

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1470 of 2010

IN

Civil Writ Jurisdiction Case No. 12954 of 2009

=====

Shashi Kant S/O Sri Vidya Sagar Upadhaya R/O Vill.- Bhelura, Rampur, P.S.-
Naubatpur, Distt.- Patna

.... Appellant/s

Versus

1. The State Of Bihar
2. The Commissioner-Cum-Secretary Primary Secondary and Adult Education,
Govt. Of Bihar, Patna
3. The District Magistrate, Patna
4. The District Teacher Employment Appellate Authority, Patna
5. The District Superintendent of Education, Patna
6. The Block Development Officer, Naubatpur, Distt. - Patna
7. The Block Education Extension Officer, Naubatpur, Distt. - Patna
8. The Mukhiya, Ibrahimpur Gram Panchayat, Block- Naubatpur, Distt. - Patna
9. The Secretary Ibrahimpur Gram Panchayat, Block- Naubatpur, Distt. - Patna
10. Sri Arbind Kumar S/O Sri Ramanuj Singh R/O Vill.- Nagma, P.S.- Naubatpur,
Distt.- Patna

.... Respondent/s

=====

Appearance :

For the Appellant/s : M/s Shree Kant Pandey & Pramod Kumar, Advocates

For the S t a t e : Mr Manoj Kumar Sinha, AC to SC

For Respondent No 8: Mr Manoj Kumar Singh, Advocate

For Respondent No 10 : Mr Rakesh Kumar Tiwary, Advocate

=====

CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH

And

HON'BLE MR JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE NAVANITI PRASAD SINGH)

Date: 19-05-2015

Heard learned counsel for the appellant, learned
counsel for the State, learned counsel for private respondent No 10
and learned counsel for the Gram Panchayat, its Mukhiya and the

Secretary and with their consent, this appeal has been heard at length for final disposal at this stage itself.

2 Learned counsel for the appellant submits that the appellant is aggrieved by the judgment and order dated 16.08.2010 passed in CWJC No 12954 of 2009 filed by the appellant by which his writ application has been dismissed. He had challenged the order of the District Teachers Appellate Tribunal (for brevity, *the Tribunal*) dated 12.08.2009 by which his prayer for reinstatement as Shiksha Mitra and consequent absorption as Panchayat Shikshak has been rejected.

3 The facts are not in dispute. In 2003, appellant had been selected and appointed as Shiksha Mitra in Ibrahimpur Gram Panchayat, District – Patna. He was given one year extension. In the meantime, it appears that the State Government came up with a policy decision that all those Shiksha Mitras, who had only Matriculation as qualification, should enhance their educational qualification to at least Intermediate level. State Government then granted 33 months time for the said enhancement of educational qualification. In 2005 itself, appellant's services as Shiksha Mitra were terminated as allegedly he did not have Intermediate qualification. Alongwith the appellant, one Vimla Devi had also been engaged as Shiksha Mitra. She had also been similarly terminated. In the vacancy caused by the appellant,

Arbind Kumar (private respondent No 10) had been recruited as Shiksha Mitra but while doing so, taking note of the fact that Vimla Devi produced Intermediate certificate from Hindi Vidyapeeth, Deoghar, she was reinstated. In 2006, the Primary Teachers' Recruitment Rules, 2006 (for brevity, *the 2006 Rules*) came into being which, inter alia, provided that all the Shiksha Mitras, who had been working on contractual basis for limited period on the day when 2006 Rules were published, were to be absorbed as Panchayat Teachers, a permanent appointment under the Gram Panchayat. Accordingly, private respondent No 10 Arbind Kumar and Vimla Devi were both absorbed as Panchayat Teachers and have been working but notwithstanding the fact that the appellant had also got his Intermediate qualification certificate from the Hindi Vidyapeeth, Deoghar in the same batch as Vimla Devi, the appellant was neither reinstated as Shiksha Mitra nor consequently absorbed as Panchayat Teacher. He then filed a writ petition in this Court but unfortunately, without looking into the merits, the writ petition was disposed of with a direction to file appeal before the Tribunal which has since been created. When the matter of the appellant was dealt with by the Tribunal, the Tribunal distinguished the case of Vimla Devi and the appellant solely on the ground that the appellant has not shown the Intermediate certificate at the relevant time though it has never been

disputed nor is being disputed today that the appellant had obtained the necessary qualification by the end of 2005 itself. It is under those circumstances that the appellant then filed a writ petition in this Court which, as noted above, was dismissed. Hence, this intra-Court appeal.

