

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5823 of 2022

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Rajesh Kumar S/o Sri Dhuja Yadav R/o Vill- Mahaveerganj, P.S.- Karpi,
District- Arwal.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Education Department, Govt. of Bihar, Patna.
2. The Additional Chief Secretary, Education Department, Govt. of Bihar, Patna.
3. The Director, Primary Education Department, Govt. of Bihar, Patna.
4. The State Appellate Authority through its Secretary, Niyogan Bhawan, Bailey Road, Patna.
5. The District Appellate Authority, Arwal through its Secretary, District-Arwal.
6. The District Magistrate, Arwal.
7. The District Education Officer, Arwal.
8. The District Programme Officer (Estt.), Arwal.
9. The Block Development Officer, Karpi, Arwal.
10. The Block Education Officer, Karpi, Arwal.
11. The Mukhiya, Gram Panchayat Raj Keyal, Block- Karpi, District- Arwal.
12. The Panchayat Secretary, Gram Panchayat Raj Keyal, Block- Karpi, District- Arwal.
13. Veermani Kumar S/o Sri Randhir Kumar Sudhanshu R/o Village-Madarichak, P.O.- Sarain, P.S.- Makhdumpur, District- Jehanabad.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajeev Kumar Singh, Adv.
For the Respondent/s : Mr. Jitendra Kr. Roy 1 (SC13)

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CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH SHARMA

ORAL JUDGMENT

Date : 25-11-2022

1. The petitioner by way of this writ petition prays for setting aside the order dated 30th March 2022 passed by the State Appellate Authority Patna, whereby the appeal preferred by respondent no. 13 was allowed with directions to the



Panchayat Secretary to remove the petitioner from his service within a period of fortnight and reinstate respondent no. 13 at his place.

2. Further prayer has been made to pay the arrears of salary for the period the petitioner has been performing his duties on the post of Panchayat Teacher and also for the period from 01.06.2013 to 26.03.2017 during which he was forced to remain out of service.

3. The petitioner has stated that a notification was issued on 1st July 2006 for appointment of Panchayat/Block Teachers in different schools of the State. The applications were invited by respective appointing authorities of which Mukhiya of the concerned Gram Panchayat was the Chairman and the Panchayat Secretary was a Member Secretary. The petitioner applied for the post of Panchayat Teacher for Gram Panchayat Raj Keyal, Block-Karpi, District Arwal as a BC category candidate on 26.08.2006. The petitioner asserts that the respondent no. 13 had not applied for the said Panchayat and date of counselling was fixed on 08.10.2006. On the said date petitioner appeared along with others. However, respondent no. 13 did not appear for counselling as he had not applied.

4. It is further stated that father of respondent no. 13 was



Headmaster of upgraded Middle-School, Andhra Chak, Karpi District Arwal who managed to get him appointed in the same school, where he was posted as Headmaster.

5. A complaint was filed by the Supervisor-cum-Member Teacher to the B.D.O., Karpi about the irregularities in preparation of the panel but no action was taken. As the appointment of respondent no. 13 was illegal, petitioner also filed a complaint to the B.D.O. who was the Appellate Authority under Rule 18 of the Bihar Panchayat Elementary Teacher (Employment and Service Condition) Rules 2006. He did not decide the appeal and therefore the petitioner preferred a representation to the D.M. Arwal on 28th July 2007 who remanded the matter back to the B.D.O. directing him to decide the dispute. The B.D.O. kept the complaint pending and in the meanwhile the Rules of 2006 were amended in 2008 and the power of Appellate Authority was wrested from B.D.O. to the District Teacher Appointment Appellate Authority and accordingly the petitioner appeal was transferred to the District Appellate Authority to register as Appeal no. 01/2008-09.

6. The Appellate Authority passed an order on 08.02.2010 holding the appointment of respondent no. 13 as bad in law and suffering from malice on facts as the respondents



father had been instrumental in getting him appointed and was guilty of misusing the power vested in him. Appointment of respondent no. 13 was set aside with further direction to consider the petitioner for appointment on the post. Accordingly orders were issued by the D.M. Arwal on 11.03.2010 and the petitioners joining was accepted on 22.03.2010 by the Headmaster of the School and since then he was performing his duties.

