

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.5489 of 2020**

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Suresh Ram Son of Late Ugras Ram Resident of Village- Musaul Tola,  
Jahagirpur, P.S.- Sakara District- Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar Bihar.
2. The Principal Secretary Education Department, Bihar, Patna.
3. The Director Primary Education, Government of Bihar, Patna.
4. The District Education Officer Muzaffarpur.
5. The District Programme Officer (Establishment) Muzaffarpur.
6. The District Treasury Officer Muzaffarpur.

... .. Respondent/s

with

**Civil Writ Jurisdiction Case No. 6392 of 2020**

=====

Sunita Kumari wife of Umesh Prasad resident of Chandni Chowk Satbighi,  
Sheikhpura, P.S.- Sheikhpura, District-Sheikhpura.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary Govt. of Bihar, Patna.
2. The Director (Administration)-cum-Additional Secretary Education,  
Department of Bihar, Patna.
3. The Director of Primary Education Govt. of Bihar, New Secertariat, Bihar,  
Patna.
4. The Principal Secretary, Human Resources Department Govt. of Bihar,  
Patna
5. The District Magistrate, Sheikhpura.
6. The District Superintendent of Education Sheikhpura.
7. The District Programme Officer (Estb.) Sheikhpura.
8. The Block Education Officer, (Estb.) Sheikhpura.
9. The Head Master, Tarchha High Cum Middle School, Sheikhpura.

... .. Respondent/s

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**Appearance :**

(In Civil Writ Jurisdiction Case No. 5489 of 2020)

For the Petitioner/s : Mr.Pramod Kumar, Advocate

For the Respondent/s : Mr.Madanjeet Kumar (AC to GP 20)

(In Civil Writ Jurisdiction Case No. 6392 of 2020)

For the Petitioner/s : Mr.Umesh Prasad



For the Respondent/s : Mr.Smt.Shilpa Sinha (AC to GA-XII)

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

**Date : 23-02-2022**

The petitioners in the present writ petition pray for grant of Matric Trained Pay Scale. They are in service teachers appointed on regular basis.

2. A pointed query was raised to the counsels whether the appellate authority appointed under the Bihar State Teaching Institutions Teachers and Employee (Dispute Redressal and Appeal) Rules, 2020) would be having jurisdiction to examine the grievance raised by the petitioner and redress the grievance and the case be sent to the Tribunal for adjudication on merits. In other cases too, which are before this Court claiming for pay scale, promotions etc. similar issue would require to be similarly adjudicated.

3. In order to examine the aforesaid issue, it would be appropriate to consider to the position of rules in relation to constitutional powers and scope of the appellate authorities, who can examine and adjudicate on the factual aspects.

4. In exercise of powers under Articles 162 and 243 of the Constitution of India and under Sections 47 and 146 of the Bihar Panchayat Raj Act with Section 419 of the Bihar



Municipal Act 2007 and Section 38 of Right of Children to Free and Compulsory Education Act, 2009, the State of Bihar had framed rules called the Bihar State School Teachers and Employees (Dispute Redressal) Rules, 2015. The said rules came into force w.e.f. 13<sup>th</sup> of May 2015 and the District Appellate Authority and the State Appellate Authorities were constituted under the said rules at the level of District and State respectively.

The said authorities were empowered to hear and dispose of complaints/appeals in relation to employment of Niyojit Teachers, Librarian and other Niyojit functionaries of the Government. Niyojit Teachers and Niyojit Karmis were defined under the said rules and essentially in other terms they were those teacher who were appointed under other scheme and all were fixed remuneration basis which were being continued in the State of Bihar.

The said rules, however, came to be repealed and vide notification dated 25.08.2020, Bihar State Teaching Institutions Teachers and Employees (Dispute Redressal & Appeal) Rules 2020 came into force after publication of Bihar gazette on 09.07.2021 w.e.f the



aforesaid date i.e. 25.08.2020 by exercising the powers as above and additionally as per Section 14 of the Bihar Private Teacher (Fee Regulation) Act, 2012.

5. It would be appropriate to quote various provisions of the rules for the purpose of this order.

### **Part 1**

#### **Definitions -**

(vi) **“Elementary School”** means, such government/Nationalized Primary and Middle School (including aided by the State Govt. and aided Minority Schools) in which education is being imparted upto 5<sup>th</sup> or 8<sup>th</sup> standard.

(vii) **“Secondary School”** means, Govt./Nationalized Secondary School/Project Secondary School in which education is imparted upto standard 10<sup>th</sup>.

(viii) **“Senior Secondary School”** means, Govt./Nationalized/Project Senior Secondary School/upgraded Senior Secondary School in which education is being imparted upto standard 12<sup>th</sup>.

