

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10824 of 2025

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Kundan Kumar S/o Arvind Kumar Singh R/o Village Pauni Hasanpur, P.O. Pauni Hasanpur, P.S. and District- Vaishali.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Education Department, Govt. of Bihar, New Secretariat, Patna.
2. The Additional Chief Secretary, Education Department, Govt. of Bihar, New Secretariat, Patna.
3. The Director, Primary Education, Education Department, Govt. of Bihar, New Secretariat, Patna.
4. The District Magistrate, Vaishali.
5. The District Education Officer, Vaishali.
6. The District Programme Officer (Establishment), Vaishali.
7. The Block Development Officer, Mahua, Vaishali.
8. The Block Panchayati Raj Officer, Mahua, Vaishali.
9. The Block Education Officer, Mahua, Vaishali.
10. Shubhendu Kumar S/o Anil Kumar Pandey R/o Vill. Vidyajhap, P.O. Titara Ashanand, P.S. Sakara, District-Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Tathagat Saurabh, Advocate
For the Respondent/s : Standing Counsel (15)

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

2 08-07-2025 Heard Mr. Tathagat Saurabh, learned counsel

appearing on behalf of the petitioner and the learned SC 15 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) To quash the order dated 05.06.2025/21.05.2025
passed in O.A. No. 320/2022 passed by the*



*Chairperson (A), State Appellate Authority (Education Department), Bihar whereby and whereunder on the basis of report, the authority comes to conclusion that the petitioner Kundan Kumar was not present in counseling and his name was included in selection list without counseling. In view of this report contained in memo no. 2685 dated 06.07.2022 of District Education Officer is upheld and prayer of petitioner is disallowed, action will be taken accordingly. A copy of order dated 05.06.2025/21.05.2025 are annexed hereto and marked as **Annexure-P/1** to this application.*

*(ii) To further quash the memo no. 2685 dated 06.07.2022 issued by the District Education Officer, Vaishali, whereby and whereunder recommended to the employment for cancellation of appointment of the petitioner. A copy of memo dated 06.07.2022 is annexed hereto and marked as **Annexure-P/2** to this application.*

(iii) To further direct the respondent authority not to disturb the petitioner in discharging his duty as a Basic Grade Teacher in Upgraded Middle School Madhepur, Singlara, Block Mahua, District Vaishali. And/or any other appropriate relief(s) as per the fact and circumstances of the case”

3. At the very outset, learned counsel appearing on behalf of petitioner submitted that the order dated 05.06.2025/21.05.2025 passed by the State Appellate Authority, Education Department in Original Appeal No.320 of 2022, against the order dated 06.07.2022 contained in Memo No. 2685 passed by the District Education Officer, Vaishali is not sustainable, as the same has been passed by the Officer of Indian Administrative Service. The Tribunal quorum provided



under Rule 4(3) of the ***Bihar State School Teachers and Employees Disputes Redressal Rules, 2015*** (hereinafter referred to as the 'Rules, 2015') has not been fulfilled. Learned counsel has relied upon a judgment dated 23.05.2025 passed in CWJC no.7081 of 2021 (***Vidyasagar Kushwaha & Anr. vs. The State of Bihar and Ors.***) by this Court.

4. I find that the State Appellate Authority consists of a quorum as per the provision of Rule 4(3) of the Rules, 2015 , which is reproduced hereinafter:

“4(3). The State Appellate Authority shall be constituted at State level consisting of two persons only (hereinafter each referred as the separate chairperson) who will be appointed by the State Government for hearing the appeal against the order passed by the District Appellate Authorities. One chairperson will be a retired Justice of Hon'ble High Court and another will be a retired officer of Indian Administrative Service not below the rank of Principal Secretary. The State Government may authorise the Chairperson of one State Appellate Authority to discharge the functions of the Chairperson of another State Appellate Authority.”

5. Now the question arises, whether the Chairperson, who has passed the order, has been appointed in accordance with the provisions of Rule 4(3) of the Rules, 2015? The aforesaid statutory Rule binds the State Government to constitute a State Appellate Authority, consisting of two persons, out of which Chairperson shall be a retired Judge of the Hon'ble High Court and another person shall be a retired Officer of



Indian Administrative Service, not below the rank of Principal Secretary. In the present case, order has been passed by the Chairperson, who is not a retired Justice of Hon'ble High Court, but he is an Officer of the Indian Administrative Service. I find that the aforesaid order dated 05.06.2025/21.05.2025 cannot be sustained for two reasons- Firstly, absence of quorum as provided under Rule 4(3) of the Rules, 2015 and Secondly, the Chairperson can only be a retired Judge of Hon'ble High Court. Rule 4(3) of the Rules, 2015 is also supported by the decision of the Apex Court in case of ***State of Gujarat Vs. Utility Welfare Association*** reported in ***(2018) 6 SCC 21 : 2018 SCC OnLine SC 368***, wherein, in paragraph nos.117 and 118, the following order has been passed, which is *inter alia* reproduced 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.”

Any person, from the field of law or holding the law degree, cannot hold the post of Chairperson, who don't possess qualification to have been appointed as Judge of the Hon'ble High Court or the District Court.

6. Taking note of the above facts and discussion made hereinabove and law laid down by the Apex Court in the case of ***State of Gujarat (Supra)***, the impugned order dated 05.06.2025/21.05.2025 passed by the Chairperson of the State Appellate Authority can only be held to be without jurisdiction and, as such, the same is hereby set-aside and quashed. In view of the direction/observation contained in order dated 25.03.2025



passed in CWJC No.7081 of 2021, corrective measures in accordance with law, as per the provision of Rules, 2015 is required to be taken by the State Government.

7. The matter is remitted back to the State Appellate Authority. The Chairman of the State Appellate Authority having jurisdiction must ensure to dispose of the Appeal expeditiously, in accordance with law without being prejudiced by the order dated dated 05.06.2025/21.05.2025 passed by the State Appellate Authority in Original Appeal No.320 of 2022 **(Annexure P/1)**.

8. The petitioner should not be allowed to suffer as a result of order without jurisdiction.

9. Accordingly, the present writ application stands disposed of.

(Purnendu Singh, J)

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