

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14542 of 2021

1. The District Education Officer Nalanda at Biharsharif.
2. The District Programme Officer (Establishment), Nalanda at Biharsharif.
3. The Block Education Officer, Asthawan, District- Nalanda.

... .. Petitioner/s

Versus

1. The Block Teacher Selection Committee, Asthawan through its Secretary, Block Development Officer, Asthawan Block, Nalanda.
2. The Block Development Officer cum Secretary, Block Teacher Selection Committee, Asthawan, Nalanda.
3. Radha Krishna Prasad, S/o Sri Mathura Prasad, R/o Village- Rasalpur, P.S.- Bind, District- Nalanda.
4. Arun Kumar, S/o Sri Chandra Bhushan Prasad, R/o Village- Kubhrar, P.S. Agamkuan, District- Nalanda.
5. Prabhat Kumar, S/o Sri Sarvan Kumar, R/o Village- Arai Benipur, P.S. Daniyawan, District- Nalanda.
6. Devanand Prasad, S/o Sri Kameshwar Prasad, R/o Village- Alawalpur, P.S.- Daniyawan, District- Patna.
7. Kanaklata Kumari, D/o Sri Arjun Kumar, R/o Village- Pariyauna, P.S.- Noorsarai, District- Nalanda.
8. Kumari Pummi Sinha, D/o Sri Om Prakash, R/o Village- Mehtarawan, P.S.- Tharthari, District- Nalanda.
9. Babita Kumar, D/o SriKant Prasad, R/o Village- Bajitpur, P.S.- Kashichak, District- Nalanda.
10. Navin Kumar, Chandravanshi, S/o Sri Saryug Singh, R/o Village- Ushmanpur, P.S.- Nagarnausa, District- Nalanda.
11. Chandrashekhar Sharma, S/o Sri Sita Thakur, R/o Village- Ushmanpur, P.S.- Nagarnausa, District- Nalanda.
12. Akash Kumar, S/o Sri Jawahar Pd. Gupta, R/o Village- Sasaram, P.S. Sasaram, District- Nalanda.
13. Dipanti Kumar, D/o Sri Sudhir Kumar Sharma, R/o Village- Ekangardih, P.S.- Ekangarsarai, District- Nalanda.
14. Suman Kumari, D/o Sri Siddnath Prasad, R/o Village Rasidachak Choti Pahari, P.S.- Agampuyan, District- Nalanda.
15. Roop Shree, D/o Sri Shiv Shankar Thakur, R/o Village- Jalalpur, P.S. Sohsarai, District- Nalanda.
16. Reena Kumari, D/o Sri Gopi Ram, R/o Village- Jalalpur, P.S.- Sohsarai, District- Nalanda.
17. Randhir Paswan, S/o Sri Uma Shankar Pasan, R/o Village- Makrauta, P.S. Chicsaura, District- Nalanda.



18. Vikash Kumar, S/o Sri Sita Ram Pd., R/o Village- Nagarnausa, P.S.- Nagarnausa, District- Nalanda.
19. Kanchan Kumar, D/o Sri Siyasan Paswan, R/o Village- Malawan, P.S. Hilsa, District- Nalanda.
20. Kumari Rekha, W/o Sri Navin Kuma,r R/o Village- Giraienpur, P.S.- Sare, District- Nalanda.
21. Pushpa Kumar, D/o Sri Kameshwar Pd., R/o Village - Ganeshbhnlam Kumuruddinganj, P.S. Biharsharif, District- Nalanda.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Shashi Shekhar Tiwary, (A.C. To A.A.G.5)
For the Respondent/s : Mr. Bipin Bihari Singh, Advocate

**CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT**

Date : 11-07-2025

Heard Mr. Shashi Shekhar Tiwary, learned A.C. To
A.A.G.5 appearing on behalf of the petitioners and Mr. Bipin
Bihari Singh, learned Advocate for the State.

