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**(2010) 05 PAT CK 0089**  
**In the Patna High Court**  
**Case No : CWJC No. 17456 of 2009**

Md. Altaf Hussain

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

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**Date of Decision :** 11-05-2010

**Acts Referred:**

Bihar Panchayat Teachers (Appointment and Service Conditions) Rules, 2006 — Rule 6

**Citation :** (2011) 1 PLJR 530

**Hon'ble Judges :** Mridula Mishra, J

**Bench :** Single Bench

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## **Judgement**

Mridula Mishra, J.

I.A. No. 3528 of 2010 with C.W.J.C. No. 17456 of 2009

1. Initially the interlocutory application filed by Respondent No. 7, for vacating the stay in favour of the Petitioner, was taken up for hearing. But, considering the fact that all the parties have entered appearance and pleadings is complete, except that the State Respondents did not chose to file counter affidavit, the writ application alongwith interlocutory application was taken up for disposal.

2. Interlocutory application was filed by Respondent No. 7 for vacating the order of stay, granted in favour of the Petitioner, vide order dated 12.3.2010, stating that Petitioner is not eligible for being appointed on the post of general teacher, as such, the stay order granted in his favour, will amount to perpetuating illegality committed by the Respondents.

3. Petitioner and the Respondent both had applied for the post of Panchayat Teacher, in Prathmik Vidyalaya, Narar, Thana-Tole, Anchal-Khajauli, District-Madhubani.

4. Petitioner's case is that though his name was in the merit list but he could not participate in the counselling, as information for participation in counselling, reached to him after the date of the counselling has expired. Due to this,

Respondent No. 7 having lesser marks than the Petitioner, got appointment on the post. Considering, objection filed by the Petitioner, he was given an opportunity to appear in counselling. On account of Petitioner's belated counselling, the appointment of Respondent No. 7 was cancelled and by order dated 28.2.2007, in place of Respondent No. 7, Petitioner was appointed. Respondent No. 7, being aggrieved by cancellation of his appointment, filed C.W.J.C. No. 8473 of 2007, which was disposed of, giving liberty for filing an appeal before the appellate forum. The Respondent No. 7 filed an appeal and the appellate court has cancelled the appointment of Petitioner on two grounds:

(i) Since he did not participate in the counselling, he should not have been allowed to be appointed on the basis of subsequent counselling.

(ii) The Petitioner having Maulvi Degree was not eligible for being appointed on a general post of Panchayat Teacher, as persons having Maulvi Degree are eligible for appointment on Urdu Teacher's post, as per Rule 6 of the Bihar Panchayat Teachers (Appointment and Service Conditions) Rules, 2006.

5. Order passed by the appellate Tribunal is under challenge, on the ground that without issuing any notice to the Petitioner, impugned order has been passed.

6. Admittedly the Petitioner do not possess requisite qualification for being appointed on the post of general teacher, in view of Rule 6 of 2006 Rules as well as amended Rule 2008. The eligibility of Petitioner is for being appointed on the post of Urdu Teacher. In the light of the order contained in Memo No. 234 dated 23.1.2006, issued by Special Secretary-cum-Director, Secondary Education, only relief which can be allowed to the Petitioner is that the Respondent authorities will consider for adjustment of Petitioner, against any vacant Urdu Teacher's posts, in any of the school, in the concerned Gram Panchayat. So far the post, on which, presently the Petitioner is working, is general teacher's post, for which he do not possess requisite qualification. In the light of the order passed by the Appellate Tribunal, Respondent No. 7, earlier appointed on the post, having requisite qualification is eligible for appointment and he must be appointed on the post, without any delay, preferably within four weeks from the date of presentation/communication of the order.

7. Counsel for the Petitioner submits that since the date of his joining, he was not paid his salary. The Petitioner will represent before the D.S.E., for payment of his salary for the period he has worked. The D.S.E. will consider the claim of the Petitioner and pass necessary order for payment, preferably within four weeks from the date of filing representation.

8. The Respondent, Principal Secretary, Human Resources Development Department, Government of Bihar, Patna, as well as other Respondents are directed to find out vacant post of Urdu Teacher for adjustment of Petitioner in any of the school, within the concerned Gram Panchayat, without any delay, preferably within four weeks of the presentation/communication of this order.

9. This writ application is disposed off.