

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1772 of 2021

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1. Pinky Kumari Jha Wife of Sanjeev Kumar Jha Resident of Village-Saharghat, Ward No.7,P.S.-Saharghat, Distt.-Madhubani, At Present Designated Post Block teacher-Madhawapur.
 2. Ganesh Pradhan Son of Late Jhari Lal Pradhan, Resident of Vilalge-Mahmadpur, Ward No.2, P.S.-Benipatti, Distt.-Madhubani, At Present Designated Post Block teacher-Madhawapur and
 3. Ram Prasad Marik Son of Muni Marik, Resident of Village-Sugapatti, P.S.-Fulparash, Distt.-Madhubani. at Present Designated Post Block teacher-Madhawapur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Human Resources Development Department (Now Education Department), Govt. of Bihar, Patna.
2. The Director, Primary Education, Human Resources Development Department, Department (Now Education Department), Govt. of Bihar, Patna.
3. The Distt. Magistrate, Madhubani.
4. The Distt. Programme Officer, Madhubani.
5. The Block Development Officer, Madhawapur, Distt. Madhubani.
6. The Block Education Officer, Madhawapur, Distt. Madhubani.
7. Satya Narain Son of Sri Budhan Mahto Resident of Village-Parmeshra P.S.-Lakhanur, Via-Jhanjaharpur, Distt.-Madhubani.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Rajeev Kumar Singh, Adv. Mr.Devendra Kumar, Adv.
For the State	:	Mr.S.K.Ranjan, AC to G.P. 17
For the Respondent no.7 :		Mr.Shambhu Sharan Kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
CAV JUDGMENT

Date :22-03-2024

Heard learned counsel for the petitioners, learned counsel
for the State and learned counsel for the respondent no.7.

2. This writ application has been filed for the following



relief(s):-

“(i) For issuance of writ in nature of mandamus and directing and commanding the Respondent authorities for setting aside the order dt.31.08.2020 passed by the Chairperson State Appellate Authority, Education Department, Niyojan Bhawan, Bihar, Patna, whereby and where under State Appellate Authority has allowed the Appeal filed by the respondent no.8 for further appointment on counselling the petitioners and further direction to respondents authorities i.e. the Block Education Officer, Madhwapur to hold Fresh counselling for the appellant and three private respondents and all other candidates having higher merit lists than petitioners in physical education under BC/General category and take final decision.

(ii) For further direction to the respondent authorities to not disturb the petitioners who are working from last 10 years.

(iii) For any other relief or reliefs to which the petitioner is found entitled in accordance with law for the end of justice.”

3. The respondent no.7 has challenged the appointment of the petitioners as Block Teacher (Physical Education) in the District of Madhubani in the second phase of employment, 2008 before the District Teachers Appellate Authority on the ground



that notwithstanding the fact that respondent no.7 was high in the merit list, he was not allowed to participate in the counseling.

4. The District Teachers Appellate Authority dismissed the claim of respondent no.7 on the ground that in his application, there was a complaint regarding his not being allowed to be counseled on 28.12.2010. It was held that without adverting to the developments which might have taken place on 12.08.2010, the District Teachers Appellate Authority was not in a position to declare the appointment of the petitioners to be beyond Rules. Aggrieved by the aforesaid order of the District Teachers Appellate Authority, the Respondent no.7 preferred an appeal before the State Appellate Authority, who did not agree with the order passed by the District Teachers Appellate Authority. The order passed by the District Teachers Appellate Authority was set aside by the impugned appellate order and the State respondents were directed to undertake a fresh process of counseling as early as possible.

5. Mr. Rajeev Kumar Singh, learned Advocate for the petitioners submitted that first round of counseling for the appointment of Block Teachers was done on 21.04.2009. On that date, along with the petitioners, respondent no.7 had also



participated. A provisional merit list was prepared in which admittedly the name of respondent no.7 was placed above the names of the petitioners. On 06.08.2010, an advertisement was issued which was in the nature of notice to all such candidates, to appear for fresh counseling on 12.08.2010. The petitioners appeared but the respondent for some reason was absent. Later, the process was again deferred for 28.12.2010. On that date, since the petitioners were found to be eligible and since their names were included in the merit list against the existing vacancy, they were appointed. It has thus been submitted that the State Appellate Authority, without verifying whether the respondent no.7 had furnished the requisite documents or respondent no.7 was present on 12.08.2010 or not, has given a finding only on the basis of a complaint made by respondent no.7, that he was not allowed to participate in the counseling which was held on 28.12.2010.

6. Though the petitioners have not been immediately removed from the post but directing for a fresh counseling without there being any basis for coming to the conclusion that the appointment of the petitioners was in breach of any one of the rules, is unjustified and uncalled for.