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

“1. That this writ application is being filed against the order dated 05.07.2019 passed by Learned State Appellate Authority, contained in Bihar, annexure-4 by Patna which order dated 23.12.2015 passed by Learned Appellate Authority, Nalanda in Appeal No.56/2011 contained in annexure-3 has been affirmed without considering the fact that by order dated 09.01.2014 passed by this Hon'ble Court in C.W.J.C. NO.155/2014 contained in annexure-2 was pleased to pass order that if the post covered by 2nd phase of appointment has already been carried over to the 3rd phase of appointment and the appointment has already been sought to be made on those posts the tribunal shall not enter into any further issue and dispose of the case of the petitioner by holding that since no one was appointed from the old panel the petitioner has no right to agitate



for selection process revival of old which as per decision of the government came to end of 31.12.2010.”

3. The petitioners are the District Education Officer, Nalanda, Bihar Sharif, District Programme Officer, Establishment, Nalanda, Bihar Sharif and the Block Education Officer, Asthawan, Nalanda, who being aggrieved by the order dated 23.12.2015 passed by the District Appellate Authority, had filed an Appeal before the State Appellate authority . The State appellate authority vide its order dated 05.07.2019, has affirmed the order dated 23.12.2015. The Petitioners have questioned both the orders on the ground that both the Tribunals have erred in not considering the direction/order of this Court, dated 09.01.2014 passed in CWJC No.155 of 2014, in which the court has passed *inter alia* as following order: -

“Having held that the aforementioned order is incapable of being implemented this Court would remit the matter back to the Tribunal which has now been constituted afresh on 20.12.2013 which shall now hear the case of the petitioner and take a decision as with regard to the grievance of the petitioner strictly in accordance with law.

It is, however, made clear that if the post covered by the second phase of appointment has already been carried over to the third phase of appointment and the appointment has already been sought to be made on those post, the Tribunal shall not enter into any further issue and dispose of the case of the petitioner by holding that since no one was appointed from the old panel the petitioner has no right to agitate for revival of the old selection process which as per decision of the government came to an end on 31.12.2010.

With the aforementioned observation and direction, this application is disposed of.”

4. The Appeal before the State Appellate Authority



against the order dated 17.03.2011 passed by Learned District appellate authority, Nalanda was filed nearly after eight years, and nearly after five years from the order dated 09.01.2014 passed in CWJC No.155 of 2014 by this Court. A query was made from the officers, who are present in the Court, to verify from the records, as to whether, before filing the present writ petition the Approval of the Additional Chief Secretary, Education Department, Government of Bihar was obtained or not, as per the mandate prescribed under the Article 166 of the Constitution of India, under which the Rule 53(i)(c) of the Rules of Executive Business, 1979 has been framed. This Court find that no approval was taken at the relevant point of time, as also reflected from the affidavit, sworn by one Arinjay Kumar, aged about 54 years, son of Ramesh Chandra Sinha, R/o Road No.1B, Rajendar Nagar, Patna, who was the District Programme Officer, Establishment and in want of such approval, this Court had requested the learned counsel appearing on behalf of the petitioners to verify and if such approval has not been obtained, he was given liberty to withdraw the present writ petition and take steps in accordance with the prescribed procedure.

5. The learned counsel on instruction submitted that the delay in filing can be explained and the learned counsel



proceeded to argue on merits that the orders passed by the District Appellate Authority and State Appellate Authority are perverse and have been passed in the teeth of order dated 09.01.2014 passed in CWJC No.155 of 2014. This led this Court to call the three officers, who are present today in the Court and they were requested by this Court to verify from the record, as to whether, any approval has been obtained before filing of the appeal before the State Appellate Authority.

6. This Court requested them to verify from the record to avoid any incorrect order in want of relevant information. They jointly admit that no approval was taken at the relevant point of time from the Additional Chief Secretary, Education Department, Government of Bihar. The delay was required to be explained, at the same time, after the appointment of the private respondents, their right having crystallized any action against them required as per the service condition Rules applicable on the date of passing of the order dated 09.01.2014 in CWJC No.155 of 2014.

7. It is admitted that no disciplinary action was taken at the relevant time, as per the procedure prescribed under the Bihar Panchayat Elementary Teachers (Employment and Service Conditions) Rules, 2012. The inaction can be



discernible on the part of the District Programme Officer, Establishment and District Education Officer, who were responsible for taking action at the relevant time in accordance with the Rules of Executive Business in terms of Article 166 of the Constitution of India.

