

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.21125 of 2013

Prabhat Kumar @ Prabhat Kumar Singh Son Of Shiv Kumar Singh
Resident Of Village- Mala, P.S.- Chapra Muffasil, District- Saran (Chapra)

.... Petitioner/s

Versus

1. The State Of Bihar through the Chief Secretary, Government of Bihar, Patna
2. The Principal Secretary, Human Resources Development Department, Govt. Of Bihar, Patna
3. The Principal Secretary, Panchayat Raj Department, Govt. Of Bihar, Patna
4. The District Magistrate, Saran
5. The District Education Officer, Saran
6. The District Programme Officer, Saran
7. The Block Education Officer, Sadar Block, Saran
8. The Pramukh-Cum-Chairman of Panchayat Samiti, Sadar Block, Saran
9. The Block Development Officer-Cum-Secretary of Panchayat Samiti, Sadar Block, Saran
10. The District Teacher Employment Appellate Authority, Saran Through Its Member
11. Kamlesh Kumar Singh Son Of Sri Raj Nandan Singh Resident Of Village- Rathour Nawazi Tola, P.S.- Chapra Mufassil, District- Saran

.... Respondent/s

Appearance :

For the Petitioner/s	:	Mr Vinod Kumar Kanth, Sr. Advocate Mr Rajeev Roy Mr. Gyan Prakash Mr Sharwan Kumar
For the State	:	Mr. Vijay Kumar Verma, AC to GA 3
For Respondent No.11	:	Mr Bindhayachal Singh Mr Ram Binod Singh

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

CAV JUDGMENT

Date: 15-01-2015

Petitioner wants quashing of the order dated 29.7.2013
passed by the District Teachers Employment Appellate Authority,
Saran in Appeal No.104 of 2011, by virtue of which the order of
the District Magistrate dated 30.10.2006, passed in terms of the

order of the Hon'ble High Court in favour of the petitioner has been nullified. He also wants quashing of the order dated 27.1.2007 passed by the Gram Panchayat Raj, Purbi Telpa, which is a fall out of the earlier decision against the petitioner.

2. Anneuxre-1 is the order of the Tribunal. The Member, District Teachers Appellate Authority after hearing the parties to the dispute has directed reinstatement of the private respondent no.11, namely, Kamlesh Kumar Singh, and ousted the petitioner from the post which has become the cause of action for the petitioner seeking quashing of the various orders since they are detrimental to his interest and continuance as a Panchayat Teacher.

3. Private respondent Kamlesh Kumar Sigh had earlier filed CWJC No.15280 of 2006. His grievance in the said writ application, which was adjudicated on 22.6.2011 and a copy thereof is Annexure- 14, was that he was not allowed to continue on the post of Shiksha Mitra. If he was allowed to do so, he would have been absorbed as a Panchayat Teacher and since the decision not to allow him to continue as a Shiksha Mitra was per se illegal, the Court ought to decide the case in his favour. The High Court, however, allowed the private respondent to move the District Teachers Employment Appellate Authority and in terms of the direction of the learned Single Judge contained in Annexure- 14,

private respondent moved the Appellate Authority, Saran by filing Case No.104 of 2011.

4. It must also be noted that the petitioner was earlier terminated as Shiksha Mitra vide order dated 16.7.2004. This decision was assailed in CWJC No.16334 of 2004. On the basis of the direction and the decision of the High Court, the Collector was directed to examine the matter, who directed his reappointment. Petitioner joined on 1.2.2007. After his joining, he was removed again on 27.8.2007 on the ground that he seems to have two dates of birth. That issue was examined by yet another learned Single Judge, who allowed the writ petition in favour of the present petitioner and ordered his reinstatement vide order dated 26.6.2008, a copy of which is Annexure- 9 to the writ application.

5. However, since the private respondent was given the liberty of moving District Teachers Employment Appellate Authority in his writ application, which was allowed vide order contained in Annexure- 14, yet another round of adjudication has come to be made by the Tribunal and it is this decision contained in Annexure- 1, which is being assailed by the petitioner.

6. The main thrust of argument on behalf of the private respondent before the Tribunal was that the District Magistrate, Saran had no occasion to pass any order in favour of the



petitioner. He was not the competent authority. He could not have ordered reinstatement of the petitioner twice on the post of Shiksha Mitra especially after the rule had undergone a change relating to such appointment and including the jurisdiction with regard to the forum which was required to adjudicate any dispute relating to selection, non-selection or removal.

