

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1343 of 2014
IN
Civil Writ Jurisdiction Case No. 920 of 2011**

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Bharti Kumari, W/o Shri Amrendra Kumar Mandal, R/o Village – Tikapatti,
Chandpur Tola, PO Tikapatti, under Paschimi Chandpur Gram Panchayat Raj,
Block Samaili, District Katihar

.... Appellant

Versus

1. The State of Bihar
2. The Collector, Katihar, Collectorate, Mirchaibari, District Katihar
3. The District Teachers Appointment Appellate Forum, Katihar
4. The District Superintendent of Education, Katihar, Marchaibari, SDO, Campus,
District Katihar.
5. The Block Education Extension Officer, Samaili Block Office, Samaili, PO
Samaili, District Katihar
6. Ram Prakash Paswsan, S/o Late Basant Paswan, Secretary, Gram Panchayat Raj
Paschimi Chandpur, Village Shabda, PO .Pothia, PS Falka, District Katihar

.... Respondents-Respondents

7. Kiran Devi, W/o Sri Prabhash Kumar, Mukhiya, Paschimi Chandpur Gram
Panchayat Raj, under Samaili Block, District Katihar, resident of Village Diara
Chandpur, PO Chandpur, PS Falka, District Katihar, Pin 854101

.... Respondent-Petitioner

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Appearance :

For the Appellant : Mr. Sharda Nand Mishra, Advocate

For the Respondents : M/s P K Jaipuriyar, Anshuman Jaipuriyar,
Anukriti Jaipuriyar, Kamal Kr. Sinha, Advocates

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date: 24 -11-2015



The appellant is aggrieved by the order, dated 25.3.2014, passed by the learned Single Judge of this Court in CWJC No. 920 of 2011, whereby the learned Single Judge has allowed the writ application filed under Article 226 of the Constitution by respondent No. 7 and has set aside an order of the District Teachers Appointment Appellate Authority, Katihar, dated 16.6.2010.

2. We have heard Mr. Sharada Nand Mishra, learned counsel appearing on behalf of the appellant, and Mr. P K Jaipuriyar, learned counsel appearing on behalf of the private respondent.

3. From the materials on record, it appears that the appellant herein had filed an appeal under Rule 18 of the Bihar Panchayat Elementary Teachers (Appointment and Service Conditions) Rules, 2006, before the District Teachers Appointment Appellate Tribunal, Katihar (hereinafter referred to as 'the Tribunal') giving rise to Appeal Case No.1858 of 2009 seeking direction for her appointment as *Shiksha Mitra* on the basis of panel prepared for such appointment in the year 2005. The learned Tribunal allowed the appeal by order, dated 16.6.2010, holding that the grievance of the appellant against her non-selection and the appointment as *Shiksha Mitra* was genuine. The Mukhiya of the Gram Panchayat preferred a writ application before this Court under Article 226 of the

Constitution of India giving rise to the present CWJC No. 920 of 2011, putting to challenge the decision of the learned Tribunal, as reflected by the order, dated 16.06.2010, aforementioned.

4. The learned Single Judge, by the order under appeal, has set aside the said order of the Tribunal on the ground that the post of *Shiksha Mitra* having been abolished with the enactment of the Bihar Panchayat Elementary Teachers (Appointment and Service Conditions) Rules, 2006, with effect from 1.7.2006, the appellate authority could not have passed the impugned order and could not have entertained the appeal preferred by the appellant.

5. Mr. Mishra, learned counsel appearing on behalf of the appellant, has submitted that the learned Single Judge ought not to have entertained the writ application preferred by the Mukhiya of the Gram Panchayat as she could not be said to be the party aggrieved by the order of the learned Tribunal. He has placed reliance on the Division Bench decision of this Court, reported in **2015 (3) PLJR 503 [Sangeeta Kumari Yadav vs. The State of Bihar & Ors.]**. He has further submitted that the learned Tribunal has rightly entertained the petitioner's appeal there being breach of reservation policy in the matter of appointment to the post of Panchayat Shiksha Mitra.