7. Respondent no. 13 preferred a writ petition before this Court which was registered at C.W.J.C. No.4612/2010. The High Court vide its judgment dated 11.04.2013 dismissed the writ petition but further set aside the directions of the District Appellate Authority whereby it directed for appointment of the petitioner on the post.

8. The petitioner preferred an L.P.A. No.-602/2013 challenging the order of the Single Judge. The Division Bench vide its judgment dated 27.01.2014 decided the L.P.A. preferred by the petitioner as well as by the respondent no. 13 and set aside the order of the District Appellate Authority/ Tribunal dated 08.02.2010 as well as the order of the Single Judge dated 11.04.2013 and remanded the matter back to the Tribunal to decide the same afresh.



9. The petitioner preferred an Appeal No. 24 of 2014 before the District Appellate Authority in terms of the directions dated 27.01.2014 wherein the District Appellate Authority vide its judgment dated 23.06.2015 again held the appointment of respondent no. 13 as illegal and further directed for initiating fresh proceeding for appointment on the said posts.

10. The petitioner thereafter submitted application before the B.D.O. Karpi for implementation of the order of the District Appellate Authority dated 23.06.2015.

11. The respondent no. 13 preferred writ petition challenging the order of the District Appellate Authority dated 23.06.2015 bearing no. 12477/2015. In the meanwhile, the respondent no. 13 was appointed on the post illegally by the respondent on 10.12.2015 but the same was later on set aside by the Panchayat Secretary vide order dated 15.12.2015.

12. The petitioner preferred an application for implementation of the order of the District Appellate Authority before the D.M. Arwal but instead of him appointment was issued in favour of respondent no. 13. The petitioner again submitted application before the D.M. Arwal who submitted his report recommending for cancellation of appointment of respondent no. 13 on 28.05.2016. Thereafter vide letter dated



10.11.2016 the respondent no. 13 vide letter dated 24.10.2016 was informed of being removed from the post.

13. The petitioner moved contempt proceeding before the District Appellate Authority as he was not given benefit of the order passed in his favour dated 23.06.2015. The writ petition preferred against the order dated 23.06.2015 namely C.W.J.C. 12477/2015 was dismissed by the High Court on 06.02.2017. The petitioner was asked to appear for counselling vide letter dated 17.03.2017 along with others who were in the merit list and appointment letter was issued to him on the same day based on his overall highest merit. The petitioner joined on 27.03.2017. The writ petition C.W.J.C. No.-19798/2016 challenging the order of the Tribunal/District Appellate Authority dated 23.06.2015, preferred by respondent no. 13 which was dismissed as withdrawn with liberty to move the State Appellate Authority on 30.07.2019.

14. Keeping in view, the liberty granted on 30.07.2019 by the High Court, the respondent no. 13 filed an appeal before the State Appellate Authority bearing No. 383/2019 wherein order was passed on 30.03.2022, which was allowed with direction to remove the petitioner from his service within period of one fortnight and reinstate the respondent no. 13.



15. Learned counsel for the petitioner has pointed out that the respondent no. 13 concealed and suppressed several facts from the State Appellate Authority. The order passed by the High Court in C.W.J.C. No. 4612/2010 dismissing the writ petition, challenging the order dated 08.02.2010 was not brought to the knowledge of the State Appellate Authority. The order passed in L.P.A. was also not informed to the State Appellate Authority. The order dated 23.06.2015 had been challenged in C.W.J.C. No. 12477/2015 by the respondent no. 13 which was dismissed on 06.02.2017 was suppressed. Learned counsel submits that the State Appellate Authority has noticed this aspect of suppression and held it to be a blunder but did not proceed to dismiss the appeal. Learned counsel submits that the State Appellate Authority has erred in interpreting the directions of the District Appellate Authority and has passed wholly an illegal and perverse order.

16. This Court vide order dated 29.04.2022 stayed the operation of the order passed by the State Appellate Authority dated 30.03.2022. Whereafter application was moved for vacating the interim order by respondent no. 13 wherein it has been stated that the petitioner has made false averments and false submissions before the Court. Therefore, this Court



deemed it appropriate to hear the case finally. The respondent no. 13 has asserted that the petitioner did not participate in the counselling and it could not be proved that he was selected by counselling. It is also stated that Division Bench has also noticed that “the respondent no. 13 did not appear for counselling, he had thus forfeited his right to appointment.” Whereas this Court finds that the petitioner is not the same person to which the Division Bench is referring to in L.P.A. 1125/2020 as he is a male. The learned counsel for the respondent submits that the subsequent counselling which was required to be done by the respondents was after excluding the petitioner.

