

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18083 of 2022

=====

Shailesh Kumar, Son of Sri Birendra Kumar, Resident of Village- Baikathpur,
P.O.- Adai, P.S.- Konch, District- Gaya.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Primary Education Department, Government of Bihar, Patna.
2. The Deputy Director, Secondary Education-cum I/C Officer, Certificate Verification Cell, Govt. of Bihar, Patna.
3. The District Magistrate, Gaya.
4. The District Education Officer, Gaya.
5. The District Programme Officer (Establishment), Gaya.
6. The Block Education Officer, Konch, Gaya.
7. The Headmaster, Middle School Gorkatti, P.S.- Konch, District- Gaya.
8. Mukhiya, Gram Panchayat Raj Adai, Block and P.S.- Konch, District- Gaya.
9. The Panchayat Secretary, Gram Panchayat Raj Adai, Block and P.S.- Konch, District- Gaya.
10. The National Council for Teacher Education through Member-Secretary, G-7, Sector-10, Dwarka, Near Metro Station, New Delhi- 110075

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr.Arghesh Kumar, Advocate.
For the Respondent/s	:	Mr.Madhaw Prasad Yadaw (GP 23)
For the NCTE	:	Mr. Sunil Kumar Singh, Advocate.
		Mr. Tanay Bhasker, Advocate.

=====

CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY
ORAL ORDER

11 17-11-2025 Heard learned counsel for the parties.

2. The present Writ Petition has been filed for the
following reliefs:-

*“That this application is
directed against the order dated
21.10.2022 passed by Mr. Ashok Kumar*



Sinha, Chairperson, State Appellate Authority, Bihar, Patna in O.A. No. 44 of 2022 by which the learned Chairperson dismissed the Appeal in a long drawn order holding therein that the Certificate of Diploma-in-Education from R.G. Polytechnic, Kirti Nagar, New Delhi, which was found to be unrecognized, Non-existent only to defraud the School Management or the Government as the case may be.

It is further be held that the materials brought on records shows that the petitioner has made false claim for his appointment on the basis of Diploma-in-Education certificate.”

3. Learned counsel appearing on behalf of the petitioner submits that the order dated 21.10.2022 (Annexure-1) impugned in the present writ petition has been passed by the Chairperson, State Appellate Authority, Bihar, Patna who is a retired IAS Officer. Learned counsel submits that the order passed by the lone member who is a retired IAS Officer is contrary to the Rule 4 (3) of the Bihar State School Teachers and Employees Disputes Redressal Rules, 2015. As per the Rule 4 (3), the State Appellate authority shall consists of two persons one of whom shall be a retired Judge of the Hon’ble High Court and another will be a retired officer of the Indian Administrative Service not below the rank of the Principal Secretary. However, in this particular case, the order has been passed by a lone member who is not a retired Judge of the Hon’ble High Court



but only a retired officer of the Indian Administrative Service. Therefore, the impugned order passed by the lone member suffers from lack of quorum is without jurisdiction and non-est in the eye of law. Learned counsel has relied on the judgment of this Hon'ble Court passed in CWJC No. 17508 of 2021 dated 17.04.2025 and the order dated 05.07.2018 passed in CWJC No. 1368 of 2016 in support of his case.

4. Per contra, the learned counsel appearing on behalf of the Respondent-State has vehemently opposed the very maintainability of the present writ petition. Learned counsel has submitted that the State Appellate Authority duly taking into consideration the totality of the circumstances has passed a reasoned order and the same does not require any interference. Learned counsel has, therefore, prayed this Hon'ble Court to dismiss the present writ petition.

5. In order to appreciate the issue involved in the present writ petition, it is necessary to extract Rule 4 (3) of the Bihar State School Teachers and Employees Disputes Redressal Rules, 2015 which reads as under:

“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 Authority. 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."

6. Further this Hon'ble Court relying on the Judgment dated 17.04.2025 passed in CWJC No. 17508 of 2021 has held as under:

*"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 person, out of which Chairperson shall be a retired judge of the Hon'ble High Court and anohter 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 retired justice of the Hon'ble High Court, but he is an officer of the Indian Administrative Service. I find that the aforesaid order dated 23.08.2021 cannot be sustained for two reasons, firstly absence of quorum as provided under Rule 4 (3) of the Rule, 2015 and secondly the Chairperson can only be a retired Judge of the Hon'ble High Court. The Rule 4(3) of the Rules, 2015 is also supported by the decision of the Apex Court in the Case of **State of Gujarat Vs. Utility Welfare Association** reported in **(2018) 6 SCC 21; 2018 SCC OnLine SC 368**, where, in paragraph Nos. 117 and 118, the following order has been*



passed, which, inter alia, is 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 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 23.08.2021 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 Sate 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 23.08.2021 passed by the State Appellate Authority in Appeal No.117 of 2019 (Annexure 8) with respect to petitioners of CWJC No.17508 of 2021 and in Appeal No.124 of 2020 with respect to petitioners of CWJC No. 17406 of 2021.”

7. Having regard to the above settled legal position of law as well as the provisions of Rule 4 (3) of the Bihar State School Teachers and Employees Disputes Redressal Rules, 2015, this Court has to necessarily allow the present CWJC and set aside the order dated 21.10.2022 passed in Case No. O.A.- 44 of 2022 (Annexure 1) and remit the matter back to the concerned Authority for passing orders afresh.

8. Learned counsel appearing on behalf of the petitioner submits that as against the order of termination the



petitioner could not challenge the same before the District Appellate Authority due to the non-functioning of the District Appellate Authority and the petitioner had to approach the State Appellate Authority. Learned counsel submits that as on date the District Appellate Authority is functioning and, therefore, the petitioner may be granted liberty to challenge the order of termination before the District Appellate authority by fixing a time frame.

9. Having regard to the fact that the order dated 21.10.2022 which is impugned herein passed by the Chairperson, State Appellate Authority, Bihar, Patna is set aside and the issue is squarely covered by the Judgment dated 23.02.2022 passed in CWJC No. 5489 of 2020 and other analogous cases reported in 2022 (2) B.L.J, 381, the present writ petition is allowed by setting aside the order dated 21.10.2022 passed by the Chairperson, State Appellate Authority, Bihar, Patna. The petitioner is granted leave to file an appeal before the District Appellate Authority within a period of four weeks from today against the orders of termination. On such appeal being filed, the same shall be taken on record and necessary orders passed after putting the petitioner as well as the other interested parties on notice and giving them an opportunity of hearing. The



District Appellate Authority shall endeavour to dispose of the appeal filed by the petitioner as expeditiously as possible preferably within a period of 6 months from the date of filing of the appeal by the petitioner herein.

10. With the above directions, the present writ petition stands allowed to the extent indicated.

(A. Abhishek Reddy, J)

shakir/-

U			
---	--	--	--

