

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11596 of 2010

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1. Dinesh Prasad Yadav S/O Sri Bacchu Prasad Yadav R/O Vill.- Katiyama,
P.O.- Kiyajori, P.S.- Chakai, Distt.- Jamui

.... Petitioner/s

Versus

1. The State Of Bihar
2. Principal Secretary Human Resources Development Department,
Government Of Bihar, Patna
3. Director, Primary Education, Government Of Bihar, Patna
4. District Magistrate, Jamui
5. District Superintendent Of Education, Jamui
6. Block Development Officer, Chakai, Jamui
7. Block Education Extension Officer, Chakai, Jamui
8. Mukhiya, Dulampur Gram Panchayat, Dulampur, Chakai, Jamui
9. Panchayat Secretary, Gram Panchayat Dulampur, Dulampur Chaikai,
Jamui
10. The Member, District Teacher Appointment Appellate Tribunal, Jamui
11. Jitendra Kumar Yadav S/O Jai Narayan Yadav R/O Vill.- Katiyama,
P.O.- Kiyajori, P.S.- Chakai, Distt.- Jamui

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Tej Bahadur Singh, Sr. Advocate

For the Respondent No.11 Mr. Bindhyachal Singh, Sr. Advocate

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH**

CAV ORDER

12 20-05-2015 1. The petitioner seeks quashing of memo no. 239

dated 25.6.2010 passed by the learned Member, District
Teacher Appointment Appellate Tribunal, Jamui (hereinafter
referred to as the Tribunal) in case of 4 of 2009, whereby,
the petitioner's deemed appointment as Panchayat Teacher
has been cancelled.

2. The dispute in the present writ application is
primarily between the petitioner and respondent no.11. Both



of whom had applied for appointment on the post of Siksha Mitra in the year 2005 for Gram Panchayat Raj, Dulampur. Appointment to the post of Siksha Mitra were made under the scheme of the State of Bihar under its resolution dated 21.6.2002, which was modified from time to time. The selection Committee of the Gram Panchayat in its meeting held on 30.6.2005 selected respondent no.11 for the said post whereafter, he was appointed as Siksha Mitra for Primary School, Katiyama, where he joined on 1.7.2005. The sole dispute between the petitioner and respondent no.11 is that whereas the petitioner claims that respondent no.11 had submitted his resignation on 20.7.2005 and he was appointed against the consequent vacancy, the respondent no.11 has disputed that he had ever resigned as Shiksha Mitra.

3. It is the petitioner's case that the Selection Committee of the concerned Gram Panchayat Dulampur in its meeting held on 22.7.2005 decided to accept the resignation submitted by respondent no.11 and make fresh appointment on the said post. It is his further case that applications were invited from the candidates for filling up the posts consequent upon resignation of respondent no.11



whereafter, the petitioner, after following the prescribed procedure for selection, was selected by the Selection Committee on 31.7.2005. The petitioner was accordingly, appointed for the period 1.8.2005 to 31.3.2006 through an agreement. He was paid his honorarium for the period and after 31.3.2006, the petitioner's tenure was extended by the Gram Panchayat in pursuance of the recommendation of Vidyalya Siksha Samiti, Katiyama, for a further period of 11 months and he was thus, continuing as Siksha Mitra as on 1.7.2006. Thereafter, the State of Bihar framed Bihar Panchayat Elementary Teachers (Employment and Service Conditions) Rules, 2006 (hereinafter referred to as 2006 Rules), repealing all circulars, resolutions issued by the State Government dealing with engagement of Siksha Mitra. Rule 20(iii) of the Rules provides for absorption of Panchayat Siksha Mitra appointed or employed under the then prevalent rules, resolutions, circulars, orders and instructions as Panchayat Sikshak under the Rules. Said Rule 20(iii) required that Panchayat Shiksha Mitra appointed under the then prevalent schemes, circulars, orders, instructions, and employed as such as on 1.7.2006 shall be deemed to have been absorbed as Panchayat

Teacher under the Rules.

4. In the background of the claim of the petitioner as noted above and the said Rules, it is the petitioner's claim that he was continuing as Siksha Mitra as on 1.7.2006 and therefore, by deeming fiction under Rule 20(iii) of the Rules he acquired the status of Panchayat Teacher under the Rules. Respondent no.11 has on the other hand, disputed the very factum of his resignation as Siksha Mitra and according to him, he had never submitted resignation and therefore, he continued as Siksha Mitra up to 1.7.2006 and thereafter, he acquired the status of Panchayat Teacher.

