

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.2720 of 2019**

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1. Ram Chabila Prasad Yadav and Anr S/o Ram Ekbal Prasad Yadav R/o Village-Khutaha,P.O. Singhwahini,P.S. Sonbarsa,Dist.-Sitamarhi
  2. Bharat Bhushan Kumar S/o Surendra Prasad R/o Vill.-Narga,Block Parihar,P.S. Bela,Dist.-Sitamarhi
- ... .. Petitioner/s
- Versus
1. The State Of Bihar and Ors through the Principle Secretary,Education Department,Govt. of Bihar,Patna
  2. The Director, Primary Education,Govt. of Bihar,Patna
  3. The State Appellate Authority, Niyojan Bhawan,Bailey Road,Patna
  4. The Member, District Teacher's Employment Appellate Authority,Sitamarhi
  5. The District Education Officer, Sitamarhi
  6. The District Programme Officer (Estt.),Dist.-Sitamarhi
  7. The Block Development Officer Block-Parihar,Dist.-Sitamarhi
  8. The Block Education Officer, Block-Parihar,Dist.-Sitamarhi
  9. The Panchayat Secretary, Gram Panchayat Raj Prasandi,Block-Parihar,Dist.-Sitamarhi
  10. The Mukhiya, Gram Panchayat Raj Prasandi,Block-Parihar,dist.-Sitamarhi
- ... .. Respondent/s
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**Appearance :**

For the Petitioner/s : Mr.Rajeev Kumar Singh, Adv.  
For the Respondent/s : Mr.Ashutosh Ranjan Pandey (AAG-15)

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**CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH SHARMA**  
**ORAL JUDGMENT**

**Date : 22-03-2022**

The petitioners by way of this writ petition assail the order passed by the District Appellate Authority, Sitamarhi dated 13.02.2018 whereby their appeal was rejected and the order passed by the Block Education Officer dated 28.01.2017 and the orders of the District Programme Officer dated



27.02.2016 and 29.02.2016 were upheld.

2. Learned counsel appearing on behalf of the petitioners submits that the petitioners had participated in a selection process for appointment as Panchayat Teachers for Gram Panchayat, Parsandi, in the Panchayat Teachers Selection Process, 2008. They were placed in the select list and the select list was forwarded by the Panchayat Secretary to the District Education Officer, Sitamarhi vide its letter dated 31.12.2010. The said select list was however not operative upon and litigation in this regard ensued in different districts. The similarly situated persons approached the District Appellate Authority, Sitamarhi in appeals which came to be decided on 21.11.2014 and the District Appellate Authority after reaching to the conclusion that the posts are lying vacant and there is no fault in the selection process, proceeded to direct similarly situated persons to be offered employment. The petitioners who were also considered and employment was offered to them vide order dated 28.02.2016. The petitioners joined on the post of Panchayat Teachers in the pay-scale of Rs. 5200-20200. However, the petitioners were not released salary in terms of order issued by the Block Development Officer order dated 28.01.2017 which resulted in filing of appeals before the



District Appellate Authority, Sitamarhi claiming salary for the period. Learned counsel submits that instead of adjudicating upon the said aspect, the District Appellate Authority proceeded to examine the appointment given to the petitioners and proceeded vide impugned order dated 13.02.2018 to hold that the appointment given to the petitioners was *void ab initio*. Learned counsel submits that the petitioners preferred appeal before the State Appellate Authority which was dismissed vide impugned order dated 01.11.2018. Thereafter, the petitioners have approached this Court.

3. Learned counsel submits that the District Appellate Authority, Sitamarhi has gone beyond its jurisdiction to cancel the appointment of the petitioners and declared wrongfully as *void ab initio*. It is further submitted that the prior sanction for offering appointment to the petitioners, was an internal process, for which, the petitioners cannot be held responsible. Moreover, the order dated 17.05.2016 issued by the Director, Elementary Education, Bihar could not have been relied upon to set aside the order of D.P.O dated 18.02.2016 as the order of Director is later in point of time. He also submits that the appointment issued to the petitioners was by a competent person, namely, The Panchayat Secretary of the



Gram Panchayat which was done after following due procedure of advertisement of posts.

