

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18472 of 2010

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Ragini Devi W/O Shri Sanjay Kumar Shrivastava R/O Vill.- Belawa Lala, P.O.- Sahdegree, P.S.- Vijayee pur, Distt.- Gopalganj, At Present Posted And Working As Panchayat Teacher In Govt. Primary School, Belawa Mathia, Anchal- Vijayee pur, Distt.- Gopalganj

.... 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 Divisional Commissioner, Saran Division At Chapra
5. The District Magistrate, Gopalganj
6. The Deputy Development Commissioner-Cum-Chairman District Education Establishment Committee, Gopalganj
7. The District Superintendent Of Education, Gopalganj
8. The Block Development Officer, Vijayee pur, Distt.- Gopalganj
9. The Block Education Officer, Vijayee pur, Distt.- Gopalganj
10. Shri Chhakauri Yadav S/O Late Bandhu Yadav R/O Vill.- Pagra Bazar, P.O.- Sahdegree, P.S.- Vijayee pur, Distt.- Gopalganj, The Mukhiya Of Gram Panchayat Raj, Belawa, Block-Vijayee pur, Distt.- Gopalganj
11. Shri Lalan Yadav S/O Late Ramjee Yadav R/O Vill.- Trilokawa, P.O.- Bilehi, P.S.- Kateya, Distt.- Gopalganj, The Panchayat Secretary Of Gram Panchayat Raj Belawa, Block- Vijayee pur, Distt.- Gopalganj
12. The Headmaster, Govt. Primary School, Belawa Mathia, Anchal-Vijayee pur, Distt.- Gopalganj

.... Respondent/s

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Appearance :

For the Petitioner/s :	Mr. Umesh Kumar Mishra
For the State	Mr. Kumar Bahadur Singh, S.C. 22
for respondent nos. 10 and 11	Mr. Nityanand Mishra
	Mr. Balmukhi Pandey Bhaskar

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

Date: 30-01-2015

Heard Mr. Mishra for the petitioner, Mr. Pandey for respondent nos. 10 and 11 and A.C. to S.C. 22 for the State.

Counter affidavits have been filed on behalf of the State respondent and respondent nos. 10 and 11. A supplementary affidavit has been filed by the

petitioner bringing on record the order dated 24.10.2013 passed by the District Teachers' Employment Appellate Authority Gopalganj (for short 'the Authority') in Appeal Case No. 16/2013 (Shakuntala Devi vs. District Superintendent of Education, Gopalganj).

Gram Panchayat Raj Belawa in the district of Gopalganj was required to engage 20 Panchayat Shiksha Mistra (for short 'the PSM') under various categories. The Sukh Suvidha Samiti of the Gram Panchayat undertook the selection process sometime in the year 2005 and as many as 17 PSMs were engaged/appointed. 03 posts of PSM remained vacant which were reserved for the candidates belonging to SC (M) category. Subsequently, the Committee engaged the petitioner and two others as PSMs who did not belong to the said category. Vide order dated 27.05.2005 (Annexure-5) she joined on 31.05.2005. Subsequently sanction for payment of honorarium of the post held by the petitioner was granted by the Block Education Officer. Such engagement was made initially for a period of 11 months. On expiry thereof, the Authority vide order contained in Annexure-7 granted extension/renewal of her engagement for a further period of 11 months. The petitioner thus continued as PSM on 01.07.2006 when by virtue of the enforcement/promulgation of the Bihar Panchayat Elementary Teacher (Employment and Service Condition) Rules 2006 (for short 'the Rules') she acquired the status of Panchayat Teacher (PT) as contemplated under clause 3 of Rule 20 of the Rules. The further case of the petitioner is that she was sent for training which she completed successfully. Further case of the petitioner is that for one reason or the other her payment of salary was stopped with effect from January 2008 for which she made diverse representations as a result whereof the Block Education Officer passed an order on 23.12.2009 (Annexure-16) directing the Mukhiya/Panchayat



