

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7307 of 2017

Brahmdeo Yadav Son of Sri Mahabir Yadav resident of Village - Simraha, P.S.
- Kusheshwar Asthan, District - Darbhanga Bihar.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Education Department, Government of Bihar, Patna Bihar.
3. The Director Primary Education, Bihar, Patna Bihar.
4. The District Magistrate, District - Darbhanga Bihar.
5. The District Education Officer, Darbhanga Bihar.
6. The District Programme Officer, Darbhanga Bihar.
7. The Block Development Officer, Kusheshwar Asthan Cum Secretary, Block Teacher Selection Committee,
8. The Education Officer, Kusheshwar Asthan, District - Darbhanga Bihar.
9. The Mukhiya, Gram Panchayat Raj, Bisharia Bujurg Block, P.S. - Kusheshwar Asthan, District - Darbha
10. The Panchayat Sewak Cum Panchayat Secretary, Gram Panchayat Bisharia Bujurg, Block - Kusheshwar Ast
11. Santosh Kumar Poddar Son of Late Babu Poddar Resident of Village - Mohim, P.S. - Kusheshwar Asthan, District - Darbhanga Bihar.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Raju Giri, Adv. Mr. Santosh Kumar Gupta, Adv. Mr. Ranjeet Kumar Yadav, Adv.
For the Respondent/s	:	Mr. Amit Bhushan, Adv.
For respondent no. 11.	:	Mr. Sanjay Kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

Date : 29-11-2021

1. Heard Mr. Raju Giri, the learned counsel for the petitioner, Mr. Sanjay Kumar, the learned counsel for the respondent no. 11 and Mr. Amit Bhushan, the learned counsel for the respondent nos. 2 to 10.



2. Pursuant to an advertisement in the year 2006 for appointment of Panchayat Teachers in Raj Bisharia Mohim Bujurg Gram Panchayat, Kusheshwar Asthan in the district of Darbhanga, the petitioner and the respondent no. 11 had applied. The petitioner had applied in the category of physically disabled person and had more marks than the respondent no. 11. Despite that, when respondent no. 11 was appointed on the said post, he had made a complaint before the appropriate authority leading to the constitution of a Two Men Enquiry Committee. The enquiry was held but a joint report of the enquiry was submitted under the signature of the Block Education Officer and the Block Development Officer. The rules in that regard indicated that the authority to conduct the enquiry was only the Block Development Officer. However, as a result of the aforesaid enquiry, the petitioner was appointed on the post of Panchayat Teacher in place of respondent no. 11.

3. The respondent no. 11 thereafter approached this Court vide C.W.J.C. No. 3941 of 2008 and challenged



such appointment of the petitioner on the ground that before the next date fixed in the enquiry, the report was submitted under the joint signature of the B.D.O. and B.E.O. the latter not being the concerned authority for being part of the enquiry. On such ground and on another petition on similar ground having been allowed, this Court quashed the appointment of the petitioner (Brahmedeo Yadav) and permitted the State to start to a fresh proceeding in case it was deemed necessary and the respondent no. 11 was directed to be reinstated in service with all consequential benefits.

4. The order passed by the learned Single Judge was challenged in appeal by the petitioner vide L.P.A. No. 1756 of 2015. The Appellate Court, taking into account that the respondent no. 11 also was not properly associated with the enquiry, held that the learned Single Judge ought not to have given any direction to reinstate him. If the appointment was quashed by the learned Single Judge, the Appellate Court maintained, the only natural consequence to that order was to direct the appropriate authority to conclude the



enquiry after giving adequate opportunity to the writ applicants and other affected persons.

5. The part of the order which directed for reinstating the respondent no. 11 only because the enquiry conducted was not fair and reasonable was not approved of.

6. The Appellate Court, therefore, modified the learned Single Judge's order by directing that the order of reinstatement will not be made effective and the official respondents shall proceed with the enquiry afresh and take appropriate decision in accordance with law.

7. Mr. Giri, learned Advocate has pointed out that the order passed by the Appellate Court was blatantly flouted in as much as the respondent no. 11 was not removed from service and the enquiry was conducted behind the back of the petitioner. In support of the aforesaid contention, the enquiry report has been adverted to which reflects that merely by perusing the concerned register, a decision was taken by the Committee that the appointment of the petitioner was bad in the eyes of law. There is nothing on record to indicate that in compliance of the order of the



Appellate Court, the respondent no. 11 was removed from service during the pendency of the enquiry. Annexure -10, which is an information to public in general contained in memo no. 63 dated 16.01.2017 further confirms the correctness of the statement of the petitioner that during the enquiry, the respondent no. 11 continued to work as Panchayat Teacher.

8. Based on this ground alone, the learned counsel for the petitioner has submitted that the enquiry report is absolutely unsustainable in the eyes of law and should be treated as non-est. Had the petitioner been made known of the continuing enquiry and the respondent no. 11 continuing in service, he would have surely brought these facts to the Appellate Court.

9. Mr. Sanjay Kumar on the other hand, submits that the petitioner has not approached the State Appellate Authority, which is the correct forum for him to agitate his claim. Invoking the writ jurisdiction of this Court which is a discretionary remedy without availing of the provisions of appeal before the State Appellate Authority, no order should



be passed in this writ petition. Secondly, it has been argued that the enquiry was made by the official respondents on the documents which were available with them. From the enquiry report, it has been shown by Mr. Kumar that there has been an interpolation in the marks and even the application of the writ petitioner was not received for his counselling and his consequent appointment on the post of Panchayat Teacher.

10. The learned counsel for the State, however, has fairly conceded that the order passed by the Appellate Court was not followed in its entirety and in its letter and spirit in as much as the respondent no. 11 was allowed to continue as Panchayat Teacher and the enquiry was concluded without noticing the writ petitioner.

11. For the reasons that the order passed by the Appellate Court was not followed in its entirety and the enquiry was conducted behind the back of the petitioner, the enquiry report is hereby quashed.

12. The concerned authority is directed to implement the order passed by the Appellate Court in its entirety. A



fresh enquiry be conducted by the same authority after noticing the petitioner and the respondent no. 11 and all other affected parties. The enquiry report be submitted within a period of thirty days from the date when the enquiry commences. The enquiry shall commence from a week after a copy of this order is produced before the concerned authority.

13. Till the time the enquiry is concluded, the respondent no. 11 shall not be treated in service and status quo shall be maintained.

14. Necessary sequel action shall be taken by the concerned authorities after the report in this regard is received.

15. The writ petition stands allowed to the extent indicated above.

(Ashutosh Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	N/A
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