4. Per contra, learned counsel appearing for the State supports the order passed by the District Appellate Authority as well as by the State Appellate Authority and submits that the prior sanction was required from the department secretariat and the District Programme Officer has no authority to proceed and direct the units to give appointment. Learned counsel thus, submits that the decision taken by the District Appellate Authority declaring the appointment of the petitioners as *void ab initio* does not warrant any interference.

5. Learned counsel submitted that the appointment should be done up-to 31.12.2010 and the Gram Panchayat, Parsandi has sent the list on the said date only, therefore, the said list could not have been made operative by the District Programme Officer.

6. Considering the submissions, this Court find that the District Appellate Authority was seized of the issue raised by the petitioners-appellants regarding their non-payment of salary. In a case where the demand has been made before the District Appellate Authority for payment of salary issued of validity of appointment of the petitioners was raised by the



respondents and the District Appellate Authority has proceeded to conduct a roving enquiry to examine the said aspect without giving any opportunity to the petitioners to place their case with regard to validity of their appointment.

7. This Court notices that the District Appellate Authority has relied upon an order issued by the Director, Primary Education, Bihar dated 17.05.2016 which clarified that the District Programme Officer (Esta..) was not having any powers to give directions to the employing units for giving appointment to teachers or to issue guidelines, orders or directions in this regard since the Primary Panchayat Teachers Employment and Service Rules, 2006 amended Rules of 2008 and 2012 and 2015 do not lay down any such provisions. Therefore, it proceeded to hold that the directions issued by the District Programme Officer, Sitamarhi dated 18.02.2016 was illegal and beyond his jurisdiction and *void ab initio*. It further proceeded to hold the appointments given on the basis of the directions of the DPO letter dated 18.02.2016 as also bad in law and *void ab initio*.

8. Resultantly, the petitioner's appointment itself stood cancelled by the order of the District Appellate Authority without their being any such pleading taken up by the Appellant.



This Court finds that the District Appellate Authority cannot be said to be a Supervising Authority sitting over the actions of the government. It is only required to examine the dispute which may be raised before it in terms of the Rules of 2015. Even otherwise, the order is wholly defective as it takes into consideration a subsequent clarification letter dated 17.05.2016 to annul an order passed earlier on 18.02.2016. Such course itself vitiates the entire order dated 13.02.2018.

Further, this Court finds that the selection process was initiated in 2008 by issuance of advertisement and the names of the petitioners found place in the select list which was finally prepared of Panchayat, Parsandi. In matters relating to similarly selected persons of different Panchayat, the District Appellate Authority, Sitamarhi passed judgments on 21.11.2014 and 09.06.2015 making observation that appointment orders be released in their favour which are on record. If in compliance of such orders, the District Programmes Officer has issued an order to the Panchayat to issue appointment orders, the same



cannot be faulted. In the impugned order dated 13.02.2018, the said aspect has not been taken into consideration relating to the earlier order passed by the District Appellate Authority. The State Appellate Authority has also not taken notice of such orders. This Court finds that the State Appellate Authority has gone on a totally different tangent and proceeded to uphold the order of the District Appellate Authority on the ground that the petitioners-appellants therein did not approach the District Authority but approached the wrong forum of B.E.O and D.P.O, Sitamarhi for issuing directions to Panchayat to issue appointment orders as per select list. The State Appellate Authority has failed to take notice that in similar cases the District Authority had already given its adjudication and, therefore, it was not necessary for the petitioners to approach the District Authority again individually and they could have asked the concerned officer to comply the orders passed in similar cases as regards them too. In the circumstances, the order passed by the State Appellate Authority also stands vitiated.



9. In view thereof the writ petition is allowed. The order passed by the State Appellate Authority as well as District Appellate Authority dated 01.11.2018 and 13.02.2018 are quashed and set aside. The earlier order passed by the Block Education Officer dated 28.1.2017 also stands quashed.

Consequently, the petitioners will be treated to be continued in service and would also be entitled to regular salary and arrears of salary from the date they have not received payment.

The exercise shall be completed within a period of three months, failing which, the petitioners could be entitled to receive interest additionally on the arrears of salary @ 10 percent which shall be recovered from the concerned officer who delays in implementing the order.

**(Sanjeev Prakash Sharma, J)**

Jagdish/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	31.03.2022
Transmission Date	