5. Respondent no.11 had approached the District Teachers Appointment Appellate Authority, Jamui by filing an appeal giving rise to case No. 4 of 2009 alleging that he is not being paid his honorarium right from the date of his appointment as Siksha Mitra on 1.7.2005. He also asserted before the Appellate authority that he had been making complaints to the authorities for payment of honorarium/salary before the Block Development Officer, Chakai, the District Superintendent of Education, Jamui and District Magistrate, Jamui, whereafter, who was told that the petitioner was appointed as Siksha Mitra on 8.5.2005 after



the respondent no.11 had submitted his resignation. The appellate authority by a short order dated 25.6.2010 passed on the appeal preferred by Respondent no.11, upon comparing the signature of respondent no.11 said to have been put by him on the alleged registered letter and his signature submitted before the authority, found much difference between the two. He also, however, recorded in the said order that the signature of respondent no.11 in the employment register maintained for Siksha Mitra was similar to the signature in the resignation letter. The appellate authority, taking into account the fact that the name of respondent no.11 was mentioned in the list of teachers prepared in the year 2008-09 and 2009-10 allowed the appeal holding that Respondent No.11 was working as on 1.7.2006. From the impugned order, it appears that the Panchayat Secretary of the concerned Gram Panchayat had produced before the appellate authority, the proceeding book of the employment unit including the minutes of the proceeding of the meeting dated 22.7.2005 wherein the employment Committee had observed that the post of Siksha Mitra became vacant because of resignation of one of the Siksha Mitra though name of the person who had

submitted the resignation was not mentioned in the minutes.

6. Counter affidavit has been filed on behalf of the Panchayat Secretary (Respondent no.9). Apart from reiterating the stand that respondent no.11 had submitted his resignation, it has been stated that the petitioner had joined the post of Panchayat Siksha Mitra on 1.8.2005 in Primary School Katiyama and had been regularly rendering his service in the school to the satisfaction of the Vidyalaya Siksha Samiti and Gram Panchayat since then. His initial engagement as Siksha Mitra was extended and he was working as Panchayat Siksha Mitra as on 1.7.2006 and accordingly, he was re-designated as Panchayat teacher in terms of the Rules. It has also been stated that respondent no.11 and the petitioner are co-villagers and the school is situated in the same village but at no point of time, respondent no.11 raised any dispute over appointment of the petitioner.

7. Respondent No.11 has also filed exhaustive counter affidavit and supplementary counter affidavit wherein, he has asserted that he was appointed as Siksha Mitra on 1.7.2005 and continued thereafter. He has stated that in the year 2010 he was appointed as the Polling Officer

for Assembly Election, 2010 and again in the year 2012 for Panchayat Election as he was working as Panchayat Teacher. He has stated that he was never paid his salary right from the first date of his appointment as Siksha Mitra. From the said counter affidavit, it appears that the respondent no.11 started making representation for payment of salary from 2008. The first representation which the respondent no.11 has referred to in his counter affidavit is dated 6.2.2008 which is said to have been filed before the District Education Officer, Jamui, Block Development Officer, Chakai and Block Education Extension Officer, Chakari. According to him, he filed several representations as mentioned in the counter affidavit, thereafter. It has been stated that one Deep Narayan Singh was the Mukhiya of Gram Panchayat Dulampur for the period 2001-2006 who stated before the appellate authority on 18.3.2010 that he had appointed respondent no.11 to the post of Panchayat Siksha Mitra in his capacity as Mukhiya of the Gram Panchayat in the year 2005, and the petitioner had neither submitted any resignation nor any resignation was accepted by him. He is said to have deposed before the Tribunal that the letter of respondent no.11 was illegally drafted and



submitted in the block office. Photo copy of the said deposition dated 18.3.2010 has been brought on record as Annexure H to the counter affidavit. It has also been asserted that the handwriting in the resignation letter does not match with the handwriting of respondent no.11.

8. In the supplementary counter affidavit, the respondent no.11 has brought on record by way of Annexure-I, the Attendance Register of the months of July and August, 2005.

9. Mr. Tej Bahadur Singh, learned senior counsel appearing on behalf of the petitioner, referring to the pleadings in the writ application has submitted that immediately after the petitioner's appointment as Panchayat Siksha Mitra, he continued as such without any interruption and was working as such on 1.7.2006 with effect from which the Rules came into force. He has also submitted that whereas the petitioner was paid his salary, respondent no.11 was never paid any amount which belies his claim that he was continuing after his appointment as Siksha Mitra. He has also submitted that it is unbelievable that respondent no.11 would not be knowing about the petitioner's working in the school situated in the same village

to which the petitioner and respondent no.11 both belong.

