.10.2009 passed in CWJC No.10269/2008, the petitioner approached the District Teachers Appellate Authority, Darbhanga through Appeal No.674/2009 and the District Appellate Authority by its order dated 08.12.2009 set aside the order dated 04.04.2008 and directed to reinstate the petitioner and petitioner was reinstated and since then, he is working.

6. The respondent no.7, then challenged the order dated 08.12.2009 before this Court through CWJC No.2162 of 2010 which was disposed of by order dated 13.11.2017 with liberty to approach the Bihar State Appellate Authority, Patna. Thereafter, the respondent no.7 filed Appeal No.144 of 2018 before the State Appellate Authority, which, by order dated 01.04.2019 allowed appeal no.144 of 2018 on the ground that the District Teacher Appellate Authority has no jurisdiction to sit in appeal against order of B.D.O. and Mukhiya and Panchayat Secretary could not clarify on what date and by which means, notice was sent to the respondent no.7 to appear on 18.12.2006. The State Appellate Authority quashed order dated 08.12.2009 and 04.04.2008 and cancelled selection of petitioner and further



directed the respondent Mukhiya and Panchayat Secretary to hold fresh counselling inviting appellant, private respondent and other candidates above them in the merit list intimating the date, time and venue of counselling at least two weeks before the counselling merit list, date, time etc. may be published on notice board. Further, B.D.O., Baheri has been directed to get the entire process completed within three months.

7. Learned counsel for the petitioner submits that the respondent no.7 did not attend in counselling on 18.12.2006 and hence, he was not selected like others. The respondent no.7 approached the respondent Block Development Officer, Baheri in January 23, 2008 about delay of one year when he was not selected in his own Panchayat. Learned counsel submits that the appellate authority failed to consider that mere having more meritorious does not matter in the matter of appointment, if a candidate did not turn up for counselling as per law. The power of the District Teachers Appellate Authority is not to review the order of B.D.O. under section 18 of the Act but the same was exercised on direction of this Hon'ble Court under Article 226 which cannot be said that order of District Appellate Authority is without jurisdiction.

8. A counter-affidavit is filed on behalf of respondent no.7



whereby it is stated that the respondent no.7 on 25.08.2006 applied for appointment as Panchayat Teacher (Urdu) in Gram Panchayat, Baghauni, after completion of all formalities, counselling conducted on 03.11.2006 and merit list was prepared in which, name of respondent no.7 stands at serial no.36 in Extremely Backward (others) Class. In a meeting of the appointment committee, the respondent no.7 and others were selected to be appointed as Panchayat Teacher. On 18.12.2006, the selected candidates were issued a notice/information letter to give their consent and thereafter on 19.12.2006, appointment letters were issued to few persons. Learned counsel for the respondent no.7 submits that aforesaid notice/letter was never served upon the respondent no.7 inspite of his selection. The name of petitioner finds place at serial no.37 in the merit list in a second merit list which was prepared illegally in which petitioner was included and thereafter, he was appointed as Panchayat Teacher (Annexure-1 of the writ application).

9. That after getting knowledge about the illegal appointment of petitioner, the respondent no.7 approached the Mukhiya but of no avail. Finding no way the respondent no.7 has filed a petition before the Block Development Officer (the then appellate authority), who after hearing the parties passed as



order dated 04.04.2008 to appoint the respondent no.7 as Panchayat Teacher and communicated through Memo No.1059 dated 08.05.2008 to all concerned. The petitioner preferred an appeal against the order of the Block Development Officer dated 04.04.2008, being Objection Case No.674 of 2009 before the District Teacher Appointment Appellate Tribunal, Darbhanga. The respondent no.7 appeared before the Tribunal and filed his reply. The Tribunal after hearing the parties, set aside the order of the Block Development Officer dated 04.04.2008 vide order dated 08.12.2009 contained in memo no.1543 dated 16.12.2009 and the same order is illegal passed without jurisdiction.

10. The appointment of the petitioner was illegal and it was not necessary to hear him before passing any order. It is submitted that it is well settled law that on the earlier occasion, the B.D.O. was Appellate Authority under Rule 18 of Employment Rules, 2006. Rule 18 was amended by Notification No.3148 dated 25.08.2008 replacing the B.D.O. by a District Level authority consisting of one or more members appointed by the State Government having power to lay appeals related to employment and other service condition under the Rules. The amendment dated 25.08.2008 did not say that the District Authority will hear appeal against the order passed by the



B.D.O.

11. Respondent no.7 had no option than to challenge the order of District Appellate Authority by filing CWJC No.2162 of 2010 which was disposed of by order dated 13.11.2017 with liberty to approach the Bihar State Appellate Authority, Bihar. The respondent no.7 filed the appeal before the State Appellate Authority against the impugned order dated 08.12.2009 passed in Objection Case No.674/2009 by the Members of the District Teachers Engagement Appellate Authority, Darbhanga. Learned counsel for the respondent no.7 further submitted that the District Appellate Authority has no jurisdiction to sit in appeal against order of B.D.O. and this Hon'ble Court held in the case of ***Amarnath Kesri and Narendra Kumar Jha; 2018(4) PLJR 660*** that "*Tribunal had no power to hear or decide the issue which has already been decided by the predecessor body*".

12. Considering the arguments of the parties, on perusal of the record and on going through the order of the State Appellate Authority, it is clear that the State Appellate Authority has passed order after considering the order of this Court passed in ***Amarnath Kesri and Narendra Kumar Jha (supra)***, which held that Tribunal had no power to hear or decide the issue which has already been decided by the predecessor body i.e. B.D.O., which



was the adjudicatory forum prior to constitution of tribunal.

13. In view of the aforesaid background, I do not find any illegality in the order passed by the State Appellate Authority.

14. Accordingly, this writ application is dismissed being devoid of merit.

(Anjani Kumar Sharan, J)

pallavi/-

AFR/NAFR	NAFR
CAV DATE	29.04.2024
Uploading Date	08.05.2024
Transmission Date	N.A.