8. This Court is informed about the Department communication regarding filing of appeal immediately against the order of the District Appellate Authority or the State Appellate Authority all the concerned vide letter no.275 dated 30.01.2019.

9. The appointment of altogether 19 block teachers have been questioned by the two officers posted at the relevant point of time, when they individually, on their part had, chose to prefer appeal against the order dated 23.12.2015 passed by the District Appellate Authority before the State Appellate Authority, which has been deprecated by the Authority, by making following observation in the impugned order dated 05.07.2019 and dismissed the Appeal to not maintainable;

“Learned counsel submits that the vacancy must have been carried over as per instruction of the Government. The Court finds that the litigation was filed by the respondent in 2011. New Rules came into existence in 2012 amending the eligibility of the candidates as well as the rules of employment. Prior thereto, the litigation was pending. Right of a litigant is to be considered/examined with reference to the date on



which the litigation is filed.

It is also surprising that the Block Unit headed by the BDO against whom the direction was issued is not the appellant. Prima facie, the appeal filed by the present appellant appears not maintainable.

On going through the materials on record the Court does not find any legal flaw in the direction issued by the learned District Authority. Consequently, even if, the application seeking condonation of delay is allowed, the appellant has no case on merit.

The appeal is rejected. The application seeking condonation of delay stands disposed of.”

10. The State Appellate Authority has specifically pointed out that surprisingly the Block Unit headed by the Block Development Officer against whom the direction was issued, is not the appellant and held the appeal *prima facie* to be not maintainable. The present writ petition in spite of the specific observation made by the learned State Tribunal that it was not filed by the Block Development Officer, rather, the Block Teachers' Selection Committee and the Block Development Officer have been made respondents no.1 and 2. No counter affidavit has been filed on behalf of the respondents no.1 and 2 in the present writ petition.

11. I can derive that the intention of the District Education Officer, as well as, the District Programme Officer, Establishment, Nalanda posted at the relevant time who on their own chose to prefer appeal after delay of nearly five years against the order dated 23.12.2015 passed by the District Appellate Authority to hold the appointment of altogether 19



teachers, who are arrayed as respondents no.3 to 21, without adopting the paraphernalia for challenging the order, which adversely affect the interest of the State. The action of the petitioner will amount to willful and deliberate non-compliance of the order passed by the learned District Appellate Authority, who were posted as District Education Officer and District Programme Officer, Establishment.

12. This Court has taken notice of the government decision contained in Letter No.275 dated 30.01.2019, was communicated much after the order dated 09.01.2014 passed in CWJC No.155 of 2014 and the appeal preferred before State Appellate Authority.

13. Vide order dated 26.06.2025, this Court had directed to verify, as to whether, any delay has been caused in adopting any paraphernalia in filing the appeal against the order passed by the District Appellate Authority, which was required to be followed after the order of this Court dated 09.01.2014 and the District Education Officer and District Programme Officer, Establishment were also directed to be present and bring the entire record to satisfy this Court that there was no deliberate delay which has accentuated with malafide. Today, they are present alongwith the record but they have failed to give any



explanation.

14. What is rule of law has been explained in several decisions but it has been clearly indicated by the Supreme Court in the Constitution Bench judgment in the case of ***S.G. Jay Singh Vs. Union of India*** reported in ***AIR 1967 Supreme Court 1427*** that absence of arbitrary power is the first essence of the rule of law. If the decision is taken without any principle or without any rule, it is unpredictable and is against the rule of law. The question is who is to guard the guards themselves "*Quis Custodiet ipsos custodes?*"

15. Tested on the aforesaid principal of law laid down by the Apex Court it is clear that the action of the District Education Officer and the District Programme Officer, Establishment without obtaining the approval of the Additional Chief Secretary, Education Department and without any valid reason to question the order dated 23.12.2015 passed by the District Appellate Authority, have filed the appeal before the State Appellate Authority and upon failure, they have chosen to file the present writ petition.

