
(2014) 08 PAT CK 0036
In the Patna High Court
Case No : CWJC No. 15616 of 2009

Karamvir Kumar Singh and Others	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 13-08-2014

Acts Referred:

Citation : (2015) 3 PLJR 117

Hon'ble Judges : Chakradhari Sharan Singh, J

Bench : Single Bench

Advocate : Prabhat Ranjan Singh, Advocate for the Appellant; Priya Ranjan and Sushil Kr. Singh, Advocate for the Respondent;

Final Decision : Dismissed

Judgement

Chakradhari Sharan Singh, J.

1. The petitioners have challenged an order dated 17.9.2009 passed by the District Teachers Appointment Appellate Tribunal, Jamui as well as an order dated 11.9.2007 passed by the Block Development Officer, Jamui. It is the case of the petitioners that they had applied for appointment to the post of Panchayat Teachers for the Gram Panchayat Raj, Chaudiha under the District of Jamui and they were duly selected by a committee constituted under Bihar Panchayat Elementary Teachers (Appointment and Service Conditions) Rules, 2006 (hereinafter referred to as 2006 Rules), they were appointed accordingly. Certain complaints against the said selection process were made before the Block Development Officer, Jamui who happened to be the Appellate Authority under Rule 18 of 2006 Rules. The Appellate Authority under 2006 Rules vide an order dated 11.9.2007 set aside the entire selection process, pursuant to which the petitioners were appointed as Panchayat Teachers. The Appellate Authority cancelled the appointment of all Panchayat Teachers including these petitioners accordingly and directed the Appointment Committee to take steps for filling up the vacancies in accordance with law. The petitioners by that time had already completed six months of their service as Panchayat Teachers pursuant to their

selection and appointment. They approached this Court by filing writ applications vide C.W.J.C. No. 12874 of 2007 (petitioner No. 1) and C.W.J.C. No. 12868 of 2007 (petitioner No. 2) questioning the order of Appellate Authority i.e. Block Development Officer whereby their appointments were cancelled. The petitioners however took liberty from this Court to approach the Appellate Tribunal, constituted under Rule 18 of Bihar Panchayat Elementary Teachers (Appointment and Service Conditions) Rules, 2006 as during the pendency of the writ applications, District Teachers Appellate Tribunals came to be constituted and appellate power which earlier vested in the Block Development Officer under Rule 18 came to be conferred upon the Appellate Tribunal. In view of such liberty as sought for, this Court vide order dated 13.7.2009 disposed of the writ applications with a direction to the Tribunal to consider the matter and decide within two months from the date of filing of the writ application. By an interim order dated 20.1.2009 passed by this Court in those cases, the Respondents were restrained from issuing any appointment letters in favour of any candidate. While disposing of the writ applications by order dated 13.7.2009, this Court did not observe that the said interim order dated 20.1.2009 shall have any effect after disposal of the writ applications. The petitioners thereafter approached the Tribunal, upon which the Tribunal passed the order dated 17.9.2009, which is impugned in the present application. The petitioners' claims against cancellation of their appointments were not acceded to by the Tribunal.

2. This is to be noted that Block Development Officer, the Appellate Authority vide order dated 11.9.2007 had set aside the selection and appointment of Panchayat Teachers including these petitioners on following three grounds:--

"I. Merit list prepared on 18.3.2007 for counselling on 20.3.2007 was not approved by the Gram Panchayat, in contravention of Rule 9(ix) of 2006 Rules.

II. The panel was published on 18.3.2007 and counselling held on 20.3.2007 which was also contrary to Rule 9(vii) of the Rules.

III. All selected candidates were not informed and only those who were available in counselling were appointed."

3. This has to be kept in mind that order dated 11.9.2007 passed by the Block Development Officer, was a statutory appellate order passed in exercise of power under Rule 18 of 2006 Rules which powers was subsequently conferred upon the District Teachers Appellate Tribunal.

4. In the meanwhile, certain developments took place after passing of the order by the Block Development Officer till passing of the interim order dated 20.1.2009 as well as disposal of the writ petitions being C.W.J.C. No. 12874 of 2007 (Karamvir Kumar Singh v. State of Bihar and Ors.) and other analogous matters and thereafter. Pursuant to new selection process in terms of the order of the Appellate Authority, Respondent No. 9 was selected as Panchayat Teacher for which counselling was held on 24.10.2004. Appointment letters were issued on 30.11.2007. Thus, the appointment letters came to be issued prior to the

interim orders passed by this Court on 20.1.2009 and 13.7.2009. The Respondent No. 9 was, required to join on the post of Panchayat Teacher in Primary School, Chaudiha where the petitioner was earlier posted on the basis of earlier selection and appointment. Respondent No. 9 has been impleaded as party respondent on the ground that he has been posted as Panchayat Teacher in Primary School, Chaudiha after his selection for the post in the same category to which the petitioner belongs. Respondent No. 9 was noticed and has entered appearance through his counsel and filed counter affidavit.

