

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14759 of 2021

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Kamlesh Kumar S/o Chandra Bhushan Singh Resident of Village- Bhitiya,
P.O. and P.S.- Kadauna, District- Jehanabad and previously working as
Prakhand Techer in Utkramit Middle School, Makhadumpur, Jehanabad.

... .. Petitioner/s

Versus

1. The State of Bihar through its Principal Secretary, Education Department,
Govt. of Bihar, Patna.
2. The Director, Primary Education, Govt. of Bihar, Patna.
3. The District Education Officer, Jehanabad.
4. The District Programme Officer (Establishment), Jehanabad.
5. The Block Development Officer, Jehanabad.
6. The Block Education Officer, Jehanabad.
7. The Secretary cum-Block Niyojan Unit, Jehanabad.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rama Kant Singh, Advocate

For the Respondent/s : Mr. Hitesh Suman, AC to SC 13

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

5 27-03-2025 Heard Mr. Rama Kant Singh, learned counsel

 appearing on behalf of the petitioner and Mr. Hitesh Suman,

 learned AC to SC 13 for the State.

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

*“(i) For quashing of the order dated 04.09.2019
vide letter no. 527 passed by the Secretary -cum-
Prakhand Niyojan Limit-Jehanabad whereby
and whereunder petitioner has been terminated
from the post of Prakhand Teacher.*



(ii) For quashing of the order dated 09.07.2020 passed by the District Teacher Appellate Authority, Jehanabad passed in Appeal case no. 72(9)/2019 and issued vide letter no. 30 dated 09.09.2020 whereby and whereunder cancellation of the appointment on the post of Prakhhand Teacher by the respondent no.-7 has been continued.

(iii) For quashing of order dated 26.07.2021 passed in case no. Appeal/15/2021 by the State Appellate Authority, Education Department, Bihar whereby and whereunder order of the District Teacher Appellate Authotiry, Jehanabad has been affirmed.

AND/OR for any other appropriate relief (s) to the petitioner for which he may be found entitle in the eye of law.”

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)

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