6. We do not find any infirmity in the order



under appeal, there being no dispute about the fact that the post of Panchayat Shiksha Mitra stood abolished, with effect from 1.7.2006, by operation of Rule 20 of the aforesaid Rules. Appointments to the post of Panchayat Shiksha Mitra were made under the scheme of the State Government, which came to be repealed by operation of Rule 20 of the Rules with clear stipulation that those persons, who had been working as Panchayat Shiksha Mitra, would be treated to have been appointed as Panchayat Teachers under the Rules. Further, Rule 18 of the Rules provides for appeal before the District level Appellate Authority to consider the cases relating to appointment made under the Rules. The appellant's case could not have been entertained by the appellate authority as her grievance did not relate to appointment or service conditions under the said Rules, which deal with Panchayat Teachers.

7. Our view finds support from the Division Bench decision of this Court in case of ***Renu Kumari Pandey vs. State of Bihar & Ors. [2011 (4) PLJR 297]*** and subsequent Full Bench decision in the case of ***Kalpana Rani vs. State of Bihar & Ors.***, reported in ***2014(2) PLJR 665***. In case of ***Renu Kumari Pandey*** (supra), the Division Bench of this Court, analyzing the Scheme relating to appointment of *Shiksha Mitra* and the provisions of 2006 Rules framed for appointment of Panchayat Teachers, held in paragraphs 10, 11, 12, 16, 17

and 21 as follows:-

"10. The Government of Bihar, in exercise of power conferred by Article 243Q of the Constitution and by Section 146 of the Bihar Panchayat Raj Act, 2006 framed the Bihar Panchayat Elementary Teacher (Employment and Service Conditions) Rules, 2006 (hereinafter referred to as 'the Rules'). Under Rule 3 of the Rules, the elementary teachers are grouped into two categories: (a) the Block Teacher (Prakhand Shikshak) at Block level, and (b) the Panchayat Teacher (Panchayat Shikshak) at Gram Panchayat Level.

"11. Rule 2 of the Rules defines "Primary School" to mean Government and nationalized schools imparting education up to Vth standard. "Middle School" is defined to mean Government and nationalized schools imparting education for VIIth and VIIIth standard. "Elementary School" is defined to mean Government and nationalized primary and middle schools. Rule 8 thereof provides for eligibility for appointment as Block Teacher and Panchayat Teacher. Rule 9 thereof provides for procedure for constitution of selection committee and for selection and appointment of Block Teachers and Panchayat Teachers. Rule 18 thereof provides for appeals arising out of the selection made under the Rules.

"12. Rule 20 of the Rules provides for repeal and saving. Clause (i) thereof provides, inter alia, for repeal of all Rules, Resolutions, Orders and Instructions issued in respect of employment of Panchayat Shiksha Mitra. Clause (ii) thereof provides for saving of selection and service conditions of the Panchayat Shiksha Mitra employed under the Rules, Resolutions, Orders or Instructions prevalent prior to the date of repeal. Clause (iii) thereof provides for absorption of Panchayat Shiksha Mitra appointed or employed under the then prevalent Rules, Resolutions, Circulars, Orders and Instructions as Panchayat Shikshak under the Rules. In other words, the Panchayat Shiksha Mitra appointed under the then prevalent Rules, Resolutions, Circulars, Orders, Instructions and employed as Panchayat Shiksha Mitra as on 1st July, 2006 are absorbed as Panchayat Shikshak under the Rules. It is the aforesaid Clause (iii) which is the subject matter of reference before us.

"16. Clause (iii) of Rule 20 of the Rules reflects the policy decision of the State Government. We are of the considered opinion that no legal provision can be held to be arbitrary or discriminatory or ultra vires Articles 14 and 16 of the Constitution on hypothetical set of facts. We, therefore, hold that Clause (iii) of Rule 20 of the said Rules is neither arbitrary nor discriminatory nor it is violative of Articles 14 and 16 of the Constitution.

"17. Coming to the second issue, we are of the opinion that the Rules are statutory in nature and have to be implemented in letter and spirit. Under Clause (i) of Rule 20 of the Rules, all earlier resolutions, order, directions issued in respect of employment of Panchayat Shiksha Mitra are repealed. Consequently, the posts of Panchayat Shiksha Mitra stood abolished. Thereafter, no person can be employed as Panchayat Shiksha Mitra; nor can there be a deemed employment as Panchayat Shiksha Mitra; nor can there be a deemed absorption in the service as Panchayat Shikshak by operation of Rule 20(iii) of the Rules. In our opinion, even in a case where a person has a legitimate grievance in respect of his or her non-selection as Panchayat Shiksha Mitra at the relevant time or non-continuance as Panchayat Shiksha Mitra, such person cannot be deemed to have been appointed as Panchayat Shiksha Mitra; nor can he/she be deemed to have been employed as Panchayat Shiksha Mitra as on 1st July, 2006; nor can such person be deemed to have been absorbed in service as Panchayat Shikshak under the Rules.

