

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19169 of 2010

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1. Raj Lal Sah S/O Sri Bindeshwar Sah R/O Vill.- Kamalpur, P.S.- Khutauna,
Distt.- Madhubani.

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, HRD Department Govt. Of Bihar, Patna
3. The Director, Primary Education Govt. Of Bihar, Patna
4. The District Magistrate, Madhubani
5. District Panchayat Teacher Appointment Appellate Tribunal, Madhubani
6. The District Superintendent Of Education, Madhubani
7. The Block Development Officer, Khutauna (Madhubani)
8. The Block Education Extension Officer, Khutauna, Madhubani
9. The Mukhiya, Durgipatti Gram Panchayat, Khutauna, Madhubani
10. The Headmaster, Primary School, Udara, Durgipatti, Madhubani
11. Panchayat Secretary, Durgipatti Gram Panchayat, Khutauna, Madhubani
12. Rajendra Prasad S/O Ganga Ram Mandal R/O Vill.- Durgipatti, P.S.- Khutauna
(Madhubani).

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Bajrangi Lal
Mr. Gagandeo Yadav
For the Respondent/s : A.C. to S.C. 25
Mrs. Mahasweta Chatterji.

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL
ORAL JUDGMENT
Date: 30-01-2015

Heard Mr. Bajrangi Lal for the petitioner, Mrs.
Mahasweta Chatterji for the private respondent and A.C. to S.C. 25
for the State.

Two counter affidavits have been filed on behalf of
private respondent whereas the petitioner has filed a rejoinder thereto.
A counter affidavit on behalf of District Programme Officer has been
filed.

The petitioner is aggrieved by the order passed by the



District Teachers Appointment Appellate Authority, Madhubani (for short “the Authority”) as contained in Memo No. 540 dated 27.10.2010 (Annexure-6) whereby the respondent no. 10 was directed to accept the joining of the respondent no. 11 who was illegally not renewed as the Panchayat Shiksha Mitra (for short “PSM”) and to treat him as Panchayat Teacher (for short “PT”) in view of the change of status after coming into force of the Bihar Panchayat Elementary Teacher (Employment and Service Conditions) Rules 2006 (for short “the Rules”).

The Selection Committee of the concerned Gram Panchayat in the selection process undergone in the year 2003 selected respondent no. 12 as PSM. He was renewed for another period of 11 months as PSM. However, on expiry of period of 11 months, his continuance as PSM was not renewed by the concerned Gram Panchayat vide Annexure-1. In the meeting of the Sukh Suvidha Committee of the Gram Panchayat held on 30.3.2004, a fresh process of selection was undergone wherein the petitioner was selected as one of the PSMs. No such selection was made of the private respondent. It is the contention of the petitioner that his continuance on the post of PSM was renewed on different occasions lastly on 23.4.2006 vide Annexure-4. At the time of enforcement of the Rules w.e.f. 1.7.2006, he was functioning as PSM and as such



acquired the status of PT by virtue of Clause (III) of Rule 20 of the Rules. The private respondent filed diverse applications/representations before different authorities vide Annexure-F series against his non-selection/non-renewal on the post of PSM. An enquiry in this regard was made by the District Superintendent of Education wherein non-selection/non-renewal of the private respondent was found contrary to the provisions contained in the relevant guidelines/instructions issued by the Government. By an order dated 22.12.2008 passed by the District Superintendent of Education-cum-District Programme Officer, Madhubani, it was held that the engagement of the petitioner was contrary to the guidelines/circulars of the Government and the Panchayat Secretary of the Panchayat was directed to annul the appointment of the petitioner as PSM and in his place, the private respondent was directed to be inducted as PSM. Subsequently, by another order dated 20.3.2009 (Annexure-O/1 to the supplementary counter affidavit on behalf of Respondent no. 10), the operation of the said order was stayed until further enquiry to be made in this regard by the District Superintendent of Education. It may be noted here that before the said order dated 20.3.2009 was passed by the District Superintendent of Education, the Panchayat Secretary of the Gram Panchayat vide an order dated 27.2.2009 (Annexure-5) had passed an order cancelling



the engagement of the petitioner as PSM and subsequently acquiring the status of PT and the private respondent was directed to be treated as PSM subsequently acquiring the status of PT. However, the aforesaid order, in view of the facts noticed above, was not given effect to which punctuated the respondents to file an application in the Janta Darbar which, on transfer, was placed before the Authority for consideration and disposal. The Authority, after hearing the appellant and the official respondent passed the impugned order (Annexure-6) wherein it was found that the private respondent (applicant before the Authority) was illegally not considered and allowed to continue as PSM by renewal of his contract period until coming into force of the Rules. It was directed that the private respondent no. 12 be allowed to join as PSM in the concerned Gram Panchayat and by fiction of law be treated as the PT upon enforcement of the Rules. Aggrieved thereby, the present writ petition has been filed.

