

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18056 of 2010

Manoj Kumar Ojha, son of Madan Mohan Ojha resident village-Vishambharpur P.S. Majhaulia, Distt. West Champaran, at Bettiah

.... Petitioner/s

Versus

1. The State of Bihar
2. The District Teacher Appointment Appellate Tribunal West Champaran through its member
3. The District Superintendent of Education, West Champaran
4. The Mukhiya, Gram Panchayat Raj Chanayan Bandh, Block Majhaulia, District West Champaran
5. The Panchayat Secretary, Gram Panchayat Raj Chanayan Bandh, Block Majhaukia, Distt. West Champaran
6. Kaushal Kishore Tiwary, village-Vishambharpur, P.O. Chanayan Banch, P.S. Majhaulia, Distt. West Champaran at Bettiah

.... Respondent/s

With

Civil Writ Jurisdiction Case No.18407 of 2010

Kaushal Kishore Tiwari S/O Shri Subhash Tiwari R/O Vill.-Bishambharpur, P.S.- Majhoulia, Distt.- West Champaran

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary Human Resources Development Department, Government of Bihar, Patna
3. The Director, Primary Education, Bihar, Patna
4. The District Magistrate, West Champaran at Bettiah
5. The Member District Teacher Employment Appellate Authority, West Champaran at Bettiah
6. The District Superintendent of Education, West Champaran at Bettiah
7. The Block Development Officer, Majhoulia Block, Distt.- West Champaran
8. The Block Education Officer, Majhoulia, Anchal Majhoulia, Distt.- West Champaran
9. The Mukhiya Of Gram Panchayat Raj, Chanayan Bandh, Block- Majhoulia, Distt.- West Champaran
10. The Panchayat Secretary Of Gram Panchayat Raj Chanayan Bandh, Block- Majhoulia, Distt.- West Champaran
11. Manoj Kumar Ojha S/O Shri Madan Mohan Ojha R/O Vill.- Bishambharpur, P.S.- Majhoulia, P.O.- Chanayan Bandh, Distt.- West Champaran

.... Respondent/s

Appearance :

(In CWJC No.18056 of 2010)

For the Petitioner : Mr. Rajeev Kr.Singh
For the Respondent no.6 : Mr. B.K.Mishra
For the State : Mr. Shashi Shekhar Pd. Sinha

(In CWJC No.18407 of 2010)

For the Petitioner : Mr. Bashishtha Narayan Mishra
Mr. Brij Kishore Mishra
For the State : Mr. Kundan Bahadur Singh (SC-22)

CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR
MANDAL
ORAL ORDER

5 19-01-2015 CWJC No. 18056 of 2010 has been filed questioning the legality of the order dated 29.07.2010 passed by the District Teachers' Employment Appellate Authority, West Champaran (for short 'the Authority') whereby the complaint lodged by the private respondent (writ petitioner of CWJC No. 18407 of 2010) was allowed and the appointment/engagement of the petitioner as the Panchayat Teacher (for short 'the PT') was directed to be cancelled and an FIR was to be lodged for his illegal act in obtaining the appointment on the basis of fake/false mark sheet. CWJC No. 18407 of 2010 has been filed by the private respondent of CWJC No. 18056 of 2010 seeking a direction to command the respondents to appoint him on the post of PT in Gram Panchayat Raj Chanayan Bandh within Majhoulia Anchal of the district of West Champaran in the light of the order impugned in CWJC No. 18056 of 2010. Both the writ petitions, therefore, have been heard together and are being disposed of with the consent of the parties.

Heard Mr. Rajendra Pd. Singh learned Sr. Counsel in support of CWJC No. 18056 of 2010 and Mr. B.K. Mishra who has appeared on behalf of respondent no.6 in CWJC No. 18056 of 2010 and for the petitioner in the cognate writ application being CWJC No. 18407 of 2010 as also the counsel for the State.

CWJC No. 18056 of 2010



According to the writ petitioner, an advertisement was published for appointment/engagement of Panchayat Shiksha Mitra (for short 'the PSM') in the Gram Panchayat in question. The petitioner was an applicant under unreserved category. On 01.04.2003 he was engaged as PSM and joined as such on 03.04.2003. The appointment letter and the joining letter have been enclosed as Annexure-2 series. He was thereafter sent for training which he completed successfully. Such engagement was initially for a period of 11 months. The Appointment Committee of the Gram Panchayat vide letter dated 09.03.2004 (Annexure-3) extended his period of engagement for another 11 months. By another order contained in letter dated 31.03.2005 (Annexure-4) the petitioner was granted second extension for 11 months. In 2005 the petitioner passed the Upshastri Examination with first division which is equivalent to Intermediate. By another letter dated 01.03.2006 (Annexure-5) he was given the 3rd extension for another 11 months on the post of PSM. In the meanwhile, Bihar Panchayat Elementary Teacher (Employment and Service Conditions) Rules, 2006 (for short 'the Rules') came into force and by reason of Rule 20 (3) thereof all PSMs working on the said post were converted as PTs and given the permanent status. In 2008 the petitioner was assigned the training conducted by the



Indira Gandhi National Open University (for short 'the IGNOU') and he cleared the first terminal examination. The efficiency test was thereafter conducted by the State Government in which the petitioner appeared and cleared the same. In 2009 respondent no.6 filed an appeal before the Authority against the engagement of the petitioner on the post of PSM which gave rise to Case No. 254 of 2009 on the file of the Authority. After hearing the parties the Authority passed the impugned order and directed for cancellation of the engagement/appointment of the petitioner on the post of PT and further recommended for lodging of the criminal case against him.