"21. All these petitions arise from the claim made by the respective writ petitioners for employment as Panchayat Shiksha Mitra under the then prevalent scheme for selection and employment of Panchayat Shiksha Mitra under the Gram Panchayats. None of them was employed as Panchayat Shiksha Mitra as on 1st July, 2006. As we have held that from the date of the Rules (1st July, 2006) such persons have no right to claim employment or deemed employment as Panchayat Shiksha Mitra or a right to be absorbed as Panchayat Shikshak by operation of Rule 20(iii) of the Rules, the reliefs prayed for by the writ petitioners cannot be granted."

8. Rejecting the claim of the petitioner in case of **Kalpana Rani vs. State of Bihar & Others** (supra), a Full Bench of this Court, while approving the *ratio* laid down in case of **Renu Kumari Pandey** (supra), held, in paragraphs 23 and 25, as follows:-

"23. Having considered the scope and ambit of the Scheme for appointment of Panchayat Shiksha Mitra and the Rules of 2006, the Bench held :-

"21. All these petitions arise from the claim made by the respective writ petitioners for employment as Panchayat Shiksha Mitra under the then prevalent scheme for selection and employment of Panchayat Shiksha Mitra under the Gram Panchayats. None of them was employed as Panchayat Shiksha Mitra as on 1st July, 2006. As we have held that from the date of the Rules (1st July, 2006) such persons have no right to claim employment or deemed employment as Panchayat Shiksha Mitra or a right to be absorbed as Panchayat Shikshak by operation of Rule 20(iii) of the Rules, the reliefs prayed for by the writ petitioners cannot be granted."

"25. Another Division Bench headed by Justice Smt. Meena Kumari had the similar view in the matter of Umesh Chandra Shiva vs. The State of Bihar & Ors. [2012 (1) PLJR 585]. It reads, "..... the Rules namely Bihar Prarambhik Shikshak Niyojan and Shikshak Niyamawali Adhiniyam -2006, does not permit selection earlier made for the post of Panchayat Shiksha Mitra to be either saved or retained for any purpose, inasmuch as, Rule 18 and 20 read in tandem would make it absolutely clear that all circulars and guidelines relating to selection and appointment on the post of Panchayat Shikshak were repealed as a whole and therefore, once the saving clause also was limited to serving the rights of already appointed Shiksha Mitra either in respect of their salary or service conditions, it has to be necessarily held that the earlier selection and preparation of panel in which Umesh Chandra Shiva had been found to be best among the backward

candidate was limited for the post of Panchayat Shiksha Mitra and on that basis, he cannot be appointed on the post of Panchayat Shikshak after 1.7.2006 in view of the aforementioned 2006 Rules”.

9. We do not find any merit in the submission made on behalf of the appellant relying upon the Division Bench decision of this Court, in the case of **Sageeta Kumari** (supra), that the writ petition filed by the Mukhiya of the concerned Gram Panchayat could not have been entertained by the learned Single Judge. The said decision does not have any application to the facts and circumstances of the present case. In the said case, the parties, whose case was rejected by the learned Tribunal, had not approached this Court and, instead, the Mukhiya of the Gram Panchayat had approached. In such circumstances, the Division Bench observed that writ application filed by the Mukhiya was not maintainable. In the present case, we find that the learned Tribunal had passed an order, which was completely beyond its jurisdiction, and, therefore, could be challenged by the Mukhiya of the Gram Panchayat, who was required to implement the order under Article 226 of the Constitution of India. We do not, therefore, find any merit in the submission that the Mukhiya, in the present case, did not have the *locus standi* to challenge the order, dated 16.06.2010, passed by the learned Tribunal, by way of writ petition, which gave rise to CWJC No. 920 of 2011.

10. In the light of Full Bench decision in the case of **Kalpana Rani vs. State of Bihar** (supra), we are of the considered view that the learned Single Judge has rightly set aside the learned Tribunal’s order by the order under appeal, which does not warrant any interference in the present proceeding under Clause 10 of the Letters Patent of the Patna High Court.

11. The appeal is accordingly dismissed.

12. There shall, however, be no order as to costs.

(Chakradhari Sharan Singh, J)

I.A. Ansari, ACJ. I agree.

(I A Ansari, ACJ)

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