

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No.37 of 2022

In
Civil Writ Jurisdiction Case No.5489 of 2020

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Rajiw Kumar Singh, S/o Late Ram Kumar Singh, R/o Pawat, Post - Behara,
P.S. - Ara Mufassil, District - Ara (Bhojpur).

... .. Petitioner

Versus

1. The State of Bihar.
2. The Principal Secretary Education Department, Bihar, Patna.
3. The Director, Primary Education, Government of Bihar, Patna.
4. The District Education Officer, Muzaffarpur.
5. The District Programme Officer (Establishment), Muzaffarpur.
6. The District Treasury Officer, Muzaffarpur.
7. The District Education Officer, District - Ara.
8. The District Program Officer (Establishment) - Cum - Drawing and Disbursing Officer, Department of Education, District - Ara.
9. The District Accounts Officer, District - Ara.
10. Suresh Ram, Son of Late Ugras Ram, Resident of Village - Musaul Tola, Jahagirpur, P.S. - Sakara, District - Muzaffarpur.

... .. Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Purushottam Kumar Jha, Adv.
Mr. Avanindra Kumar Jha, Adv.
Mr. Jitendra Acharya, Adv.
Mr. Anand Kumar Tiwari, Adv.
For the Opposite Party/s : Mr. Ajay Kumar Rastogi (AAG-10)
Mr. Priyadarshi Matin Sharan, AC to AAG-10

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CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH SHARMA
ORAL JUDGMENT

Date : 29-03-2022

1. This is a review petition preferred by the petitioner seeking review of an order passed by the Court in two writ petitions decided together namely Suresh Ram Vrs. The State of Bihar and Sunita Kumari Vrs. The State of Bihar.

2. The petitioner has preferred this review petition



as his writ petition was disposed of in terms of the judgment passed in Suresh Ram Case. Since he was not a party in the case of Suresh Ram Vrs. The State of Bihar or Sunita Kumari Vrs. The State of Bihar and others, learned counsel submits that he has availed remedy of filing of the present review petition.

3. On merits, learned counsel for the petitioner has submitted that this court erroneously held that the Bihar State Teaching Institutions Teachers and Employees (Disputes Redressal and Appeal) Rules, 2020 would have application to the teachers who are appointed on regular basis under the Rules of 2011, which have been framed under provision of Article 309 of the Constitution. Learned counsel submits that there are teachers who are appointed by the Panchayat, by the Nagar Parishad as well as by the Municipality, who are working in schools. Apart from such teachers, there are another set of teachers, who are working in nationalized schools namely those schools which have been taken over by the government and was earlier with the charitable society or with private organization. Such teachers working with the nationalized schools are separate class. There are third set of teachers who are working in the schools and their selection and procedure of appointment and promotion is governed by the rules framed under provision



of Article 309 of the Constitution namely the rules of 2011. These teachers have a separate rules for promotion. If they are aggrieved of their non promotion they are entitled to prefer an appeal as provided under rules Rules of 2011 to the Regional Deputy Director.

4. Learned counsel submits that the appointment of teachers to Panchayat and Nagar Parishad and to the Municipality are governed by separate set of rules. Bihar State Teaching Institutions Teachers and Employees (Disputes Redressal and Appeal) Rules, 2020 would govern the teachers who are recruited in the panchayat Rajya Institution and Zila Parishad as well as Municipal body and would also take into ambit teachers working in the nationalized schools, it would not extend to the teachers who have been appointed by the rules of 2011. The counsel is taken pains to take this court to the method and manner in which the said teachers are appointed under the various rules of appointment and conditions of service applicable to them. It is submitted that before coming into force of rules of 2020 the rules of 2015 was in force and the regular teachers do not have the remedy of taking an appeal before the District Appellate Authority or the State Appellate Authority. This court has committed an error of fact while extending the



scope of rules of 2020 to even those teachers who are regularly appointed. Learned counsel has submitted that the regularly appointed teachers namely government primary and middle schools were mostly appointed under the Bihar Primary Appointment Rules 1991. Their service conditions were governed by the Bihar Rajkiyekrit Primary School Teachers Promotion Rules 1993 and later on the said rule was substituted by 2011 promotion rules and then by 2018 promotion rules. The promotion rules of 2018 also provide for an appellate forum and therefore this court could not have extended the appellate forum of District Appellate Authority and State Appellate Authority to such teachers.

5. Learned counsel has further taken this court to the history relating to the formation of the District Appellate Authority right from the year 2008 to point out that the District Appellate Authority was initially formed only for the purpose of the redressal of grievances and disputes relating to teachers who are appointed in panchayat, Zila Parishad and by municipal body. Learned counsel submits that with the passage of time since 2003, system of appointment of regular teachers has been done away is being treated as a dying cadre. The service conditions like transfer, posting, promotion were



regulated by the District Establishment Committee headed by the District Education Officer. Whereas the teachers who are appointed in panchayat/Zila Parishad or by Municipality are subordinate to District Programme Officer, who deals with their grievances. Learned counsel further submits that the definition of teachers under the Rules of 2020 is exclusive and does not include the teachers appointed by the State Government. Learned counsel has taken this court to Rule 13 (5) of the Rules of 2020 and submit that the scope of appeal is wholly limited to the headmasters, teachers, non-teaching staff, working with the Panchayat Rajya Institutions.