CWJC No. 18407 of 2010.

The factual matrix of the case is that the petitioner was also an applicant for engagement as PSM for which process of selection was undergone in the year 2003 by the Selection Committee of the Gram Panchayat. The petitioner had passed the matriculation examination with first division obtaining 583 out of 900 marks. At the time of making application he was having qualification of Intermediate. The private respondent (writ petitioner of CWJC No. 18056 of 2010) also applied for engagement as PSM and produced his mark sheet showing that he had passed the matriculation examination obtaining 620 out of 900



marks. On the basis of the aforesaid fake mark sheet he was preferred and engaged as PSM. A representation was filed by the petitioner on 12.08.2005 against such engagement of the private respondent no.11 yielding no result whereafter another representation was also filed. In these backgrounds after obtaining the necessary papers through RTI he filed appeal before the Authority in which the impugned order was passed for cancellation of the appointment of the private respondent no.11. The petitioner has now filed the present writ application for a direction commanding the respondents to appoint him as PT in the Gram Panchayat a on the post occupied by respondent no.1.

Counsel for the petitioner in CWJC No. 18056 of 2010 has assailed the impugned order passed by the Authority mainly on two grounds. It has been submitted that in view of the provision contained in the Rules no such application could have been filed or entertained beyond 30 days of the constitution of the Authority. The Authority failed to consider this aspect of the matter and passed the impugned order. He has relied in this regard on an unreported order passed by this Court in case of Kumari Pinki Choudhary (CWJC No. 14233 of 2012). It is further submitted that in appropriate case the period of limitation could have been condoned but no such application was filed and pressed



by the applicant of the said case. It is next contended that even if the application filed by the applicant was entertained on merit the Authority in view of the provision contained in the Rules and the principles of law enunciated in this regard in diverse judgments of this Court could not have considered any claim regarding engagement on the post of PSM. He has relied in this regard on division Bench judgment of this Court in **Smt. Renu Kumari Pandey vs. State of Bihar (2011 (4) PLJR 297)** in order to submit that the Authority had no jurisdiction to entertain such application and pass order. He also relied on a full bench judgment of this Court in the case of **Kalpana Rani vs. State of Bihar (2014 (2) PLJR 665)** wherein the view expressed in **Smt. Renu Kumari Pandey** (supra) was reiterated and approved. The counsel further disputed the fact that the mark sheet which is said to be fake was submitted by the petitioner for obtaining the appointment/engagement as PSM. The statement made in the rejoinder to this effect has been cited by the petitioner. One of the submissions of the counsel for the petitioner in CWJC No. 18056 of 2010 is that irrespective of the order which has been passed by the Authority if it comes to the notice of the State respondents that a fraud was committed by the petitioner in getting employment as PSM it is always open to the respondents to take

action against him and the erring official in accordance with law besides instituting a criminal case for such criminal deeds/acts.

Mr. Mishra conversely submitted that the order passed by the Authority is in two parts. The first part deals with the case of the parties wherein it has been found that the petitioner got employment on the basis of the forged mark sheet. The Authority, in such view of the matter, directed for cancellation of his appointment initially as PSM which was later converted as PT. The second part of the order relates to the direction for instituting a criminal case against which no challenge could have been made. He further argued that if a fraud has been played in securing public employment and the court comes to a definite conclusion then the same can be set aside. Time spent in a service shall have no consequence. He relied on Annexure-C/1 which is a photo copy of the mark sheet issued in favour of the writ petitioner by the Bihar School Examination Board, Patna showing that the petitioner had obtained 626 out of 900 marks which, according to him, is fake.

While arguing in support of CWJC No. 18407 of 2010 Mr. Mishra has submitted that if the engagement of the writ petitioner of CWJC No. 18056 of 2010 is set aside then the petitioner would be entitled to engagement as PSM which, by fiction of law, was

converted as PT. Per contra, Mr. Rajendra Pd. Singh submitted that in view of the law laid down in the cases noticed above no such relief can be granted to the petitioner.

I have considered the rival submissions of the parties and perused the materials on record.