(ix) **“Aided/Permission for establishment/Recognized Secondary and Senior Secondary School”** means, such schools which is aided by the Govt. and being governed by any Managing Committee/Governing Body/Trust/Municipal body/Ad hoc Committee

“ (xii) **“Teacher”** means :-

*A. Teachers working under*



*Panchayti Raj institutions and Urban body institutions in Govt/Nationalized Primary and Middle School, Secondary School, Senior Secondary Schools as per rules notified by the Govt. of Bihar from time to time.*

*B. The teachers working under the Managing Committee of 108 Elementary Schools aided by the State Govt. (Including Minority Schools) in which education is being imparted upto standard 5<sup>th</sup> or 8<sup>th</sup>.*

*C. Teachers working under the Managing Committee/Trust in Aided, permission for establishment, recognized Secondary and Senior Secondary Schools.*

*D. Teachers of Private Schools.*

*(xiii) “Headmaster” means -*

*A. Headmaster, who would work under Panchayti Raj Institutions and Urban body institutions in Govt./Nationalized Primary and Middle School, Secondary School, Senior Secondary Schools as per rules notified by the Govt. of Bihar from time to time.*

*B. The Headmaster working under the Managing Committee of 108 Elementary Schools aided by the State Govt. (Including Minority Schools) in which education is being imparted upto standard 5<sup>th</sup> or 8<sup>th</sup>.*

*C. Headmaster working under the Managing Committee/Trust in Aided, permission for establishment, recognized Secondary and Senior Secondary Schools.*

*D. Headmaster of Private Schools.*

*(xiv) “Adhyapak” means,*



*Principal of concerned Colleges, Vice-President and Assistant Principal.*

(xv) **“Principal”** means, *Principal who are duly appointed or promoted under the provisions of Bihar State University Act, 1976 (Amended from time to time), Regulations, Guidelines or relevant Bye-laws, in affiliated aided college.*

(xvii) **“Assistant Principal”** means, *Assistant Principal who are duly appointed or promoted under the provisions of Bihar State University Act, 1976 (Amended from time to time), Regulation, Guidelines or relevant Bye-laws, in affiliated aided college, by the Managing Committee/Trust/Governing Body.*

(xvii) **“Non-teaching**

**Employees” Means -**

A. *Employees (including Librarian, who are not indulged in teaching activities, working under Panchayati Raj Institutions and Urban body Institutions in Govt./Nationalized/Project Secondary School, Senior Secondary Schools as per rules notified by the Govt. of Bihar from time to time.*

B. *Employees working under the Managing Committee of 108 Elementary Schools aided by the State Government (Including Minority Schools) in which education is being imparted upto standard 5<sup>th</sup> or 8<sup>th</sup> who are not indulged in teaching activities.*

C. *Employees working under the Managing Committee/Trust in Aided, permission for establishment, recognized*



*Secondary and Senior Secondary Schools, who are not indulged in teaching activities.*

*D. Employees of Private Schools, who are not indulged in teaching activities.*

*E. Employee working under duly constituted Managing Committee/Governing body/Trust of concerned aided College under the Regulation/Guidelines/Bye-law of Bihar State University Act, 1976 (Amended from time to time), who are not indulged in teaching activities.*

(xxi) **“Bihar School Examination Board”** means, Bihar School Examination Board established by the State Govt.

(xxii) **“University”** means, University established under Bihar State University Act, 1976.”

**art – 3**

**“13. Powers and Function of the District Appellate Authority – (A) (I) To resolve the disputes and complains pertaining to procedure of recruitment under Panchayati Raj Institutions and Urban body institutions in Govt./Nationalized Primary and Middle School, Secondary School, Senior Secondary Schools as per provisions/rules notified by the Govt. of Bihar from time to time.**

*(ii) To resolve the disputes and complaints pertaining to recruitment of Headmaster/Teacher/Non-Teaching staffs and promotions to the post of Headmaster by the Managing Committee of 108 Govt. Aided Elementary Schools (including Minority Schools) in which the education is imparted upto 5<sup>th</sup> of 8<sup>th</sup> standard.*

*(iii) To resolve the disputes and*



*complaints pertaining to process of recruitment and distribution of Grants-in-Aid with respect to Aided Permission for Establishment/Recognized Secondary and Senior Secondary Schools and Aided Colleges.*

*(iv) To resolve the disputes between the Head Master/ Teacher/Non-Teaching staffs and the Managing Committee of Private schools.*

*(v) To resolve such disputes pertaining to Headmasters/Teachers/Non-teaching Staffs working under Panchayati Raj Institutions and Urban body institutions in Govt./Nationalized Primary and Middle School, Secondary School, Senior Secondary Schools, who in case of being aggrieved by execution of the service condition, as prescribed, may prefer Appeal against the decision of the competent authority/committee.*