4 The appellant has drawn our attention to Annexure 11 to the writ petition being Resolution of the State Government dated 04.07.2008 wherein the State Government took a conscious decision that all those Shiksha Mitras, whose services were terminated on the ground that they had not enhanced their educational qualification to Intermediate level and had subsequently got the said qualification, should be reinstated from the date when their services were terminated on the solitary above ground. It must be kept in mind that this decision of the State Government is of the year, 2008 that is two years after the 2006 Rules came into being and consequently absorbed as Panchayat Teachers. Learned counsel for the appellant submits that had the learned Single Judge looked into this Resolution of the State Government itself which made an exception in particular cases, the result would have been different. On the other hand, learned counsel for the State relies on the Full Bench judgment of this Court since reported in the case of *Kalpana Rani –Versus- State of Bihar & Others (Full Bench)*, 2014 (2) PLJR 665 to submit that the post of Shiksha Mitra having already been abolished, there could not be any

reinstatement on that post on a later date and, accordingly, it is submitted that in view of the judgment of the Full Bench, the appellant cannot be reinstated as Shiksha Mitra which is a post non-existent. Learned counsel for the State fairly concedes that Full Bench was not dealing with the case like the appellant nor was the Circular of the State Government of the year 2008 under consideration. On behalf of private respondent No 10, who has been recruited in the vacancy of Shiksha Mitra caused by removal of appellant, it is submitted that it is no fault of his. A vacancy was created and he was selected. He has now been working as a Panchayat Teacher for almost a decade. It would be unjust to remove respondent No 10 at this stage. On behalf of Gram Panchayat, its Mukhiya, its Secretary, it is categorically stated that at the relevant time, the appellant had not produced his Intermediate Certificate and he and Vimla Devi were both removed. Subsequently, Vimla Devi produced her Intermediate certificate and she was reinstated but the appellant did not submit the same and, as such, could not be reinstated. It is, therefore, submitted that at this stage, it may not be appropriate to direct reinstatement of the appellant. However, in fairness to the learned counsel appearing for the Gram Panchayat as also learned counsel for private respondent No 10, they have both admitted that there is one post of Panchayat Teacher lying vacant. We

will notice the consequence thereafter.

5 Having considered the matter, in our view, this appeal has to be allowed as well as the writ petition. The reason is that the only ground on which service of petitioner as Shiksha Mitra was discontinued was that he had not yet enhanced his educational qualifications to that of Intermediate. As noticed earlier, subsequently the State Government had granted 33 months that is over two and half years to Shiksha Mitras to enhance their educational qualification. This was in the year, 2005. Later on, the State Government, having abolished the post of Shiksha Mitra with effect from 2006, absorbed all working Shiksha Mitras as permanent Panchayat Teachers. There was still time for Shiksha Mitras to enhance their education qualification. It is considering this situation, the State Government came up with its Resolution, as noted above in the year 2008 that all those Shiksha Mitras, who had been dismissed for not having educational qualification of Intermediate or equivalent but had obtained the same subsequently, would be reinstated as Shiksha Mitra but the post being abolished, they would be brought in as Panchayat Teachers. State Government took into account the abolition of the post of Shiksha Mitra. This is what distinguishes this case from the Full Bench. In Full Bench, this was not the consideration at all. The consideration was where persons, who were working as Shiksha



Mitras and had been dismissed while working as such and had not come to the Court while the post was still available but came to the Court much later after the post of Shiksha Mitra has been abolished, they could not claim reinstatement. The case also dealt with case where, at an earlier point of time, persons had been wrongly not selected as Shiksha Mitras. Similar was the view of the Full Bench. Case at hand is different where the State itself has made an exception consciously and provided that the post of Shiksha Mitra not being available, they would be reinstated as Panchayat Teachers.

6 Thus, the fact being that the appellant had acquired requisite qualification in the year 2005 itself, in terms of the Government Circular of the year 2008 that being the solitary ground for his dismissal, he had to be brought back in service as Panchayat Teacher. The problem would have been with regard to the status and the future of private respondent No 10 because he had already been recruited in the vacancy caused by removal of the appellant. It would have been unjust on the part of the Court to direct that as the appellant is to be reinstated, consequently at this stage, respondent No 10 should be dismissed. The situation is, however, not so for all parties agree that there is a vacancy in the post of Panchayat Teacher in the said Gram Panchayat.

7 Thus, while ordering reinstatement of the appellant

as a Panchayat Teacher now we would not order removal of respondent No 10. Appellant would be entitled to join as Panchayat Teacher forthwith but he shall have no claim with regard to his past remuneration and would be entitled to remuneration as from the date of his joining as Panchayat Teacher.

8 As the Panchayat is duly represented and the order has been passed in its presence, it is expected that the appellant would be reinstated within a period of one month from today, the responsibility whereof would be on the Mukhiya of the Panchayat.

9 With these observations and directions, this appeal is allowed. The judgment and order of the learned Single Judge is set aside. The writ petition stands consequently allowed.

(Navaniti Prasad Singh, J)

(Rajendra Kumar Mishra, J)

M.E.H./-

U			
---	--	--	--