

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.647 of 2014
In
Civil Writ Jurisdiction Case No. 19456 of 2010**

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Sabnam Ara, D/o Md. Shoukat, resident of Village- Narkatia,
P.S. – Bodhgaya, District- Gaya.

.... Appellant.

Versus

1. The State of Bihar
2. The District Magistrate, Gaya.
3. The District Superintendent of Education, Gaya.
4. The Block Development Officer, Bodhgaya, District-
Gaya.
5. The Block Education Officer, Bodhgaya, District- Gaya.
6. Mukhia, Basarhi Gram Panchayat, Bodhgaya, District-
Gaya.
7. Member, District Teachers Selection Appellate Tribunal,
Gaya.
8. The Panchayat Secretary, Gram Panchayat Basarhi,
Block- Bodhgaya, P.S.- Bodhgaya, District- Gaya

.... Respondents

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Appearance :

For the Appellant/s : Mr. Amar Nath Singh, Advocate

For the Respondent/s : Mr. Anil Kumar, AC to SC-10

For respondent No. 8 : Mr. S. K. Ranjan, Advocate

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CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI

AND

**HONOURABLE MR. JUSTICE SAMARENDRA PRATAP
SINGH**

C.A.V. ORDER

**(Per: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP
SINGH)**

5 07-01-2015 This appeal is filed against the order, dated
12.08.2013, passed in C.W.J.C. No. 19456 of 2010,
whereby a learned single Judge of this Court has refused to



interfere with the order, dated 30.08.2010, passed by the District Teachers Employment Appellate Authority, Gaya (hereinafter referred to as 'the learned Appellate Authority') in Case No. 770 of 2009 and also disallowed the prayer for salary on the ground that the very appointment of the writ petitioner-appellant, as a *Shiksha Mitra*, in the year 2003, was illegal.

2. The writ petitioner-appellant was engaged as *Shiksha Mitra* for 11 months, in the year 2003, by the appropriate authority. Her service was extended for 11 months from 01.04.2004 to 31.03.2005 and, thereafter, further extension was granted from 30.03.2005 to 01.04.2006. In the year 2005, she enhanced her qualification by obtaining Intermediate degree. At the behest of the District Magistrate, Gaya, the Block Education Extension Officer conducted an enquiry with respect to legality of appointment of *Shiksha Mitra* under Basarhi Gram Panchayat. In the year 2006, the Government framed Bihar Panchayat Elementary Teachers (Appointment and Service Condition) Rules, 2006 (hereinafter referred to as 'the 2006 Rules') laying down detailed procedure for selection and appointment of Prakhand/Panchayat teachers. As per Rule 20 of the 2006 Rules, the *Panchayat Shiksha Mitra*, who was appointed by earlier

orders/instructions, would be deemed to have been absorbed as Panchayat Teacher.

3. It is the case of the writ petitioner-appellant that she had been working as Panchayat Teacher with effect from 01.07.2006, i.e., the date on which the 2006 Rules came into force, and, hence, she ought to be treated as having been absorbed as a Panchayat Teacher along with others, who were appointed in similar manner. It has been the further case of the writ petitioner-appellant that though she stood absorbed as a Panchayat Teacher, she had not been paid her salary. She, therefore, filed a writ petition, which gave rise to C.W.J.C. No. 10476 of 2007. The learned single Judge, vide order, dated 16.09.2009, asked the petitioner to raise her grievance with respect to non-payment of salary before the Appellate Authority, which has, now, been constituted in terms of Rule 18 of 2006 Rules. The Appellate Authority held that the appointment of the writ petitioner-appellant has already been held to be bad by the Block Development Officer, Bodh Gaya, inasmuch as she had not secured sufficient marks for being selected as a candidate belonging to *general category*. Learned Appellate Authority observed that the appointment of the writ petitioner-appellant had, in fact, already been cancelled vide Memo No. 4/08, dated

05.02.2008, issued by the Mukhiya, Gram Panchayat Raj, Masaurhi, in view of Memo No. 4, dated 04.02.2008, issued by the Block Development Officer, Bodh Gaya.

5. The writ petitioner-appellant, being aggrieved, filed writ application, which, too, was dismissed by the learned single Judge. The writ petitioner-appellant has challenged the impugned order of the learned single Judge as well as the order of the learned Appellate Authority on the following two grounds:

(i) The State respondents erred in coming to the conclusion that the writ petitioner-appellant should not have been absorbed as Panchayat Teacher inasmuch as she has not been working as *Shiksha Mitra* on 01.07.2006, when 2006 Rules came into force.

(ii) The appellant's next submission is that in the year 2008, Block Development Officer, Bodh Gaya, did not have jurisdiction to direct cancellation of appointment inasmuch as since after coming into force of 2006 Rules, it was the learned Appellate Authority, which was competent to cancel the appointment.

6. We have heard the learned counsel for the parties. We find that the writ petitioner-appellant, along with others, were initially appointed as *Shiksha Mitra*, in the year 2003, for a period of 11 months. Again, on



01.04.2004, her tenure was extended by another 11 months, i.e., up to 31.03.2005 and it was, again, further extended from 30.03.2005 to 01.04.2006. It is the specific case of the writ petitioner-appellant that she had continued to work, in this manner, till 01.07.2006, i.e., the date on which 2006 Rules came into existence.

7. We further find that the services of the writ petitioner-appellant could not be extended, because of coming into force the Moral Code of Conduct in view of announcement of Panchayat Election. The Human Resources Development Directorate, in order to protect the interest of such Panchayat Teachers, whose services could not be extended in view of Panchayat Election, issued letter, dated 08.08.2006, directing that such teachers would be deemed to be working on 01.07.2006. The letter, dated 08.08.2006, of Human Resources Development Department, protects the case of the writ petitioner-appellant, whose service was not extended or absorbed by any formal communication in view of Moral Code of Conduct having been applied, because of announcement of Panchayat Election. We do not find any force in the submission of the respondents that the writ petitioner-appellant had not been working as *Shikha Mitra*; rather, in view of Rule 20 of 2006 Rules and letter, dated

08.08.2006, she would be deemed to have continued and absorbed as Panchayat Teacher on 01.07.2006.

8. This takes us to the next issue, namely, whether the learned Appellate Authority was correct in coming to the conclusion that the writ petitioner-appellant would not be entitled to her salary, as the Block Development Officer, Bodh Gaya, had cancelled her appointment in February, 2008. In our view, the writ petitioner-appellant is correct in submitting that after coming into force of 2006 Rules, the Block Development Officer ceased to have jurisdiction to cancel appointment of a Panchayat Teacher inasmuch as the appointment of a Panchayat Teacher can be cancelled only in terms of the provisions of 2006 Rules, whereunder Block Development Officer was not the competent authority.

9. In the result, this appeal is allowed. The impugned orders, passed by the learned single Judge as well as the learned Appellate Authority, are set aside. The writ petitioner-appellant would be deemed to be continuing in service as Panchayat Teacher after 01.07.2006 and would be entitled to her arrear salary, particularly, when there is no pleading by the State respondents nor is there any materials on record that the appellant had been gainfully employed between the period, when her services

had been illegally terminated, and till date or during any part of the period, when the appellant had been out of service.

(Samarendra Pratap Singh, J.)

I.A. Ansari, J.: I agree.

(I.A. Ansari, J.)

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