*(vi) To resolve the disputes of execution of service condition of Headmasters/Teachers/Non-Teaching staffs of Govt. aided 108 Elementary Schools (Including Minority Schools) in which education is imparted upto standard 5<sup>th</sup> or 8<sup>th</sup> and in case of any appeal being preferred by the Headmaster/teachers/Non-teaching staffs being aggrieved by the decision of the concerned Managing Committee.*

*(vii) To resolve the disputes pertaining to execution of service condition of Principal/Vice-Principal/Assistant Principal/Headmaster/Teachers/Non-teaching staffs of Aided, Permission for Establishment, Recognized Secondary/Senior Secondary Schools and Aided Colleges and in case of any appeal being preferred by the concerned Principal/ Vice-Principal/Assistant Principal/Headmaster/Teacher/Non-Teaching staffs being aggrieved by the decision of the concerned*



*Managing Committee.*

*(viii) The presiding officer of the Authority after making necessary verification and after hearing the parties shall pass the order to dispose of the disputes complaints.*

*(ix) The authority shall have jurisdiction to get the matter enquired into by any officer of the Education Department of the district or any administrative officer.*

*(B) The office of the Appellate Authority shall duly maintain all the records of the complaints/Appeals.*

*(C) All the Complaints/Appeals shall be filed before the District Appellate Authority within 30 days from the date of cause of action. The Appellate Authority will have jurisdiction to condone the delay in preferring the Complaints/Appeals after expiry of 30 days on the basis of reasonable grounds.*

*(D) The District Appellate Authority shall have the same powers for enquiry of any matter of hearing which has been vested in the Civil Court under Civil Procedure Code, 1908. While adjudicating any dispute the following powers shall be exercised :-*

*(i) To issue summons to ensure the presence of the persons and to compel them to produce evidence verbal or written through affidavit or to produce the document/record.*

*(ii) To search the record and to get the same inspected.*

*(iii) To tender evidence on Oath.*



*(iv) To issue summons to produce witnesses or record for inspection.*

*(E) The Appellate Authority shall ordinarily dispose of Complaint/Appeal within 90 days from the date of its receipt.*

*(F) The Authority shall exercise the functions and powers being entrusted by the Department from time to time.*

**14. Powers and Function of State Appellate Authority** – *(A) The Authority shall not ordinarily accept any application unless being satisfied that the applicant has availed all the alternative remedy available to him to resolve the dispute under relevant provisions.*

*(B) The Authority shall not entertain the application/Complaints unless the same has been filed within 30 days from the date of passing of the final order. But the Authority will have jurisdiction to condone the delay in filing the appeal on the basis of reasonable grounds.*

*(C ) The Authority shall hear the appeal against the decision of District Appellate Authority.*

*(D) The Authority shall hear the appeal against the decisions of the Divisional level Fee Regulation Committee constituted under Bihar Private Schools (Fee Regulation) Act, 2019.*

*(E) The State Appellate Authority shall have the same powers for enquiry of any matter or hearing which has been vested in the Civil Court under Civil Procedure Code, 1908. while*



*adjudicating any dispute the following powers shall be exercised -*

*(I) To issue summons to ensure the presence of the persons and to compel them to produce evidence verbal or written through affidavit or to produce the documents/record.*

*(ii) To search the record and to get the same inspected.*

*(iii) To tender evidence on Oath.*

*(iv) To issue summons to produce witnesses or record for inspection.*

*(F) The authority shall exercise the functions and powers being entrusted by the Department from time to time.*

**17. Function of (Appellate) Authority shall be judicial function** – *All the function of the Authority shall be deemed to be the judicial function under the provisions of Sections 193, 219 and 228 of Indian Penal Code, 1860.*

**19. Power to take assistance from Advocates and to appoint Presenting Officers - (i)** *The applicant under these Rules may appear in person to present his matter before the authority or may take assistance from any advocate of his choice.*

*(ii) The Department/Panchayati Raj Institutions/Urban Body Institutions/University/Affiliated College/Aided Secondary and Senior Secondary School and the Managing Committee of private Schools shall*



*authorise one or more than one advocates or its officers to present their matter and such authorized person may present their case before the authority.*

**25. Repeal and Savings - (i) The Bihar State School Teacher and Employees Redressal Grievance Rules, 2015 shall be deemed to be repealed from the date of notification of these Rules.**

**(ii) The Bihar Aided Teaching Institution Authority Rules, 2015 shall be deemed to be repealed from the date of notification of these rules.**

**(iv) The Presiding Officer/Chairman appointed prior to repealing of these Rules shall be deemed to have been appointed under these Rules, as if these Rules were prevalent at that point of time. Besides, the work done or any action taken in exercise of powers conferred by the said Rules shall be deemed to be done or action taken in these Rules, as if these Rules were prevalent at that point of time.”**

6. Learned counsel appearing for the petitioners, however, submits that the District Appellate Authority as well as State Appellate Authority would only entertain grievances raised by the teachers, who are either employee or fixed salary basis after 2006 and/or those who are working in aided institutions and the present petitioners would therefore, not be amenable to the jurisdiction of the District Appellate Authority as well as State Appellate Authority constituted herein above under the rules of 2020.