6. Since other counsels also wanted to assist the court, in the interest of justice, the other counsels were also allowed to address the Court.

7. Sri Purushottam Kumar Jha argued that this court would not provide an appellate forum to the teachers who have been appointed on regular basis. As such, a forum has not been provided by the legislature to them and their writ petitions should be entertained directly by this Court. Learned counsel has stated that while teachers appointed by panchayat are concerned, their disciplinary authority is the District Education Officer and the appellate authority is the District Appellate



Authority. So far as disciplinary authority of the Zila Parishad is concerned, their appellate authority is also District Appellate Authority under Rule 2020. However, for teachers who are appointed by the government namely the regular teachers who are in regular pay scale, the appellate authority cannot be the District Appellate Authority but the Regional Deputy Director is their disciplinary authority and the appellate authority is Director, Education. In such circumstances, they cannot be equated.

8. Mr. Rajeev Kumar Singh has also argued on the similar lines and further stated that this court while passing the judgment has erred in observing that interpretation of rules has to be in inclusive and not conclusive in nature. He submits that the finding has erroneously been arrived at that the rule making authority is not included in particular institutions from the jurisdiction of District Appellate Authority and therefore the order deserves to be reviewed.

9. Mr. Abhinav Srivastava has taken this court to Rule 25 of the Bihar State Teaching Institutions Teachers and Employees (Disputes Redressal and Appeal) Rules, 2020 to submits that the repeal and semi clause takes into consideration the earlier rules of 2015 and the Bihar Aided Teaching



Institution Authority Rules 2015. Thus, since the rules which have been repealed, are taken into consideration for framing of the present rule, the interpretation should be limited to those who were governed by the repeal rules.

10. I have considered the submissions.

11. This court finds that as the petitioners were not party in the proceeding earlier, they have a right to file a review petition or file a leave to appeal as observed by the Apex Court in Ram Janam Singh Vrs. The State of U.P. reported in AIR 1994 SC 1722, as under:-

“As such respondent was not required to implead private respondent, who might be affected by the verdict of the Court. Even if this stand is accepted can it be said that persons who have been affected by the judgment of the High Court in the connected writ application cannot challenge the correctness thereof either by filing a Review Petition before the High Court or by filing a Special Leave Petition before this Court? According to us, the answer is in negative.”

12. In view thereof, the Review Petition is entertainably and accordingly entertained.

13. However on merit, this court finds that the scope of review is wholly limited to see whether there is an error apparent on face of record or there is a mistake of law.



Review can also be taken if this court finds that there is a factual error or if there is any existing judgment which has not been taken into consideration or where a particular judgment cited has already been set aside in appeal. The scope of review however cannot be extended to that of an appeal. The court will not re-examine the issues which have already been examined and decided. In other words there shall be no re -appreciation of facts or law in review.

14. keeping the aforesaid aspect, if the submissions of the petitioners are examined, suffice it to state that the petitioners have not pointed out any law or any rule which exclude or restrain the regularly appointed teachers from approaching the forum of District Appellate Authority and the State Appellate Authority for redressal of their grievances relating to service. The nature of appointment of a person or the pay scale which he is drawing may be different for different class of teachers however grievance redressal forum need not be different. The definition of teachers as mentioned in Rules of 2020 and noted by this court in the judgment under review, extend to one and all teachers. The definition of secondary schools, senior secondary schools is not limited to schools which are run by as nationalized or by a project but also by



government. All the teachers who are teaching in such schools would therefore be entitled and covered by Dispute Redressal Rules 2020.

15. This court finds that definition of teachers talks about urban body institutions in government/nationalized primary and middle schools, secondary schools, senior secondary schools which are notified by government of Bihar from time to time. Thus, it takes into ambit all teachers who are working whether in government or nationalized schools in the city as well as in the Panchayat Rajya Institutions. No distinction has been made. Similarly this court also notices that while earlier rules of 2015 (now repealed) limited to teachers who were appointed by in Panchayat Rajya as well as in Zila Parishad or in Municipal body. The definition has been changed by framing rules of 2020. The court also notices that under rule 15 (3) the Appellate Authority has been provided jurisdiction from imposing punishment or to take necessary action against delinquent employees which is under provision of Bihar Services Code/Bihar Panchayat Rajya Act 2006, Bihar Municipal Act, 2007 and other relevant provisions. Thus, the jurisdiction expands to all rules leaving no room of doubt relating to the scope and jurisdiction of the District appellate



Authority and State Appellate Authority of exercising jurisdiction to redress the grievances of all teachers and also non-government employees of all schools as well as aided institutions.

16. In view of above, no scope for review of judgment arises.

17. The review petition is accordingly dismissed.

(Sanjeev Prakash Sharma, J)

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