

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14479 of 2010

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1. Vibha Sinha @ Vibha Kumari Sinha W/O Sri Tripurari Sharan R/O Vill.-
Kewadi, P.S.- Khijar Sarai, Distt.- Gaya

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Director, Department Of Human Resource, Government Of Bihar,
Patna
3. The District Magistrate, Gaya
4. The District Superintendent Of Education, Gaya
5. The Block Development Officer, Khijar Sarai, Gaya
6. The District Teachers Employment Appellate Tribunal, Gaya
7. The Block Education Extension Officer, Khijar Sarai, Gaya
8. The Head Master, Primary School, Kewadi, Khijar Sarai, Gaya
9. The Panchayat Secretary, Jamuawan, Khijar Sarai, Gaya
10. The Mukhiya, Gram Panchayat Raj Jamuawan P.S.- Khijar Sarai,
Distt.- Gaya

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Siyaram Singh, Advocate

For the Respondent/s : Mr. (AAG3)

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR
MANDAL
ORAL ORDER

6 09-01-2015 Heard Mr. Siyaram Shahi learned counsel for the

petitioner and AC to AAG-3 for the State.

No one has appeared on behalf of the respondent
nos. 9 and 10 although a counter affidavit has been filed on their
behalf.

The petitioner is aggrieved by the order passed by
the District Teachers Employment Appellate Authority, Gaya
(for short 'the Authority') in case no. 13/2010 (Annexure-2)
whereby the Authority refused to pass an order on the application

of the petitioner on the ground that no such relief in view of enforcement of the Bihar Panchayat Elementary Teachers (Employment and Service Conditions) Rules, 2006 (for short 'the Rules') as clarified by the Government vide letter bearing memo No. 1899 dated 10.11.2006 could be passed.

Short facts leading to the writ application may be noticed:-

The petitioner was engaged as Panchayat Shiksha Mitra (for short 'the P.S.M.') by the selection committee of the Kewadi Gram Panchayat in the District of Gaya. Such selection was made vide order contained in Annexure-5 for the period 22.05.2005 to 22.03.2006. It is the claim of the petitioner that upon expiry of the period of 11 months her engagement as P.S.M. in the said Gram Panchayat was renewed/extended and a fresh agreement was entered between her and the respondent-Panchayat Secretary for another period of 11 months. The agreement entered between the petitioner and the Panchayat Secretary of the Gram Panchayat has been enclosed as Annexure-8. In the meantime, the Rules came into force w.e.f. 1.7.2006. By virtue of Clause-III of Rule 20 she was absorbed as the Panchayat Teacher (for short 'the P.T.') and continued as such. In the meanwhile, the Authorities at the Block level found some illegalities committed



in the engagement/retention of P.S.M. in the concerned Gram Panchayat. An enquiry in this regard was made by three officers at the Block level. The copy of the enquiry report has been enclosed as Annexure-10. It appears therefrom that the said committee found no illegality in the engagement of the petitioner as P.S.M. Subsequently, the Block Development Officer by an order dated 27.02.2008 (Annexure-11) cancelled/withdrew the findings of the enquiry committee concerning the petitioner. In other words, her engagement as P.S.M. was not found legal and/or in accordance with the guidelines then existing for such engagement/retention. Consequently, by another order dated 16.09.2008 (Annexure-12) she was communicated by the Panchayat Secretary of the decision of the respondent –Block Development Officer, Khijar Sarai whereby her engagement as P.S.M. was not found legal/valid. By another communication dated 18.09.2008 (Annexure-13) the Headmaster of the school restrained the petitioner from functioning as the P.T. In these setting of facts the petitioner moved this Court in CWJC No. 455 of 2009. By a proceeding dated 28.01.2010 (Annexure-1) passed in the said writ petition the application was dismissed as withdrawn granting the petitioner liberty to file an appeal before the Authority raising the aforesaid grievance. The petitioner



moved the Authority raising the aforesaid grievance which was considered and dismissed, as noticed above, vide order contained in Annexure-2. The petitioner has, therefore, challenged the correctness of the order contained in Annexure-2 as also the order(s) passed by the respondent-Block Development Officer (Annexure-11) and the consequential orders as contained in Annexures 12 and 13.

The counsel for the petitioner relying on the case of **Smt. Renu Kumari Pandey vs. The State of Bihar & Ors. [2011(4) PLJR 297]** which got affirmed by a Full Bench judgment of this Court in case of **Kalpana Rani Vs. The State of Bihar & Ors. [2014(2) PLJR 665]** has submitted that admittedly the petitioner was continuing as P.S.M. in the concerned Gram Panchayat on 01.07.2006 when by virtue of the provisions contained in the Rules [Ref. Rule 20(iii)] she became P.T. in the eye of law as interpreted by this Court in those judgments. By virtue of Clause 1 of Rule 20 thereof all guidelines/circulars /instructions concerning engagement of P.S.M. stood repealed. This Court, in the aforesaid judgment taking note of the relevant provisions of the Rules, held that after coming into force of the Rules no such illegality and/or invalidity in the matter of engagement as P.S.M. could be examined since



the relevant guidelines/Rules/instructions stood repealed inasmuch as the post of P.S.M. became non-existent. It is the contention of the petitioner that the Block Development Officer who passed the order (Annexure-11) had no jurisdiction to examine the validity or otherwise of the engagement of the petitioner as P.S.M. He has further relied on Annexure-10 in order to submit that the enquiry committee had already examined the validity of engagement of the petitioner as P.S.M. and found no fault therewith. There was absolutely no occasion for the Block Development Officer to pass the order as contained in Annexure-11.

A counter affidavit has been filed on behalf of the respondent nos. 9 and 10. On perusal whereof this much is evident that engagement of the petitioner as P.S.M. for 11 months initially in the year 2005 and subsequent extension thereof has not been disputed by them. It further appears therefrom that until passing of the order by the Block Development Officer (Annexure-11) she was continuing on the post of P.T. In the case of Smt. Renu Kumari Pandey (supra) this Court held as under in paragraph no.18:-

“18. 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 person 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.”

The said judgment was considered and approved by the Full Bench in Kalpana Rani (supra).

The Authority, in view of the aforesaid position in law, has rightly held that no relief with regard to claim of the

petitioner can be granted since the post of P.S.M. now does not exist. However, this is a case where the petitioner was continuing as P.S.M. on 1.7.2006 when by fiction of law on coming into force of the Rules she became P.T. Once the petitioner got the status of P.T. in view of the judgment(s) of this Court, her engagement as P.S.M. could not have been examined by the Authority and held either illegal or irregular. That being the position in law, in my view, the order passed by the Block Development Officer as contained in Annexure-11 and the consequential orders passed by the respondent as contained in Annexures-12 and 13 are held not sustainable in law. Those orders are hereby quashed and set aside. The petitioner shall be allowed to continue on the post she was working before passing of the impugned order(s).

There shall be no order as to costs.

(Kishore Kumar Mandal, J)

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