

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No.51 of 2011

In

LPA 1621 of 2010

Lalan Prasad son of Shri Lal Bahadur Prasad, resident of Village and P.O. Bahrauli Kunwar Tola, P.S. Mashrak, District Saran

.... **Petitioner**

Versus

1. The State of Bihar
2. The Principal Secretary Human Resource Development Department, Government of Bihar, Patna.
3. The Director Primary Education, Government of Bihar, Patna
4. The District Magistrate, Saran at Chapra
5. The District Superintendent of Education, Saran at Chapra
6. The Block Development Officer, Mashrak, District Saran
7. The Block Education Extension Officer, Mashrak, District Saran
8. The Mukhiya, Gram Panchayat Raj, Bahrauli, Block Mashrak, District Saran
9. The Panchayat Secretary, Gram Panchayat Raj, Bahrauli, District Saran
10. Branjit Kumar Prasad son of Shri Ram Prasad, resident of Village & P.O. Bahrauli, P.S. Mahsrak, District Saran, presently working as Panchayat Teacher in Primary School Kuer Tola, Block Mashrak, District Saran at Chapra

.... **Respondents**

Appearance :

For the Petitioner/s : Mr. Rajendra Prasad Singh, Sr. Advocate
Mr. Shashi Shekhar Tiwary, Advocate
For the State : Mr. Vivek Prasad, Gp18
For the Respondent No.10: Mr. S.B.K. Mangalam, Advocate

**CORAM: HONOURABLE MR. JUSTICE I.A. ANSARI
AND
HONOURABLE MR. JUSTICE SAMARENDRA PRATAP
SINGH**

**CAV ORDER
(Per: HONOURABLE MR. JUSTICE SAMARENDRA
PRATAP SINGH)**

14 18 -03-2015

The petitioner herein has sought for review of the order, dated 07.01.2011, passed in L.P.A. No. 1621 of 2010, whereby the appeal filed on his behalf was dismissed.

2. The appellant-review petitioner filed L.P.A.No.1621 of 2010 against the order, dated 12.08.2010, passed in C.W.J.C. No. 15909 of 2009, allowing the writ application filed by the writ petitioner, Brenjit Kumar Prasad (respondent No. 10 both in L.P.A.No.1621 of 2010 and Civil Review No. 51 of 2011). In his writ petition, the writ petitioner, Brenjit Kumar Prasad, had challenged the local Mukhiya's order, dated 27.04.2010, cancelling the appointment of the writ petitioner as Panchayat Teacher on the direction of the District Superintendent of Education, Saran, at Chapra. The writ petition was preferred on the ground that the District Superintendent of Education, Saran, at Chapra, had no authority, under the Bihar Panchayat Elementary Teachers (Appointment and Service Condition) Rules, 2006 (hereinafter referred to as "2006 Rules"), to cancel the appointment or direct cancellation of appointment of any Panchayat Teacher and that it is the Block Development Officer, who is the competent authority to enquire into the complaint of illegal appointment of Panchayat Teachers and issue necessary directions in the matter.

3. The facts of the case may, in brief, be described thus:

The writ petitioner, Brenjit Kumar Prasad, was appointed as Panchayat Shiksha Mitra in the year 2004. In terms of 2006 Rules, his service was regularized as a Panchayat Teacher. The appellant-review petitioner, in the year 2008, made a complaint against selection of the writ petitioner as Shiksha Mitra. The District Superintendent of Education, Saran, at Chapra, got an enquiry made and, on the basis of the same, directed termination of service of the writ petitioner, Brenjit Kumar Prasad, as a Panchayat Teacher. Acting on the direction of District Superintendent of Education, Saran, at Chapra, the Mukhiya cancelled the appointment of the writ petitioner. The writ petitioner challenged the order of cancellation of his appointment as Shiksha Mitra/Panchayat Teacher on the following grounds:

(i) The challenge, with respect to his appointment as Shiksha Mitra/ Panchayat Teacher, was made beyond prescribed period of time, before an authority, who had no jurisdiction to entertain such a complaint under 2006 Rules inasmuch as the competent authority in the matter was, in terms of 2006 rules, Block Development Officer;

(ii) The impugned order of cancellation was passed without notice to the writ petitioner, Brenjit Kumar Prasad.

4. The learned single Judge accepted the contentions of the writ petitioner and allowed the writ application. Being aggrieved, the review petitioner, Lalan Prasad, filed Letters Patent Appeal bearing L.P.A. No.1621 of 2010, which, too, was dismissed as no fault could be found with the order of the learned single Judge.

5. The review petitioner has not been able to point out before us any error apparent on the face of the record. The main contention of the review petitioner is that in the writ application, the learned single Judge had issued notice only to the Mukhiya and the Panchayat Secretary and no notice was issued to him (i.e., the review petitioner) before quashing the order of Mukhiya cancelling the appointment of the writ petitioner, Brenjit Kumar Prasad, which order was passed on his complaint.

6. We find that the review petitioner had not taken the said plea in the appeal and, as such, there was no occasion for the Appellate Court to deal with the said aspect of the matter. It cannot be said that the order of the Appellate Court suffers from any error apparent on the face of record. Furthermore, the review petitioner was not able to

produce any law, circular or instructions of the Government, which authorized the District Superintendent of Education to look into the complaint against appointment of Shikhsa Mitra/Panchayat Teacher and/or to issue follow up directions for cancellation of such appointments.

7. Situated thus, we do not find any merit in this review application. The review petition is, accordingly, dismissed.

(Samarendra Pratap Singh, J.)

I. A. Ansari, J. : I agree

(I. A. Ansari, J.)

**Md.Jamaluddin
Khan**

U	✓	T	X
---	---	---	---