7. Learned counsel for the petitioners submits that in a



change of circumstance, the petitioner nos.2 and 3 retired during the pendency of the writ application and petitioner no.1 belonged to General category while the respondent no.7 belongs to the Reserved category, therefore, he prays that the order passed by the State Appellate Authority may be set aside.

8. Learned counsel for the respondent no.7 filed a detailed counter-affidavit and stated that the earlier counseling date dated 24.01.2009 has not been canceled/quashed at end of the concerned Employment Unit, which would be evident from the RTI application answered and served by the respondent no.6, the Block Education Officer, Block Madhavpur, Madhubani in compliance of the Case No.534761-12 in the State Information Commission. He further submits that the respondent no.7 went to participate in counseling at the place and date 12.08.2010 published by the concerned Employment Unit but he has been denied by conveying his participation is not necessary due to earlier counseling held on 24.01.2009 at the end of the respondents concerned. It is further submitted that after perusal of the final list, the respondent no.7 learnt that most of the selected candidates had lesser marks and merits as per the counseling list. When he perused the second counseling register held on 12.08.2010, he surprisingly observed that his name is



not in figure in the said impugned counseling register. He further alleged that the allegation with regard to manipulation with force would be evident from bare perusal of the Annexure-R/5, in which, at various places it is demonstrated that whether the candidates were physically present vis-a-vis marked their respective present or absent at the counseling register is not clear. The names of candidates are Manoj Kumar Jha (Serial No.11), Renu Kumari (serial no.34) & Gunjan Kumari (Serial No.35), Kishori Sharan Shukl (serial no.102), Amit Kumar Mandal (serial no.103), Ajay Kumar Mahto (serial no.104), Shiv Ranjan Mandal (serial no.106) and Ramesh Chandra Jha (serial no.111).

9. Learned counsel for the respondent no.7 has relied upon the judgment of the learned Single Judge passed in CWJC No.658 of 2018 on 05.07.2022 in the case of **Prabhat Kumar Versus The State of Bihar & Ors.** and submitted that the Court has rightly held at para-10, 11 and 12 as follows:-

“10. This Court notices a unique feature where the Mukhiya and the Panchayat Secretary conduct selection of teachers. This Court takes notice of the fact that a Mukhiya is an elected person and is not required to have any educational qualification for participating in the election (during some period a person who was 8th Class



passed was allowed to participate in the election). Even the Secretary Panchayat is only 8th Class passed which has now been enhanced to qualification of minimum 10th Class pass.

11. Be that as it may, it is shocking and surprising that such persons should be allowed to conduct selection and appointment of teachers.

12. Be that as it may, in the present case, this Court finds that the power granted by the State Government to make selections/appointments on the post of Panchayat Teachers has been grossly misused by the members of the Panchayat Committee which included the Mukhiya and the Panchayat Secretary. Such appointments are also examined by the concerned District Programme Officer of the concerned District. Thus a responsibility lies on the concerned District Programme Officer to see that the selections are done fairly and in accordance with law.”

10. Against this order, a L.P.A. bearing no.376 of 2022 in the case of Santosh Kumar Vs. The State of Bihar & Ors., was filed and the same got dismissed by the Division Bench of this Court after affirming the order passed by the learned Single Judge. The Division Bench had relied upon the judgment of the Apex Court in **M.S. Patil (Dr.) vs. Gulbarga University and Ors.** reported in **(2010) 10 SCC 63** in paragraphs 16 & 17 which



reads as under:

“16. But at this stage once again a strong appeal is made to let the appellant continue on the post where he has already worked for over 17 years. Mr. Patil, learned Senior Counsel appearing for the appellant, submitted that throwing him out after more than 17 years would be very hard and unfair to him since now he cannot even go back to the college where he worked as Lecturer and from where he had resigned to join to this post.

17. We are unimpressed. In service law there is no place for the concepts of adverse possession or holding over. Helped by some University authorities and the gratuitous circumstances of the interim orders passed by the Court and the delay in final disposal of the matter, the appellant has been occupying the post, for all these years that lawfully belonged to someone else. The equitable considerations are, thus, actually against him rather than in his favour.”

11. Considering the arguments of the parties and on perusal of the record, I am of the view that it is an admitted fact that the respondent no.7 has more marks than the petitioners and earlier counseling held on 24.01.2009 has not been canceled. Therefore, the State Appellate Authority has rightly set aside the order of the District Teacher Appellate Authority, Madhubani



and allowed the appeal filed by the private respondent and direction was given to the Authority to hold a fresh counseling for the appellant and three private respondents and all other candidates having higher marks in the merit list in Physical Education under B.C./U.R. category and make fresh selection for the three post.

12. In the aforesaid background, this writ application is dismissed.

(Anjani Kumar Sharan, J)

pallavi/-

AFR/NAFR	NAFR
CAV DATE	06.03.2024
Uploading Date	22.03.2024
Transmission Date	N.A.