Secretary to ensure payment of salary of all PSMs who were engaged by the Gram Panchayat. Subsequently, the District Superintendent of Education (now re-designated as District Programme Officer) vide order dated 10.03.2010 (Annexure-18) directed the Respondent Mukhiya/Panchayat Secretary to terminate the services of all the three PSMs who were engaged against the three remaining vacant post(s) of PSM. In the case of the petitioner it was found that her engagement as PSM was contrary to roster. The order directed to ensure compliance of the natural justice by issuing a show cause notice to the serving PSMs who were later treated as Panchayat Teacher and thereafter pass an appropriate order. By order dated 10.09.2010 contained in letter no.51 passed by the Respondent Mukhiya (Annexure-19) the services of the petitioner was terminated on the ground that she was retained PSM against the roster which continued until detection thereof. The aforesaid order indicates that the matter was placed before the Panchayat Shiksha Samiti of the Gram Panchayat on 30.08.2010 wherein it was resolved to terminate her service. Be it noted that that on the same day and by similar order services of Shakuntala Devi was also terminated. Aggrieved thereby the petitioner filed the present writ application wherein this Court by order dated 23.06.2011 granted the status quo.

The contention of the petitioner is that any illegality and/or irregularity in engagement of the PSMs after coming into force of the Rules 2006 cannot be investigated/examined since the post of PSM now does not exist. By virtue of clause 1 of Rule 20 of the Rules, all circulars/instructions/guidelines guiding engagement as PSM stand repealed. This view was taken by a Division Bench of this Court in the case of **Smt. Renu Kumari Pandey (2011 (4) PLJR 297)** affirmed by the Full Bench in **Kalpna Rani (2014(2) PLJR 665)**. In so far as breach of roster is concerned it has been submitted that the law



in this regard is settled in **Daya Nand Yadav vs. State of Bihar (2013 (4) PLJR page 66)**. It is contended that in similar circumstances Smt. Shakuntala Devi, one of the three aggrieved persons by the impugned order moved this Court in CWJC No. 1847 of 2011 wherein this Court directed her to approach the Authority for redressal of her grievances. She subsequently approached the Authority/Tribunal in Appeal Case No. 16 of 2013 wherein the Authority finding sufficient material including complete non compliance of the rules of natural justice passed an order whereby the order contained in Annexures-18 and 19 hereto in so far as the applicant Shakuntala Devi was set aside. In view of aforesaid it has been argued that the present writ application also merits to be allowed.

Counsel for respondent nos. 10 and 11 referring to the statements made in the counter affidavit contended that admittedly the petitioner was engagement/appointed as PSM in clear breach of the roster inasmuch as the post was reserved for SC (female) category and the petitioner could not have been engaged thereagainst. It is next contended that the petitioner should also be relegated to the Authority constituted under 18 of the Rules for redressal of her grievance. Counsel for the State has also taken a similar stand.

On a consideration of the rival submissions made by the parties and perusal of the pleadings on record it appears to the Court that there is no dispute that the petitioner was engaged as PSM on 31.05.2005. On grant of renewal she continued as PSM till 01.07.2006. By virtue of rule provision she assumed the status of PT. The petitioner has relied on the order dated 18.07.2006 (Annexure-8) wherein it has been clarified that all PSMs who were engaged and working on 01.07.2006 shall be treated henceforth as PT. It further appears that on account of violation of the roster an issue was raised subsequently which was



