

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9257 of 2024

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Sonam Kumari W/o Pinkesh Kumar, D/o Dani Prasad Yadav R/o Village-
Nathpur, P.O.- and P.S.- Saur Bazar, District- Saharsa.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Department of Education, Govt. of Bihar, Patna.
2. The Director Primary Education Department of Education Patna.
3. The District Education Officer, Saharsa.
4. The District Programme Officer (Est.) Saharsa.
5. The Block Education officer, Block Saur Bazar, District Saharsa.
6. The Panchayat Secretary, Gram Panchayat Raj- Kadhैया, Block- Saur Bazar, District- Saharsa.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Ms. Nivedita Nirvikar, Sr. Adv. Mr. Shambhu Sharan Kumar, Adv
For the Respondent/s	:	Ms. Vartika K Kashyap, Adv.

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

Date : 27-01-2026

Heard Ms. Nivedita Nirvikar, learned Senior Advocate along with Mr. Shambhu Sharan Kumar, learned Advocate for the petitioner and Ms. Vartika K Kashyap, learned Advocate for the State.

2. Challenge in the present writ petition is made to an order dated 24.05.2024 passed in Appeal/T-284/2023 by the learned State Appellate Authority, Education Department, Bihar, Patna whereby the appeal preferred by the respondent Block Education Officer, Saur Bazar, Saharsa was allowed and set-



aside the order dated 06.06.2023 passed by the District Teachers Appellate Authorities, Saharsa in Appeal Case No. 08/2023 and the appointment of the petitioner has been canceled retrospectively from the date of appointment itself and further direction was given to make recovery of the amount paid to the petitioner till date.

3. Briefly stated, the petitioner applied for the post of Panchayat Teacher under BC(F) category in Kadhaiya Gram Panchayat in the year 2019-2020, in terms with Bihar Panchayat Primary Teachers (Appointment and Service Condition) Rules, 2012 (hereinafter referred to as, "Rules, 2012"). After completing all the procedure, a final merit list was published and the name of the petitioner figured at Sl. No. 26 along with others under BC category. Based on the merit position, counseling was done and finally the petitioner was selected as Panchayat Teacher on 26.02.2022 vide Memo No. 01.

4. Despite the petitioner having been duly appointed when she was not paid her salary, filed Appeal Case No. 08/2023 before the learned District Appellate Authority, Saharsa. The District Appellate Authority, Saharsa vide its order dated 06.06.2023 allowed the appeal holding that the appointment of the petitioner has been made on the basis of



valid academic certificates in terms with relevant rules. Moreover, the petitioner has been regularly discharging her duty and none of the candidate has ever challenged or objected the selection of the petitioner, the District Appellate Authority held the petitioner entitled for salary and other benefits. It was further observed that if there was any irregularity in preparation of merit list action, if any, should be taken against the concerned officers for wrong calculation of merit points in terms of Memo No. 998 dated 22.09.2021, issued by the Education Department, Government of Bihar.

5. Aggrieved, the Panchayat Secretary filed a review application against the order passed by the District Appellate Authority, Saharsa. However, it also came to be rejected vide order dated 30.06.2023. In the meanwhile, since the Block Education Officer as well as Panchayat Secretary have also come out with letters restraining the petitioner from discharging her duties, the same were also set-aside. The Block Education Officer, Saur Bazar, Saharsa dissatisfied with the order passed by the District Appellate Authority preferred Case No. Appeal/T-284/2023 before the learned State Appellate Authority and accordingly, the impugned order came to be passed which is put to challenge by filing the present writ petition.



6. Learned Senior Advocate while assailing the impugned order has canvassed manifold submissions *inter alia* that no-one should be punished for the mistake committed by others and no-one can be allowed to take advantage of their own mistake and conveniently pass on the blame to the others and, as such, the justice demands that the petitioner's case should be considered sympathetically by this Court. To strengthen the aforesaid submissions, reliance has been placed on the decisions rendered in the case of ***Mohammed Gazi Vs. State of M.P. & Ors., (2000) 4 SCC 342; A.K. Lakshmipathy (Dead) & Ors. Vs. Rai Saheb Pannalal H. Lahoti Charitable Trust & Ors. (2010) 1 SCC 287 and Rekha Mukherjee Vs. Ashis Kumar Das & Ors., (2005) 3 SCC 427.***

7. It is further contended that on bare perusal of the final merit list, it is evident that the then employment unit has committed mistake and wrongly calculated the merit points of not only the petitioner, but also of many other candidates. On account of such miscalculation, the petitioner's marks was shown as 73.07%, placing her at Sl. No. 26 whereas her actual marks were 59.18% to be placed at Rank 111. It is unfortunate that for the miscalculation of merit marks, the petitioner has been penalized and the concerned employment unit/authorities



has been left scot free, irrespective of the letter issued by the Additional Chief Secretary, Education Department, Government of Bihar contained in Memo No. 998 dated 22.09.2021, that action can be taken against the candidate only in the case of producing forged certificates and for all other issues pertaining to selection process, it is the employment unit/authorities who are answerable and liable.