5. As per Respondent No. 9, the appointment letter dated 30.11.2007 was made available to him on 11.3.2008 whereafter he went to join Primary School, Chaudiha, Jamui on 11.3.2008. As per his contention, the Principal of the School endorsed on his joining application that since he came to join after 3 months and 10 days, he should get the date of joining and reason for delay, duly attested by the Panchayat Secretary. It is specific plea that though he was imparting teaching to the students in the School ever since 11.3.2008, his joining was not being confirmed. He accordingly approached the Appellate Authority, Jamui for redressal of his grievance but the Appellate Authority vide an order dated 29.10.2009 rejected his claim on the ground that his appeal could not be entertained since it was neither transferred by an authority nor by the High Court. The Respondent No. 9 thereafter approached this Court by filing a writ petition being C.W.J.C. No. 12224 of 2010, which was allowed by an order dated 17.5.2011 with specific direction upon the Headmaster of the School to accept the joining of Respondent No. 9. Respondent No. 9 accordingly joined in the light of this Court's order dated 17.5.2011.

6. Learned counsel for the petitioners has contended that the Block Development Officer passed the impugned order dated 11.9.2007 cancelling their appointments without giving them any opportunity of being heard and, therefore, the order is in violation of principles of natural justice. It has accordingly been contended that subsequent selection process based on the said order dated 11.9.2007 which is *ex facie* illegal having been passed without giving the petitioners an opportunity of being heard, is also illegal. He submits that the Respondents did not have authority to terminate the petitioners from service without following the procedure prescribed for termination of duly selected candidates and any termination contrary to the procedure prescribed in law is illegal. He has placed reliance upon a recent Supreme Court judgment in case of *Pune Municipal Corporation and Another Vs. Harakchand Misirimal Solanki and Others*, to contend that when a power is given up an authority to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden, it has been contended on behalf of the petitioners with reference to the said judgment.

7. Learned counsel appearing on behalf of the Respondent No. 9 on the other hand has contended that the reasons for cancellation of the selection procedure were assigned by the Appellate Authority i.e. Block Development Officer in his

order dated 11.9.2007 and there is no averment in the writ application that the reasons assigned are incorrect and not tenable. She contends that in such circumstance, the petitioners' plea that they were not given an opportunity of being heard before the Appellate Authority is a mere technical plea. She has submitted that it was open to the petitioner to raise all plea in the present proceeding against validity of the said order dated 11.9.2007 which he would have taken, had he been given any opportunity of being heard. She, therefore, contends that the orders need no interference on the ground of it being violative of principles of natural justice. Referring to the impugned order dated 17.9.2009 passed by the District Teachers Appointment Appellate Authority, Jamui, she has contented that there is no illegality in the said order. According to her, the Tribunal did not have any jurisdiction to interfere with the earlier order dated 11.9.2007 passed by the earlier Appellate Authority in exercise of same appellate power which has subsequently been vested in the Tribunal. She contends that there is no illegality in the order passed by the Appellate Tribunal which took note of the fact that validity of subsequent selection process was approved by the earlier Appellate Authority.

8. From the pleadings on record and rival submissions made on behalf of the parties, though it appears to this Court that the Block Development Officer, Jamui before passing the impugned order dated 11.9.2007 should have given opportunity of hearing to the persons appointed pursuant to earlier selection but this plea is not available now to the petitioners as the petitioners had approached this Court by filing writ applications as has been noted above and they sought liberty to file application before Appellate Tribunal constituted under Rule 18 of Bihar Panchayat Elementary Teachers Rules 2006. Learned counsel for Respondent No. 9 is correct in her submission that the Tribunal constituted under Rule 18 of 2006 Rules had the same power which the Block Development Officer had earlier prior to amendment to this Act in Rule 18 of the said Rules. She is right in her submission that the Tribunal did not have the jurisdiction to take a different view to alter or review the findings of the Block Development Officer, Jamui, the Appellate Authority. Further specific reasons have been mentioned in the order dated 11.9.2007 by the Block Development Officer, Jamui for cancellation of earlier selection process and appointments made on that basis but nothing has been argued or pleaded to satisfy this Court that the reasons are untenable and not valid. In such view of the matter, I do not feel inclined to interfere with the impugned orders. This application is accordingly dismissed.