17. Per contra counter affidavit has also been filed by the respondent no. 7 and 8 who have supported the case of the petitioner. It is stated that the petitioner has a higher merit than the respondent no. 13 and was therefore selected again based on the counselling conducted and appointed on 27.03.2017 but his salary has been stopped after the order passed by the State Authority.

18. I have considered the submissions. The State Appellate Authority has given a finding holding that the petitioner Rajesh Kumar had not participated in the counselling.



On the other hand, the application of the petitioner was duly received on 26.08.2006 and the respondent no. 13 had not applied. This Court also finds that the petitioner participated in the subsequent counselling and so far as respondent no. 13 is concerned he has been appointed by conducting a counselling in the 8th round without calling any one else. Such a counselling is an eye wash that cannot be looked into.

19. This Court fails to understand as to how the respondent no. 13 could have been offered appointment when he had not applied for the post. It is also apparent that in fact no counselling was conducted at all although the date of counselling was fixed on 08.10.2006. As appointment was given to the respondent no. 13 without participation.

20. In the circumstances therefore this Court does not find any objection in the directions issued by the District Appellate Authority to conduct a fresh counselling. Once we reach to the conclusion that the process of preparing the Panel was wrongfully done, the observation of the State Appellate Authority in holding the decision of the District Appellate Authority in directing for a fresh counselling to be unjustified is wholly perverse. The power is available with the District Appellate Authority to direct a fresh counselling in light of the



facts which has come on record that in the 8th counselling a fresh merit list was prepared and the respondent no. 13 was given appointment who was the son of the concerned Headmaster.

21. The facts where a person with higher merit was available for appointment, appointing a person lesser in merit coupled with the fact that his name is included in the merit by conducting 8th round of counselling is itself sufficient to draw an inference of malice. In fact, as pointed out by the petitioner the said aspect has been however conveniently known.

22. In the opinion of this court merit cannot be given a go by in making appointments. In view thereof, the observation of the State Appellate Authority of the petitioner not participating in the counselling is found to be wholly perverse contrary to the facts. On the other hand this Court notices that the counselling was conducted in terms of the directions of the District Appellate Authority and the petitioner was appointed, such facts were not disclosed before the State Appellate Authority. It was also not informed to the State Appellate Authority that the respondent no. 13 did not participate in the counselling conducted in terms of the directions of the District Appellate Authority. The action of the State Appellate Authority in setting aside the order of the District Appellate Authority



which had already been implemented and upheld by the High Court in writ petition preferred by the respondent no. 13 cannot be appreciated. The order passed by the State Appellate Authority therefore is found to be based on findings which no ordinary person could have arrived at and are perverse.

23. The State Appellate Authority denied claim of the petitioner on the ground that he did not participate in the counselling. However this court notices that the employment unit did not conduct only one single counselling but conducted eight counselling and in the 8th counselling it appointed the respondent no. 13. The application form of the petitioner and that of the other persons is on record while the respondent no. 13 had not even originally applied. The State Appellate Authority has failed to take notice of these aspects and also the fact that the respondent no. 13 could not have participated in the counselling itself.

24. The petitioner has been since the beginning pointing out that action of the respondent employment unit in offering appointment to the respondent no. 13 wrongfully. As is appearing from his complaint originally made to the B.D.O. who set over the matters for years together.

25. Keeping in view that the State Appellate Authority



has wrongfully interpreted the orders of this Court as well as the order of the District Appellate Authority and has failed to take notice of the facts which were not brought to its knowledge by the respondent no. 13 who is guilty of *suppressio veri suggestio falsi*.

26. Therefore the order of the State Appellate Authority is not sustainable in law. Accordingly this writ petition is allowed. The order passed by the State Appellate Authority dated 30.03.2022 is quashed and set aside. The petitioner shall be allowed to continue on the post on which he has been appointed and also will be allowed to draw salary. Arrears of salary which has been withheld shall also be released in his favour forthwith. No costs.

(Sanjeev Prakash Sharma, J)

shaswat/-

AFR/NAFR	NAFR
CAV DATE	25.08.2022
Uploading Date	26.11.2022
Transmission Date	NA