taken note of by the Authority. By an order dated 10.03.2010 (Annexure-18) the respondent District Superintendent of Education (now district Programme Officer) finding her engagement contrary to the roster directed the Mukhiya/Panchayat Secretary to dispense with the services of the petitioner but after complying with the rules of natural justice. The petitioner has specifically asserted in the writ petition that the said part of the order (Annexure-18) was never complied with and without issuing any notice the matter was placed before the Panchayat Shiksha Samiti of the Gram Panchayat on 30.08.2010 and it was resolved to terminate her services and subsequent thereto the order dated 10.09.2010 (Annexure-19) was issued terminating the services of the petitioner as PT. In the case of **Dayanand Yadav** (supra) as also **Smt. Renu Kumari Pandey** (supra) it has been held that violation of the roster in the engagement cannot be a ground to dispense with the services of the Panchayat Teacher once it is found that he/she continued as such on 01.07.2006 and assumed the status of PT. Referring to those judgments it has also been contended that the grievance either legitimate or otherwise after coming into force of the Rules can not be raised pertaining to the selection/appointment as PSM and renewal thereof. This is precisely because of the fact that under the rule-provision the post of PSM does not exist. The circulars/guidelines/instructions which were issued by the government then covering the field of engagement as PSM now stand repealed. The Authority in case of **Shakuntala Devi** in Appeal No. 13 of 2013 for the reasons stated therein set aside the order dated 10.03.2010 (Annexure-18) and 10.09.2010 (Annexure-19) which was/were passed in the same fashion in respect of the applicant of the appeal. In this regard the contention of the counsel for respondent no.10. and 11 requires consideration. It has been contended that the petitioner like **Shakuntala Devi** be relegated to the Authority for redressal of the

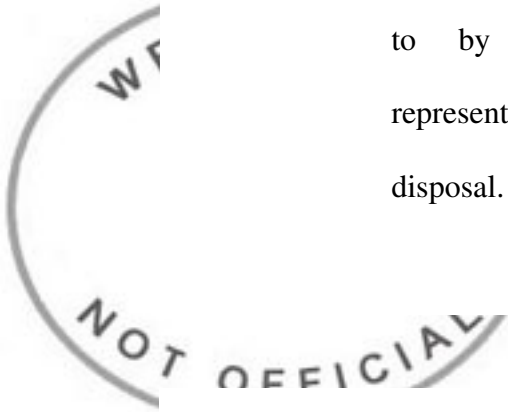


grievance as her services as PT was/were terminated. Per contra, it has been contended on behalf of the petitioner that termination of services of the petitioner like Sakuntala Devi was on the ground that their engagement as PSM was irregular/illegal. Any such issue relating to engagement as PSM in the light of the ratio laid down by this Court in the above cases cannot be examined by the Authority. The Authority has already passed an order in the case of Shakuntala Devi. This writ petition is pending in this Court since 2010 wherein an interim order has been passed.

In view of legal position explained in those cases the case of the petitioner merits to be considered by this Court. In my view, the submission of Mr. Mishra has substance. On perusal of the material on record including the impugned order it appears that services of the petitioner was/were disengaged only on the ground that her initial engagement as PSM was contrary to the roster. This Court in **Renu Kumari Pandey** (supra) as well as **Kalpana Rani** (supra) has held that any grievance either legitimate or otherwise after coming into force the Rules cannot be examined by the Authority under the Act. Secondly, from the order passed by the Authority in the case of **Shakuntala Devi** it appears that the impugned order has already been interfered with and quashed albeit in respect of **Shakuntala Devi** whose case indisputably is identical to the case of the petitioner. This case has remained pending in this Court since 2010 and diverse affidavits have been filed placing on records the case of the parties.

For the reasons aforementioned, the writ application is allowed. The orders dated 10.03.2010 (Annexure-18) as well as 10.09.2010 (Annexure-19) in so far as they relate to the petitioner is quashed and set aside. The petitioner shall be entitled to continue as PT with effect from the date of termination of her services with consequential benefits which shall be calculated and paid within

two months from the date of receipt/production of a copy of this order. The other grievance of the petitioner regarding non payment of salary has not been admitted to by this Court. The petitioner would be entitled to make appropriate representation in this regard before the respondent for consideration and disposal.



(Kishore Kumar Mandal, J)

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