8. The petitioner was the sole candidate, who appeared in the counseling and the employment unit following all the process of verification of documents and counseling have closed the counseling register and thus, there remains no dispute that the petitioner had participated in the counseling and got selected. There was no objection against the selection of the petitioner by any of the candidate. Hence, the finding of the State Appellate Authority that the selection of the petitioner has caused prejudice to the right of third party does not get substantiated. The learned State Appellate Authority has travelled beyond the lis and directed to cancel the appointment of the petitioner whereas, the petitioner had approached the learned District Appellate Authority for non-payment of salary and on this score also, the impugned order is unsustainable.

9. Learned Senior Advocate next contended that the



law is well settled that there cannot be retrospective termination of a person. Moreover, the State Appellate Authority has committed a wrong while directing for recovery of the payment made to the petitioner as it is not the case of the employment unit that the petitioner has committed any fraud. Further in absence of judicial member, learned Appellate Authority has had no jurisdiction to decide the issue. This issue has been dealt with by a co-ordinate Bench of this Court in CWJC No. 17508 of 2021, where the Court in identical circumstances, on being found that the order has been passed by the Member Administrative has set-aside the order and remitted the matter for fresh determination. To support the aforesaid contention, further reliance has also been placed on a decision reported in ***Shobha Kumari Vs. The State of Bihar & Ors., (2025) 4 PLJR 1*** that in absence of Judicial Chairperson, any order passed by learned State Appellate Authority is without jurisdiction.

10. Learned Senior Advocate while concluding her submissions further contended that the Block Education Officer, has no power and authority to assail the order of the District Appellate Authority and if there was any objection with regard to appointment of the petitioner, it is the employment unit, being an autonomous body vested with right to sue on its behalf, who



may prefer the appeal before the State Appellate Authority. In any case, the decision of the authority is bad in law and requires interference by this Court. In the interest of justice, as the scope of Article 226 of the Constitution of India is of wider ramification.

11. Per contra, learned Advocate for the State Ms. Varitka K Kashyap has taken this Court through the impugned order and submitted that the same has been passed after meticulous examination of the records and on scrutiny of the documents exhibited by the parties and, as such, the present writ petition is not sustainable in facts or in law and no relief could be granted to the petitioner while exercising the power to judicial review. To support the aforesaid contention, reliance has been placed on a decision rendered by the Apex Court in the case of ***Central Council for Research in Ayurvedic Sciences & Anr. Vs. Bikartan Das & Ors., (2023) 16 SCC 462.***

12. It is further contended that the petitioner was appointed based upon wrong calculation of her merit marks and if a mistake had been committed in calculation of merit marks, it was her duty to object to it, after publication of provisional merit list. It is thus obvious that she did not want to lose advantage of this mistake or deliberate illegal act. Hence,



connivance or implication of the petitioner cannot be ruled out. The Appellate Authority has rightly come to the conclusion that despite the petitioner being aware of her actual marks and merit points, she must have noticed after publication of provisional merit list that it had been enhanced by wrong calculation, if she did not make any objection, she was party of this mistake or intentional illegal act. It is lastly contended that now in compliance with the order passed by the State Appellate Authority, necessary communication has been made by the District Programme Officer, Saharsa to the concerned Panchayat Secretary and accordingly, the petitioner has been terminated from service vide order contained in Memo No. 15 dated 19.07.2024, which order is put to challenge by filing an interlocutory application bearing I.A. No. 1 of 2024.

13. This Court has bestowed anxious consideration to the submissions advanced by learned Senior Advocate and learned Advocate for the respective parties and also perused the materials available on record.