10. Mr. Bindhiyachal Singh, learned counsel appearing on behalf of respondent no.11, on the other hand, has submitted that the guideline dealing with engagement of Siksha Mitra does not contemplate any provision of termination of contract by way of resignation. He has submitted, referring to the Supreme Court decision reported in (2008) 7 SCC 29 (National Textiles Corporation Limited vs. M. R. Jadhav) with particular reference to paragraph 24 in support of his submission that contractual appointment of Shiksha Mitra is governed by the guidelines issued by the State Government and there it would be governed by the provisions of Contract Act. He has secondly, submitted that there is nothing on record to show that acceptance of resignation was ever communicated to him which is mandatory requirement for acceptance of resignation to be effective. He has further submitted that even if it is presumed for the sake of argument only, that respondent no.11 had submitted his resignation, the appointment of the petitioner as Siksha mitra is contrary to the guidelines relating to appointment of Siksha Mitra. He has further submitted that as per the guidelines providing appointment



as Siksha Mitra, the petitioner would have been engaged for a period of 11 months, excluding summervacation, whereas in the agreement engaging petitioner as Siksha Mitra, only 8 months period has been mentioned. He has contended that despite best efforts, no salary was paid to him and it was with the connivance of the Block Development Officer that the payment was released in favour of the petitioner by a letter No. 403 dated 16.6.2009. As regards delay in approaching the Tribunal, Mr. Bindhiyacal Singh, submits that there is no time limit prescribed under the statute as per Rule 18 in approaching the appellate authority and has contended that the respondent no.11 is still working but without any salary, because of connivance of the officials.

11. From the pleadings made on behalf of the parties and submissions made on their behalf, it appears to me that the Tribunal without getting verified the correctness of the signature of the respondent no.11 on his alleged resignation letter through a handwriting expert, came to his finding that the respondent no.11 had not resigned. It is peculiar that admittedly, respondent no.11 did not raise any plea before any authority requesting payment of his

honorarium or salary nor did he prefer any appeal before the appellate authority and he approached the appellate authority in the year 2010. This at least, raises a serious doubt as to whether respondent no.11 was in fact working as Siksha Mitra as on 1.7.2006. Claims and counter claims have been made. On the one hand the petitioner has claimed that he was working continuously as Siksha Mitra as on 1.7.2006, whereas on the other hand, respondent no.11 has claimed that he was working as such relying upon his appointment as Polling Officer for Assembly Elections and Panchayat Election in the year 2010-2011. Respondent no.11 has brought on record the teachers attendance Register for the months of July and August, 2005 in support of his plea that he was working as Panchayat Sikshak. If he has the access to the Attendance Register, he could have brought on record evidence in support of his case that he had attended school even after August, 2005. In any view of the matter, these are disputed question of facts which cannot be decided in a writ jurisdiction. However, I have no hesitation in coming to a conclusion that the Tribunal in perfunctory way came to the conclusion that the petitioner had not submitted his resignation as his signature



on the resignation letter did not match with his signature made before the Tribunal. Several documents have been brought on record by the petitioner as well as respondent no.11 in support of their respective claims that they were continuously working as Siksha Mitra in the school as on 1.7.2006 and thereafter, they acquired the status of Panchayat Teacher by operation of Rule 20(iii) of the 2006 Rules. The parties have even disputed the documents filed by each other. These facts are seriously disputed and cannot be decided by this Court in a proceeding under Article 226 of the Constitution of India. From the impugned order of the appellate authority, I find that all these disputes/facts have not been addressed by him before allowing the appeal filed by respondent no.11.

12. The order of the appellate authority dated 25.6.2010 passed in case No. 4 of 2009, therefore, cannot be sustained as the findings are based on his own assessment and comparison of signature of the respondent no.11 at two different places though he has agreed similarity of his signature in the Siksha Mitra Employment Proceeding Registered dated 22.7.2005 and on the letter of resignation.



13. I do not find much force in the submission made on behalf of respondent no.11 in the facts and circumstances of the case that in the absence of any proof of communication of acceptance of resignation letter, the engagement between the petitioner and the Panchayat Employment Committee cannot come to an end as such engagement are purely contractual in nature and the conduct of the party is also to be seen whether he had actually acknowledged acceptance of his resignation or not. There are several facts which have been pleaded in the writ application, supplementary affidavit and counter affidavit raising disputed questions of fact. It seems that either these facts were not raised before the appellate authority or the appellate authority has not addressed all those facts, before passing the impugned order.

14. For the reasons above, I quash the order dated 25.6.2010 passed by the Teachers Appointment Appellate Authority, Jamui in case No. 4 of 2009. The matter is remanded back to the appellate authority to decide all the questions of dispute raised in the present writ application and pass an order afresh dealing with such disputed question of facts. The appellate authority will be required to

pass an order, upon remand by the present order within a period of six months from the date of receipt/production of a copy of this order. By virtue of an interim order dated 7.3.2011, the petitioner is continuing as Panchayat Teacher. The petitioner shall not be disturbed till the matter is finally decided by the appellate authority in the light of the present order.

15. This application is allowed with the observations as above.

16. However, there shall be no order as to costs.

(Chakradhari Sharan Singh, J)

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