7. The Tribunal formulated the issues which included the question of jurisdiction of the District Magistrate including the fact whether the private respondent had a case in his favour. The Tribunal after due application of mind came to a conclusion that the jurisdiction to hear and decide such disputes was vested initially with the Block Development Officer, Chapra. Therefore, any decision or adjudication made by the District Magistrate was invalid. The other finding given by the Tribunal was that since the private respondent was continuing on the post of a Panchyat Shiksha Mitra and by virtue of a deeming fiction he became a Panchayat Teacher with effect from 1.7.2006, any decision rendered by the District Magistrate on 30.10.2006 would be of no avail. The Tribunal came to the conclusion that right in favour of the private respondent or his reinstatement was made out.

8. Learned Senior Counsel representing the petitioner submits that the jurisdiction and right to decide the dispute over



removal of the petitioner was created by the High Court. The District Magistrate suo motu had not taken the cause or the dispute. Since there was a mandamus issued upon him to adjudicate and decide, the District Magistrate took up the dispute and decided the matter. No doubt, there was some delay in adjudication but that adjudication cannot be nullified or set aside by the District Teachers Employment Appellate Authority because that will have the effect of overriding the direction of the High Court. If the Tribunal's order holding the order of the District Magistrate to be ineffective is allowed to be upheld then it has the effect of totally obliterating the previous direction issued by the High Court in the writ application of the petitioner moved earlier. Since adjudication was made by the District Magistrate, the fall out would be there and if the decision was in favour of the petitioner, it has to take its effect. No doubt, by virtue of the changed rule,, which came about in the year 2006, persons working as Panchayat Shiksha Mitra became Panchayat Teachers by deeming fiction but since the continuance of the private respondent was a subject matter of dispute and the lis was still alive, therefore, it cannot be the case of the respondent that despite adjudication having been made in favour of the petitioner by the District Magistrate at the instance of the High Court, that order will not take effect. In fact, since the matter was sub judice, therefore,

continuance of private respondent could not have attained finality insofar it related to him.

9. Learned counsel representing the private respondent submits that the order of the District Magistrate was passed without his impleadment or opportunity of hearing. Such an order, therefore, could not bind the respondent and the order is a nullity. Therefore, any interference with the order of the Tribunal at the instance of the petitioner would have the effect of giving a seal of approval to a non est order in favour of the petitioner.

10. This stand of the private respondent could have merited consideration provided he had succeeded in assailing the order of the District Magistrate when he approached the High Court by filing a writ application, contained in Annexure- 14. It was the private respondent, who instead of pressing the writ application and getting an adjudication made on the validity of the order of the District Magistrate decided to withdraw the writ application to move the Tribunal. The private respondent should have kept in mind the previous directions and orders of the High Court and its fall out. Counsel for the private respondent would have been correct in taking such a plea if the District Magistrate had passed that order on his own and if the private respondent was before this Court assailing such decision at this stage but that is no so. He had

already approached the High Court earlier and withdrawn his writ application to move the Tribunal, therefore, the legality and validity of the order of the District Magistrate cannot be indirectly challenged in the writ application of the present petitioner.

11. If this is the position which emerges then obviously the Member, District Teachers Employment Appellate Authority, Saran vide order dated 20.8.2013 has exceeded his jurisdiction by interfering with the order of the District Magistrate. Since the District Magistrate had restored the petitioner on the post of Panchayat Shiksha Mitra and since by that date all such persons became Panchayat Teachers, the petitioner had a right to continue in that capacity.

12. Not only this, obviously yet another effort was made to oust the petitioner from his post on yet another spurious ground that he had two dates of birth and that decision to remove him was also set aside by the order of the High Court, contained in Annexure- 9. Therefore, petitioner has gone through the ordeal of his removal and reinstatement twice over and this is too late in the day now to allow the private respondent to ride on the advantage of the decision of the District Teachers Employment Appellate Authority which is based on a flawed understanding of fact and the law. The Tribunal had no right to set aside the order of the District

Magistrate when such an order was passed at the behest of the High Court.

The writ application, therefore, is allowed. Annexure-1 dated 20.8.2013 is quashed.

(Ajay Kumar Tripathi, J)

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