14. Before coming to the facts of the present case, it would be pertinent to take note of the principle enunciated by the Apex Court in series of decisions, including one of the decision upon which reliance has been placed by the State of



Bihar i.e. ***Bikartan Das*** (supra) where the Court held that “*the first cardinal principle of law that governs the exercise of extraordinary jurisdiction under Article 226 of the Constitution, more particularly when it comes to the issue of a writ of certiorari is that in granting such a writ, the High Court does not exercise the powers of the Appellate Tribunal. It does not review or reweigh the evidence upon which the determination of the inferior tribunal purports to be based. It demolishes the order which it considers to be without jurisdiction or palpably erroneous but does not substitute its own views for those of the inferior tribunal. The writ of certiorari can be issued if an error of law is apparent on the face of the record. A writ of certiorari, being a high prerogative writ, should not be issued on mere asking.*” It would be worth benefiting to encapsulate the relevant paragraph of the aforementioned ruling, where the Apex Court while crystallizing the scope and ambit of writ of certiorari emphasized as follows:

“52. Relying on *T.C. Basappa*, the Constitution Bench of this Court in *Hari Vishnu Kamath*, laid down the following propositions as well established : (*Hari Vishnu Kamath case*, SCC p. 899, para 24)



“24. ... 24.1. “Certiorari” will be issued for correcting errors of jurisdiction, as when an inferior court or tribunal acts without jurisdiction or in excess of it, or fails to exercise it.

24.2. “Certiorari” will also be issued when the court or tribunal acts illegally in the exercise of its undoubted jurisdiction, as when it decides without giving an opportunity to the parties to be heard, or violates the principles of natural justice.

24.3. The court issuing a writ of “certiorari” acts in exercise of a supervisory and not appellate jurisdiction. One consequence of this is that the court will not review findings of fact reached by the inferior court or tribunal, even if they be erroneous.”

53. This Court explained that a court which has jurisdiction over a subject-matter has jurisdiction to decide wrong as well as right, and when the legislature does not choose to confer a right of appeal against that decision, it would be defeating its purpose and policy if a superior court were to rehear the case on the evidence and substitute its own finding in certiorari.”

15. Now coming to determine the validity of the impugned order passed by the State Appellate Authority, it is needless to observe that the tribunal is a creature of statute. Its jurisdiction and power is confined to appeals made to it and



therefore confined to the four corners of the complaint. It has neither the power of superintendence nor any inherent power to do justice. Its power is limited to resolve the *inter se* dispute between the parties. It is a court of limited jurisdiction in that sense. It cannot undertake a roving enquiry into all aspects of the matter connected or unconnected with the complaint. The Tribunal/Authority on its own, could not enlarge its own jurisdiction to become supervisory authority over the issue in question and pass judgment thereon [Vide ***Chandra Bhanu Kumar Vs. The State of Bihar & Ors., (2024) 2 PLJR 68***].

16. Admittedly, it is the petitioner who had approached the District Appellate Authority for payment of her salary and where the respondent authorities had raised a dispute with regard to her initial appointment, based upon an incorrect and wrong merit list, where the petitioner's marks was shown as 73.07% placing her Rank at 26, where her actual marks were 59.18% to be placed at Rank 111. However, this fact has been completely ignored that in terms with the procedures prescribed for conducting counseling, it is only the petitioner, who turned up for the same and at no point of time, any objection has been made against the selection of the petitioner by any candidate. If there was a mistake in the calculation of the merit marks,



undisputedly the same was done by the employment unit. Moreover, it has never been the case of the employment unit or the respondents that there is any misrepresentation and fraud on the part of the petitioner. The letter issued by the Education Department under the signature of Additional Chief Secretary under Memo No. 998 dated 22.09.2021 clearly direct that except the case of producing forged certificates, with respect to other issues pertaining to selection process, it is the employment unit/authority, who are answerable and liable.

17. Before taking any action against the petitioner, it was incumbent upon the respondent State authorities to take action against the then employment unit, but the same has not been done. It has rightly been submitted that no-one should be punished for the mistake committed by others and allowed to take advantage of their own mistake and later on, conveniently pass on the blame to the others.