16. I find that the very motive of the officers posted during the period to be malicious, which led to inaction on their part and then taking action all of a sudden after nearly five years



can't be described as proper exercise of discretion and seeking mandamus to interfere with the selection of the 19 block teachers, who were appointed on 18.01.2016, as per the provision of Bihar Panchayat Elementary Teachers (Employment and Service Conditions) Rules, 2012 (hereinafter referred to as the 'Rules 2012') with a vested interest has failed to follow the due process of law leading to failure of justice.

17. The State Appellate Authority has observed in its order dated 05.07.2019 that the appeal is otherwise also filed after lapse of four and half years that also shows that the two officers were predetermined to act in an illegal manner to terminate the services of the respondents no.3 to 21.

18. The more surprising part remains when a list of District Education Officers who were holding the office from the year 2009 to 2021 and similar list of names of all the District Programme Officer, Establishment, who were posted at the relevant period produced before this Court shows that at the time when the appeal was preferred before the State Appellate Authority, the officer holding the office of the District Education Officer was Mr. Manoj Kumar who had given his joining on 06.07.2018 remained there till 25.04.2021 and thereafter one Mr. Arun Kumar was made incharge who remained in office from



29.04.2021 to 02.07.2021 and before the present District Education Officer namely Anand Vijay, Mr. Keshav Prasad was posted from 03.07.2021 to 30.09.2023. The post of District Programme Officer, Establishment, at the relevant time was held by the officers namely Mr. Arinjay Kumar, who remained there from 15.07.2017 to 19.07.2020 and thereafter one Mrs. Poonam Kumari was posted as District Programme Officer, Establishment from 20.07.2020 till 11.05.2022. It is surprising that none of the District Education Officer or the District Programme Officer, Establishment prior to Mr. Manoj Kumar (District Education Officer) and Mr. Arinjay Kumar (District Programme Officer, Establishment) had challenged the order passed by the District Appellate Authority.

19. I find that all the District Education Officers and District Programme Officers, Establishment, without showing sufficient cause for delay, particularly Mr. Manoj Kumar, Arun Kumar and Keshav Prasad, who were posted at the time of filing of the Appeal before the State Appellate Authority, were vested with malafide interest, have tried to penalise the private respondents no. 3 to 21 (the appointed teachers) and the appointing unit along with the government officers, the Block Education Officer and the Panchayat Secretary, by filing the



present Writ petition, against the order passed by the State Appellate Authority without following the prescribed procedure and the governing service condition rules.

20. Any action against the members of the appointing unit, among whom two members are Government Officials namely the Block Development Officer and the Panchayat Secretary, requires to be taken in accordance with the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 and not in the manner as the District Education Officer and the District Programme Officer, Establishment particularly Mr. Manoj Kumar and Mr. Arinjay Kumar, who have taken the authority in their own hands, for the reason best known to them, which has only given a devastating effect and as such, the act cannot be described as a mere mistake but a gross mistake, which implies bad faith. Such malice can be considered to be associated for their personal consideration.

21. It is admitted that the appeal was filed before the State Appellate Authority after lapse of nearly five years. The order passed by the State Appellate Authority dated 05.07.2019 don't require any interference in view of the discussion made hereinabove, and accordingly, the present writ petition stands **dismissed**.



22. The Additional Chief Secretary, Education Department must show his concern in respect of the illegal action taken against the poor teachers, the Block Development Officer and Panchayat Secretary, who are being harassed by the concerned authorities by filing frivolous petition, against whom action is required, as per the procedure prescribed under relevant service condition rules applicable in their cases,.

23. The directives issued by the Education Department, contained in letter no.275 dated 30.01.2019 is of later date by which it has been communicated for filing of appeal before the State Appellate Authority immediately it comes to the knowledge of District Education Officer that the order of District Appellate Authority is required to be challenged before the State Appellate Authority. In the present case the delay has not occurred on account of administrative formalities and certain norms. This Court cannot allow to approve the illegal action and the attitude of the officers vested with malafide interest.

24. This Court is left with no other alternative than to direct the Additional Chief Secretary to consider to take disciplinary action against all those officers, who are responsible for arbitrary and illegal act in accordance with law well within a



period of three months from the date of communication of this
order.

(Purnendu Singh, J)

Ashishsingh/-
Niraj/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23.07.2025
Transmission Date	NA

