

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.10692 of 2017**

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Mamta Kumari Daughter of Sri Shyam Nandan Singh Resident of Village- Bahuara Patti, Post Office- Nagra, P.S.- Marhawrah, District- Saran. At Present working as a Panchayat Teacher in Government Primary School, Semal Sarai, Block- Marhawrah, District- Saran.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Education Department, Government of Bihar, Patna.
2. The Director, Primary Education, Government of Bihar, Patna.
3. The District Magistrate, Saran.
4. The District Education Officer, Saran.
5. The District Programme Officer Establishment, Saran.
6. The Sub Divisional Officer, Marhawrah, District- Saran.
7. The Block Development Officer, Block- Marhawrah, District- Saran.
8. The Block Education Officer, Marhawrah, District - Saran.
9. The Mukhiya Gram Panchayat Raj, Bahuara, Block Marhawrah, District- Saran.
10. The Panchayat Secretary, Gram Panchayat Raj, Bahuara, Block- Marhawrah, District -Saran.
11. The Presiding Officer, District Teacher Employment Appellate Authority, Saran.
12. Shilpi Daughter of Vinod Kumar Resident of Village- Bahuara Patti, Nagra, Block- Marhawrah, District- Saran.

... .. Respondent/s

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**Appearance :**

For the Petitioner/s : Mr.Umesh Kumar Mishra, Adv  
For the Respondent/s : Mr.Subhash Chandra Mishra- Sc16  
Mr. Abhinay Raj, Adv

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**CORAM: HONOURABLE MR. JUSTICE ALOK KUMAR SINHA**

**CAV JUDGMENT**

**Date : 15-12-2025**

Heard learned counsel for the petitioner and learned  
counsel appearing on behalf of the respondents.



2. The present writ application has been filed with a prayer for grant of the following reliefs:

*(i) I. For issuance of an appropriate writ in the nature of certiorari for quashing the order dated 14.07.2017 passed in Appeal No. 56/2017 by the Chairperson of the learned State Appellate Authority, Patna filed by the petitioner, by which the learned State Appellate Authority, Patna has been pleased to disallow the said appeal without appreciating the entire facts of the present case, and also for quashing the order dated 28.02.2017 passed in Appeal Case No. 33/2016 by the learned Presiding Officer, i.e. District Teachers Employment Appellate Authority, Saran of the Appellate Authority filed by Shilpi, Daughter of Vinod Kumar, Resident of village-Bahuarapatti, Nagra, Marhawrah, District- Saran (Applicant Vs. Mukhiya/Panchayat Secretary, Gram Panchayat Raj Bahuara Patti & Mamta Kumari) by which he has passed the order on 28.02.2017 mentioning therein that Appeal No. 33/2016 filed by*



*applicant, Shilpi Kumari is being accepted and Selection Committee has been directed to send a compliance report of the order of the Block Development Officer, Marhawah dated 13.09.2008 within a week without appreciating the fact that since 25.08.2008 the Block Development Officer cannot pass the order in the matter of Panchayat Teacher.*

*II. For issuance of an appropriate writ in the nature of mandamus commanding/directing the respondent authorities concerned to allow the petitioner to continue as Panchayat Teacher in Government Primary School Semal Sarai, Block-Marhawah, District-Saran, as she has been selected by following procedure in 2007, she is continuing since 23.02.2007, on the basis of the facts and circumstances as well as continuance for more than 10 years she may kindly be allowed to be continued taking into the age and experience of teaching in the school.*

*III. For issuance of an appropriate writ in the nature of prohibition by restraining the*



*respondent authorities concerned to not make hindrance in proper functioning of the petitioner as a Panchayat Teacher in Govt. Primary School Semal Sarai, Block-Marhawarah, District-Saran, as she is continuing as Panchayat Teacher till date and she has passed the Teachers Efficiency Test also and also for restraining the respondent authorities concerned from implementation of the order dated 14.07.2017, passed in Appeal No. 56/2017 by the Chairperson of the learned State Appellate Authority and order dated 28.02.2017 passed in Appeal Case No. 33/2016 by the learned Member, District Teachers Employment Appellate Authority, Saran at Chhapra.*