The contention of the petitioner of CWJC No. 18056 of 2010 (first case) is that after coming into force of the Rules with effect from 01.07.2006 no such challenge against the engagement on the post of PSM could have been made by the private respondent and entertained by the Authority. A dispute akin to the present case was noticed by the Single Judge of this Court in 2008 (1) PLJR 695 and finding flaw with the earlier view expressed in this regard by this Court referred the case to the division bench for an authoritative decision. The division bench in **Renu Kumari Pandey** (supra) considered the question referred for consideration whether such persons, if their grievance was found genuine, can be granted relief of deemed employment as PSM and consequent absorption in the cadre of Panchayat Teacher under the Rules. The Division Bench took notice of Clause (iii) of Rule 20 of the Rules and held that the same reflects the policy decision of the State Government which is neither arbitrary nor discriminatory or violative of Articles 14

and 16 of the Constitution of India. The division bench held as under in paragraph 18 of the report which is extracted hereinbelow:-

“We may also note here that though the State Government framed a complete scheme for employment of Panchayat Shiksha Mitra at Gram Panchayat level in furtherance of its goal of “Education for All” in none of the aforesaid Resolutions the Government had provided for an adjudicatory machinery. In other words, the State Government did not make any provision for redressal of grievance in respect of selection and employment of Panchayat Shiksha Mitra or their re-employment after the expiry of the contractual period. On perusal of the records of the above writ petitions, we find that in absence of such machinery, the aggrieved persons approached the authority whom such persons considered to be the competent/the convenient authority. In our opinion, in absence of powers expressly conferred upon any such authority the reports or the orders made by such authority are of no consequence. No relief can be granted on the basis of the finding recorded by such authority. We may also point out that Elementary Teachers Appellate Authority constituted under Rule 18 of the rules, as amended by Bihar Panchayat Elementary Teacher (Employment and Service



Conditions) (amendment) Rules, 2008 is empowered to entertain, hear and decide the appeals arising out of the employment of elementary teachers under the Rules. The said appellate authority has no jurisdiction to entertain, hear or decide the disputes relating to the employment of Panchayat Shiksha Mitra under the then prevalent Resolutions, Circulars, Orders, instructions.”

A similar question fell for consideration before the full bench wherein the judgment passed in **Smt. Renu Kumari Pandey** (supra) was noticed. The challenge to the said judgment in the light of the provision contained in the Bihar and Orissa General Clauses Act, 1917 was considered. The full bench affirmed the judgment passed in **Smt. Renu Kumari Pandey** (supra) and held as under in paragraph 118 which is extracted hereinbelow:-

“Having thus given my anxious consideration, I am of the view that after 1.7.2006, no person, who was earlier an aspirant for the post of Panchayat Shiksha Mitra, can be appointed only because his or her name figured in the panel of Panchayat Shiksha Mitra. The post of Panchayat Shiksha Mitra has been abolished with effect from 1.7.2006 and after abolition of the post, no one can be appointed on



the post of Panchayat Teacher on the basis of his mere empanelment of Panchayat Shiksha Mitra. The view taken in the judgment of the Division Bench in the case of **Smt. Renu Kumai Pandey** (supra) is a good law. I will have no hesitation in holding that the earlier Division Bench judgment in the case of **Kishori Prasad** (supra), for the reasons indicated above, has not correctly decided the law and is, accordingly, overruled.”

The submission of the private respondent is that the petitioner played a fraud by producing fake/forged/incorrect mark sheet and got precedence over him. Before this Court, the petitioner has disputed the aforesaid fact and submitted that the said mark sheet deliberately got inserted by someone inimical to the petitioner. This Court on the basis of the rival pleadings on record would be loath in recording a finding on this point. The second part of the order passed by the Authority therefore assumed relevance wherein a direction was issued for lodging of the FIR against the writ petitioner. This Court, at this juncture, would again notice the stand taken by Mr. Rajendra Prasad Singh that if it has been brought to the notice of the State respondent that a fraud has been committed by the petitioner then surely an FIR could have been registered initiating an in-depth

investigation into the said allegation for which no direction of the statutory authority is required. Mr. Mishra learned counsel for the private respondent has stated that an FIR has already been lodged after the impugned order passed by the Authority and the same is under investigation.

Coming to the merit of CWJC No. 18407 of 2010, in view of discussions made hereinabove, no relief can be granted to the writ petitioner by directing his engagement/appointment as PSM in place of the writ petitioner of CWJC No. 18056 of 2010. Mr. Mishra, in all fairness, has conceded to this effect appreciating the principle(s) laid down in the case of **Renu Kumari Pandey** (supra) affirmed in **Kalpana Rani** (supra).

In the light of discussions made hereinabove, this Court sets aside the order dated 29.07.2010 passed by the Authority (Annexure-1) and dismisses CWJC No.18407 of 2010. It is, however, clarified that that the quashing of the order of the Authority would not preclude the concerned respondent(s) from initiating and/or pursuing the criminal case/proceeding and the subsequent action/proceeding, if need be, in accordance with law.

HR/-

(**Kishore Kumar Mandal, J**)

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