7. I have considered the submission, a look at the rules as quoted above would show that the same refer to all kinds of Teachers, Headmaster, Principal, Vice-Principals, Adhyapaks and other teachers teaching in the various Schools, Colleges and Universities.

8. They are framed by exercising powers apart from other statutes, under the right of Free and Compulsory Education Act, 2009 and rules framed therein which are applicable to all institutions in Bihar. The definition of Elementary School, Secondary School, Senior Secondary School and University (*supra*) takes into its ambit all the educational institutions in Bihar whether private or government controlled and therefore, all employees working in such institutions shall be entitled to take up their disputes before the redressal mechanism provided under the rules of 2020.

9. An interpretation of rules has to be an inclusive and not exclusive in nature. A look at the rules also shows that the rule making authority has not excluded any particular institution from the jurisdiction of the District Appellate Authority. In fact, the purpose behind formation of the District Appellate Authority and State Appellate Authority is to redress disputes which arise during service.



10. Thus, only in cases where a person is not borne in service, would he be not amenable to the jurisdiction of the aforesaid authorities. However, once a person joins the service in Education Department may be in any school, college which may be having any kind of character, his or her grievances relating to service dispute, which may be of nature of transfer seniority pay scale, departmental enquiry, Advertisement,/Selection/Appointment/Probation, Engagement/Re-employment, Punishment with or without Departmental Proceedings, Termination/Removal, Compulsory Retirement, Increment, Transfer/Deputation/leave, suspension, Date of Birth, Allowance/Reimbursement, Seniority, Promotion/Reversion, Departmental Examination, Salary/Pay, Fixation, Quarter Allotment or for that matter relating to his pension etc. can be examined at the first stage by the District Appellate Authority. Factual aspects can based be examined by a such authorities. Considering that the Appellate Authorities are to be manned by person, who has had experience in the judicial field, the teacher or non-teaching employee would be able to get his dispute adjudicated in a judicious manner.

11. This Court notices that the scope of adjudication under Article 226 and 227 of the Constitution is very limited



with reference to questions of facts. The concerned authorities under the rules of 2020 can always call for the record and give its findings on facts. Then, factual disputes can best be adjudicated by them. As District Appellate Authorities are situated in the various districts, the concerned teacher would be able to get redressal of his grievances quickly. Since, advocates have been allowed to appear, the concerned litigants would be appropriately represented.

12. This Court finds that the provisions of the rules of 2020 are a beneficial legislation towards redressal of disputes of employees of Education Department which is an appreciable step to get litigation ended at the threshold. Redressal of grievances by the District Appellate Authorities in a judicious manner would result in better functioning of the employees of the education department also.

13. Having reached to the aforesaid conclusion, this Court directs that all the matters concerning teachers pending before this Court deserve to be first adjudicated on merits and on facts by the concerned relevant District Appellate authority. If still there is any grievance left, the concerned person would be entitled to take up the matter before the State Appellate Authority and this Court need not deal with such matters at the



initial stage.

14. Having stated so, the learned counsel have informed that on account of *Pandemic* for the last two years, the State Government has not taken any steps for forming District Appellate Authority and the District Appellate Authorities are non-functional in several districts.

15. Accordingly, it is directed that the writ petition and similarly situated other writ petitions are required disposed of in terms as aforesaid with liberty to approach the District Appellate Authority. The petitioner would be free to obtain a certified copy of the present petition and the counter affidavit if any filed by the respective State counsel to be made as part of the pleadings and file an application before the District Appellate Authority, who would be entitled to call for the records from the respective schools/establishment/college etc. and after hearing the parties pass a speaking order expeditiously.

16. Learned counsel appearing for the State shall also inform the Chief Secretary and Secretary of Education about the present order and it is directed that the Chief Secretary and the Secretary, Education Department shall take immediate steps for the respective District Appellate Authorities to start their function. The necessary staffs and members shall be



appointed as early as possible not later than a period of one month from today. Necessary directions for their functioning shall also be passed accordingly.

17. The writ petitions are accordingly, disposed of.

**(Sanjeev Prakash Sharma, J)**

Jagdish/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	25.02.2022
Transmission Date	