Mr. Lal, while assailing the order passed by the Authority, contended that indisputably the petitioner was continuing as PSM on 1.7.2006 whereas the private respondent was not holding the post of PSM on the said date. Way back on 4.3.2004, renewal/continuance of the service of the private respondent as PSM was denied whereafter the Selection Committee after undergoing a fresh process of selection had appointed/engaged the petitioner as



PSM which was renewed on different dates. The petitioner was thus continuing as PSM on 1.7.2006 when by fiction of law, he acquired the status of the PT. The Authority undermining the aforesaid facts and without issuing any notice to the petitioner and thereby affording an opportunity of hearing passed the impugned order directing the respondents to treat the private respondent herein as duly appointed PSM and, therefore, acquiring the status of PT in place of the petitioner. He has relied in this regard on the case of *Smt. Renu Kumari Pandey vs. the State of Bihar and Ors* [2011 (4) PLJR 297], the Full Bench of this Court in the case of *Kalpana Rani versus State of Bihar* [2014 (2) PLJR 665] affirming the judgment passed in *Renu Kumar Pandey (supra)* as also the order passed by a learned Single Judge of this Court in case of *Saroj Kumar and Ors versus The State of Bihar* (2013 (2) PLJR 897). The grievance of the private respondent regarding her non-selection/non-continuance/non-renewal on the post of PSM in the year 2004 could not have been entertained and considered in view of the aforesaid judgment of this Court.

Per contra, Mrs. Chatterji supporting the impugned order submitted that the private respondent soon after his non-renewal on the post of PSM and/or dis-engagement in the year 2004 by the Selection Committee had been raising the grievance by filing representations/applications before diverse authorities. It is, therefore,



not a case where the respondent was sitting idle and not raising any dispute. By virtue of the Rule/provision, the nomenclature of PSM has only been changed as PT. Any legitimate grievance can, therefore, always be raised and considered by the Authority. The appointment/engagement of the petitioner as PSM (later treated as PT) was cancelled under the orders of the District Superintendent of Education by the Panchayat Secretary of the Gram Panchayat vide order as contained in Annexure-5. He accepted the said order and did not raise any grievance thereagainst. In such view of the matter, the petitioner cannot challenge the order passed by the Authority.

In reply thereto, the counsel for the petitioner has submitted that from the impugned order passed by the Authority as also the order contained in Annexure-O/1 passed by District Superintendent of Education, it would appear that operation of the order contained in Annexure-5 passed by the Panchayat Secretary in the light of the direction issued by the District Superintendent of Education was put in abeyance by the same Authority until further enquiry. In fact, in a matter like this, the District Superintendent of Education has no role to play under the relevant rule. The order passed by the District Superintendent of Education, therefore, should be completely ignored.

On a consideration of the rival submissions, it appears an



admitted position that upon non-renewal of the engagement of the private respondent, the petitioner was selected on 4.3.2004 as PSM in the concerned Panchayat and he continued on the said post on grant of extension/renewal. The last order granting renewal to the engagement of the petitioner dated 23.4.2006 has been enclosed as Annexure-4. It is, thus, more than evident that on 1.7.2006 when the rule came into force, the petitioner was functioning as PSM and by fiction of law, he got absorbed as PT. Any claim whether legitimate or otherwise with regard to retention and/or renewal of the post of PSM after coming into force of the Rules cannot be examined by the Authority. This is because all the circulars/ guidelines/instructions issued providing the procedure for engagement/renewal on the post of PSM stood repealed by virtue of the Clause(1) of Rule 20. In the case of **Smt. Renu Kumari Pandey (supra)**, similar grievance was raised and considered by this Court and held that any such claim relating to the engagement/renewal on the post of PSM could not be examined by the Authority after the promulgation of the Rules. The said view fell for consideration in the Full Bench of this Court in **Kalpani Rani (supra)** and got affirmed.

In the case of **Saroj Kumar and Ors (supra)**, this Court examined the matter from different angle and observed as under in paragraphs 5 and 6:-



“5.The contention on behalf of the petitioners does merit consideration from various aspects of the matter. One, that the initial engagement was a contractual engagement and if those engagements or contracts were executed by the Panchayat in breach of any law and the same was void or voidable, it ought to have been tested at that time frame when the contract was subsisting. After the period of contract was over, the same cannot be revived and put under any kind of any judicial or quasi judicial scrutiny.

The other aspect is that once those persons became Panchayat Teachers with effect from 1.7.2006, the rule or the law conferred upon them certain advantages and service conditions. Any action, which was required to be taken against them, can only be taken within the ambit and parameters of the 2006 Rules and their removal can also be permissible for any omission or commission committed by them after 1.7.2006. Their status as a Panchayat Teacher cannot be taken away by such adjudication by reopening the issue of an illegal engagement of Panchayat Shiksha Mitra after so many years, especially when such persons got benefit of the status by virtue of a statute or rule which has never been challenged to be arbitrary or violative of any constitutional provision.

The contention of the respondent that the petitioner ought to have approached the Authority against the order contained in Annexure-5 is also not well founded since from the materials placed on record, particularly, the discussions made in the impugned order and Annexure-O/1 of the supplementary counter affidavit of the private respondent, it appears that the order dated 27.02.2009 (Annexure-5) was not directed to be given effect to by the Authority under whose command the said order was passed. This Court finds substance in the submission of Mr. Lal, Counsel for the petitioner that

the D.S.E. having no role assigned under the Rules, no weightage should be assigned by this Court to those orders. There is ample evidence available on the records which has not been disputed by the private respondent that the petitioner, by virtue of his initial engagement as PSM on 4.3.2004 and subsequent extension/renewal thereof, continued as PSM on 1.7.2006.

The legal position explained hereinabove persuade this Court to find merit in this application and set aside the order passed by the Authority as contained in Annexure-6.

The application is allowed. Order contained in Annexure-6 is quashed and set aside.

No cost(s).

(Kishore Kumar Mandal, J)

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