

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14995 of 2021

-
1. The District Programme Officer Nalanda, Biharsharif.
 2. The District Education Officer, Nalanda at Biharsharif.
 3. The Block Education Officer, Nalanda.

... .. Petitioner/s

Versus

1. The Bara Gram Panchayat Selection Committee through its Panchayat Secretary, Bara , Ben Block, District- Nalanda.
2. Kaushalendra Kumar, Son of Shrawan Prasad, R/o Village- Dariyapur, P.S. Nagarnausa, District- Nalanda.
3. Vikash Saurbh, Son of Dinesh Tripathi, R/o Village- Utarthu, P.S. Bind, District- Nalanda.
4. Anju Lata, Son of Narayan Prasad, R/o Village- Kajaria, P.S. Ben, District- Nalanda.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Shashi Shekhar Tiwary (AC To Aag15)
For the Respondent/s :

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

3 27-03-2025 Heard the parties.

2. The petitioner in paragraph no. 1 of the present writ petition has sought *inter alia* following relief(s), which is reproduced hereinafter:

"1. That this writ application is being filed against the order dated 02.12.2019 passed by Learned State Appellate Authority in Appeal No. 398/2018 by which learned State Appellate Authority has dismissed the appeal on the ground of delay and has pleased to affirm the order dated 14.11.2015 by which learned District Teacher Appellate Authority, Nalanda has pleased to dismiss the review application and has affirmed the order dated 25.07.2011 passed in case no. 16/2011 by which ex-parte order / direction was issued to the panchayat appointment committee for counselling and appointment of the respondents."



3. It is submitted by the learned counsel appearing on behalf of the petitioner that in absence of judicial member of the Tribunal, quorum is not proper as per the requirement of the Rule 14 of the Bihar State School Teachers and Employees Disputes Redressal Rules, 2015.

4. In view of the above perversity in the order dated 26.07.2021 passed in Appeal no. 15 of 2021 by the State Appellate Authority, Education Department, Bihar, the case of the petitioner is required to be revisited by the full quorum of the Tribunal, in accordance with law. The Apex Court in case of **State of Gujarat Vs. Utility Welfare Association** reported in **(2018) 6 SCC 21 : 2018 SCC OnLine SC 368** as held as follows:

117. In Madras Bar Assn. [Madras Bar Assn. v. Union of India, (2014) 10 SCC 1] (MJ-II), the Constitution Bench, referring to the decision in Madras Bar Assn. [Union of India v. Madras Bar Assn., (2010) 11 SCC 1] (MJ-I) observed that members of tribunals discharging judicial functions could only be drawn from sources possessed of expertise in law and competent to discharge judicial functions. We are conscious of the fact that the case (MJ-I) dealt with a factual matrix where the powers vested in courts were sought to be transferred to the tribunal, but what is relevant is the aspect of judicial functions with all the “trappings of the court” and exercise of judicial power; at least, in respect of same part of the functioning of the State Commission. Thus, if the Chairman of the Commission is not a man of law, there should, at least, be a member who is drawn from the legal field. The observations of the Constitution Bench in Madras Bar Assn. [Madras Bar Assn. v. Union of India, (2014) 10 SCC 1] (MJ-II) constitute a declaration on the concept of basic structure with reference to the concepts of “separation of powers”, “rule of law” and “judicial review”. The first question raised before the Constitution Bench as to whether judicial review was part of the basic structure of the Constitution was,



thus, answered in the affirmative.

118. We are, thus, of the view that it is mandatory to have a person of law, as a member of the State Commission. When we say so, it does not imply that any person from the field of law can be picked up. It has to be a person, who is, or has been holding a judicial office or is a person possessing professional qualifications with substantial experience in the practice of law, who has the requisite qualifications to have been appointed as a Judge of the High Court or a District Judge.

As such, the matter is remitted back to the State Appellate authority for reconsideration of the case of the petitioner, in accordance with law.

5. Accordingly, the present writ petition stands disposed of.

(Purnendu Singh, J)

Niraj/-

U			
---	--	--	--