*IV. For issuance of any other appropriate writ/writs, order/orders, direction/directions for which the writ petitioner will be found entitled in the facts and circumstances of the case.*

#### **FACTS**

3. The case of the petitioners inter alia is as follows:
4. The petitioner, Mamta Kumari, claims that she



was appointed as a Panchayat Teacher pursuant to the counselling held between 15.02.2007 and 19.02.2007, in terms of the schedule issued by the District Magistrate, Saran. She was issued an appointment letter dated 20.02.2007 issued under signature of the Panchayat Secretary, Gram Panchayat Raj, Bahuara Patti vide memo no. 07(*Annexure 6*), whereafter she joined her post on 23.02.2007. According to the petitioner, her appointment was made from the waiting list as several candidates having higher merit, including private respondent no. 12, did not appear in the counselling.

5. The private respondent no. 12, asserting superior merit, subsequently raised objections to the petitioner's appointment (*Annexure 7*). An enquiry was conducted by the competent authorities, and the dispute ultimately reached the District Teachers Employment Appellate Authority, Saran (*Annexure 8*).

6. By order dated 28.02.2017 (*Annexure-14*), passed by The District Teachers Employment Appellate Authority, Saran allowed the appeal of private respondent no. 12 and set aside the petitioner's appointment. The petitioner's appeal before the State Teachers Employment Appellate Authority, Bihar was dismissed by order dated 14.07.2017



(Annexure-15). Aggrieved by the said orders, the petitioner has approached this Court by filing the present writ application.

### **PETITIONER'S SUBMISSIONS**

7. Learned counsel for the petitioner submits that the petitioner was validly appointed from the waiting list after counselling; that the private respondent no.12 admittedly did not participate in counselling; and that the petitioner has continued in service for several years without any complaint.

8. It is contended that the appellate authorities exceeded their jurisdiction under **Rule 18 of the Bihar Panchayat Elementary Teachers (Appointment and Service Conditions) Rules, 2006** and that the petitioner's appointment, having attained finality, ought not to have been disturbed.

9. Learned counsel for the petitioner places reliance upon the decisions of this Court in *Alok Kumar v. State of Bihar CWJC No.16423 of 2008*, *Sunil Kumar Ojha v. State of Bihar CWJC No. 8800 of 2008*, and *Prakash Kumar v. State of Bihar CWJC No. 4878 of 2007*, to contend that settled appointments should not be reopened and that the jurisdiction of the authorities under Rule 18 of the Bihar



Panchayat Elementary Teachers (Appointment and Service Conditions) Rules, 2006 is limited.

### **RESPONDENTS' SUBMISSIONS**

10. *Per contra*, learned counsel appearing for the respondents submits that the private respondent no.12 was found to be higher in merit; that the petitioner's appointment was not in accordance with rules; and that the appellate authorities acted strictly within the jurisdiction conferred upon them under Rule 18 of the of the Bihar Panchayat Elementary Teachers (Appointment and Service Conditions) Rules, 2006.

11. It is further submitted that the foundational order passed by The Block Development Officer, Marhwhrah dated 13.9.2008/16.10.2008(*Annexure 10*), on the basis of which the subsequent appellate proceedings arose, was never challenged by the petitioner.

12. It is contended that once the foundational order remained unassailed, the petitioner cannot seek to set aside the consequential appellate orders and, therefore, the writ petition is not maintainable and is liable to be dismissed.