18. The State Appellate Authority while exercising the power of appeal primarily statutorily obliged to see the illegality of the order under appeal and in case, the order suffers from illegality then while setting-aside the order, a direction should be given to the concerned authority to take appropriate action, in terms with the order passed by the appellate authority. However,



in the case at hand, the State Appellate Authority accepted its jurisdiction and subsume the power of the employer/employment unit and passed the order of termination, besides recovery of the salary right from the date of joining. It is well settled law and the Courts across various decisions have ruled that a termination order can only be effective from the date it is passed or a future date, as it cannot legally erase the period, during which services were actually rendered. An employee cannot be deprived of benefits, as salary etc. earned during the period of service of retrospectively backdating her termination. Reference may be take to a decision rendered by learned Division Bench of this Court in ***Smt. Lalita Kumari Vs. State of Bihar & Ors., 1980 SCC OnLine Pat 175.***

“Retrospective termination of service or cancellation of the appointment, as the case may be, is totally unjustifiable and similar is the position with regard to recovery of the salary drawn for the period she worked as a teacher. Conscious of this legal position, the learned Additional Advocate General representing the respondents frankly conceded that this part of the order could not be supported. The result is that the cancellation of her appointment from the date of her appointment and orders for recovery of the salary drawn by her during the period she actually worked as a teacher is held



to be unsustainable in law and is bound to be quashed.”

19. Reliance of the State Appellate Authority on a judgment of Hon'ble Supreme Court in the case of ***R. Vishwanatha Pillai Vs State of Kerela & Ors., (2004) 2 SCC 105***, while directing the District Education Officer to recover the salary of the petitioner for the period she rendered her duty in the opinion of this Court would be applicable in a case where the appointment to said post is vitiated by fraud, forgery or crime or illegality and would not be applicable in all the cases, as a rule of thumb.

20. At the cost of repetition, it would be pertinent to observe that it has never been the case of the employment unit that the petitioner has produced any certificates or documents, which has been found to be forged and fabricated, rather it is the employment unit itself, who has committed mistake while calculating the marks of the petitioner along with other candidates. The respondents have also not come out with a case that the petitioner has anyhow caused manipulation and miscalculation of the marks in connivance with the member of the employment unit, hence the finding of the State Appellate Authority that none disclosure of the petitioner regarding



miscalculation of marks is a deliberate illegal act and thus, connivance of the petitioner is quite obvious.

21. This is also not the case of the respondent that if the marks of the petitioner is recalculated and rightly shown as 59.18% then she would have been ousted from the zone of consideration; once the record clearly suggest that the petitioner was the only candidate, who had appeared in the counseling. It would be worth stating that the record placed before this Court clearly demonstrates that in counseling, it is only the petitioner, who had turned up and despite the proper information and notice, none of the candidate chose to appear.

22. Now coming to the issue with regard to jurisdiction of the State Appellate Authority to decide a lis finally in absence of judicial member, the co-ordinate Bench of this Court in **(2025) 4 PLJR 1** (CWJC No. 12632 of 2025, ***Shobha Kumari Vs. The State of Bihar & Ors.***) has held that the order passed by the learned State Appellate Authority in the absence of judicial Chairperson is without jurisdiction and accordingly, set-aside the impugned order passed by the State Appellate Authority. It would be also appropriate to take note of the relevant paragraph, which reads as follows:

“4. Otherwise also order dated



*21.07.2025 passed by the Chairperson State Appellate Authority, Bihar, Patna (Respondent no. 6), in Case No. Appeal 70 of 2024 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. A reference in this regard can be taken to the law laid down by the Apex Court in the case of **State of Gujarat Vs. Utility Welfare Association** reported in (2018) 6 SCC 21, the impugned order dated 19.06.2024 passed by the District Appellate Authority in Appeal No.94 of 2023 and order dated 21.07.2025 passed by the Chairperson State Appellate Authority in Appeal no.70 of 2024 can only be held to be without jurisdiction and as such, the same are hereby **set-aside and quashed.**"*

23. On account of all the reasons disclosed and the position of the law explained, this Court finds that the impugned order passed by the State Appellate Authority suffers from the illegality, besides it acceded its jurisdiction while passing the order of retrospective termination and recovery of salary. Accordingly, this Court has no hesitation to set-aside the order dated 24.05.2024 passed in Case No. Appeal/T-284/2023 as also the consequential order contained in Memo No. 15 dated



19.07.2024 issued by the Panchayat Secretary-cum-Member Secretary, Employment Unit and remitted the matter to the State Appellate Authority afresh.

24. On account of the impugned orders having been set-aside by this Court, the consequences shall follow and the petitioner is directed to be reinstated and allowed to discharge her duty, till any order is passed by the State Appellate Authority, adverse to her right and entitlement of appointment.

25. Accordingly, the writ petition stands allowed. All the pending application(s), including I.A. No. 01/2024 stands allowed.

26. There shall be no order as to cost.

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	10.02.2026
Transmission Date	NA