### **ISSUES FOR CONSIDERATION**

13. On the pleadings and rival submissions, the following four issues arise for consideration:



*(i) Whether the writ petition is maintainable in absence of any challenge to the foundational order passed by The Block Development Officer, Marhwhrah dated 13.9.2008/16.10.2008(Annexure 10), forming the basis of the subsequent appellate proceedings?*

*(ii) Whether the District Teachers Employment Appellate Authority and the State Teachers Employment Appellate Authority acted without jurisdiction in passing the impugned orders dated 28.02.2017 and 14.07.2017 respectively?*

*(iii) Whether the petitioner's long continuance in service confers any indefeasible or vested right in her favour?*

*(iv) Whether the impugned orders call for interference in exercise of writ jurisdiction under Article 226 of the Constitution of India?*

## **FINDINGS**

***Issue (i): Whether the writ petition is maintainable in absence of any challenge to the foundational order passed by The Block Development Officer, Marhwhrah dated 13.9.2008/16.10.2008(Annexure 10), forming the basis of the subsequent appellate proceedings?***



14. This issue goes to the root of the matter. From the materials on record, it is evident that the appellate orders dated 28.02.2017 and 14.07.2017 specifically rely upon, and derive their procedural foundation from, the BDO's order dated 13.9.2008/16.10.2008. This is evident from the operative portion of the 28.02.2017 order directing the Selection Committee to submit a compliance report in terms of the order dated 13.09.2008.

15. Thus, the order dated 13.9.2008/16.10.2008 constitutes the originating and determinative order which revived the claim of respondent no.12 and enabled reopening of the selection process after nearly a decade.

16. Admittedly, the petitioner has not challenged the said foundational order. In absence of such challenge, the petitioner cannot selectively challenge the consequential orders passed by the District Appellate Authority and the State Appellate Authority, both of which rest upon the 13.9.2008/16.10.2008 order.

17. It is a settled principle that if the foundational order is left unchallenged, consequential orders flowing from it cannot be set aside independently. The writ petition, therefore, fails at the threshold and were founded upon an



initial determination/enquiry relating to the validity of the petitioner's appointment vis-à-vis the merit claim of the private respondent no.12.

18. The judgments relied upon by the petitioner, namely *Alok Kumar, Sunil Kumar Ojha and Prakash Kumar*, lay down well-settled principles regarding jurisdiction under Rule 18 and interference with settled appointments. There can be no quarrel with the propositions of law enunciated therein. However, the said decisions were rendered in cases where the foundational action itself was under challenge or was found to be without jurisdiction. In the present case, the foundational order forming the basis of the appellate proceedings has admittedly not been challenged. The aforesaid decisions are, therefore, distinguishable on facts and do not advance the case of the petitioner.

19. The writ petition, therefore, suffers from a fundamental defect. Issue (i) is answered against the petitioner.

*(ii) Whether the District Teachers Employment Appellate Authority and the State Teachers Employment Appellate Authority acted without jurisdiction in passing the impugned orders dated 28.02.2017 and 14.07.2017*



*respectively?*

*(iii) Whether the petitioner's long continuance in service confers any indefeasible or vested right in her favour?*

*(iv) Whether the impugned orders call for interference in exercise of writ jurisdiction under Article 226 of the Constitution of India?*

20. Having found and held, while considering Issue No. (i), that the writ petition itself is not maintainable on account of non-challenge to the foundational order forming the very basis of the subsequent appellate proceedings, this Court is of the considered view that the said finding goes to the root of the matter and is sufficient to non-suit the petitioner. In view thereof, this Court does not deem it necessary to adjudicate upon Issue Nos. (ii), (iii) and (iv). All the said issues are accordingly left open.

21. For the reasons aforesaid, this Court holds that the writ application is not maintainable and is liable to be dismissed solely on the ground of non-challenge to the foundational order passed by The Block Development Officer, Marhwhrah dated 13.9.2008/16.10.2008(*Annexure 10*), thus, the consequential appellate orders dated



28.02.2017 (*Annexure-14*) and 14.07.2017 (*Annexure-15*) do not warrant interference.

22. The writ application is, accordingly, dismissed.

There shall be no order as to costs.

**(Alok Kumar Sinha, J)**

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<b>AFR/NAFR</b>	AFR
<b>CAV DATE</b>	09.12.2025.
<b>Uploading Date</b>	15.12.2025.
<b>Transmission Date</b>	N/A

