

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1482 of 2012

IN

Civil Writ Jurisdiction Case No. 21098 of 2011

Prem Kumar S/O Late Sudheshwar Singh R/O Village- Pandura, Police Station- Sandesh, District- Arrah

.... Appellant

Versus

1. The State of Bihar through Human Resources Department through Principal Secretary Government of Bihar, Patna
2. The Principal Secretary, Human Resources Department, Government of Bihar, Patna
3. The District Magistrate, Arrah
4. The District Superintendent of Education, Arrah
5. The Block Development Officer, Sandesh, Arrah
6. The District Teachers Appointment Appellate Tribunal, Arrah
7. Sri Santh Prakash Singh S/O Late Ram Peyary Singh R/O Village- Pandura, Police Station- Sandesh, District- Bhojpur

.... Respondents

Appearance :

For the Appellant/s : Mr. Anand Kumar Ojha, Advocate
Mr. Ashok Kr. Karn, Advocate
For the Respondent/s : Mr. Gyan Shankar, A.C. to G.P.- 6

CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

And

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 20-08-2015

Heard Sri Anand Kumar Ojha, learned counsel
for the appellant and Sri Gyan Shankar A.C. to G.P.6,
learned counsel for the State.

2. The appellant in this Intra-Court Appeal was
the writ petitioner. His writ petition has been dismissed by
the learned Single Judge on the ground that he seeks
restoration of his appointment as Shiksha Mitra which post
was abolished in the year 2006. The Writ Court held that the

writ petition could not be entertained, thus, following Division Bench Judgment of this Court. We regret our inability to agree in the said facts.

3. The writ petitioner was selected and appointed as Shiksha Mitra in the year 2006. Thereafter, the post of Shiksha Mitra was abolished. Persons working as Shiksha Mitra were then absorbed as Panchayat Teachers. The private respondent lost in the selection as Shiksha Mitra, he complained before the Block Development Officer in the year 2008. The Block Development Officer decided the case in favour of the writ petitioner rejecting the claim of the private respondent who had not been selected as Shiksha Mitra. The private respondent then appealed to the Collector of the District against the order of the Block Development Officer. The Collector acting wholly without jurisdiction having no statutory authority set aside the order of the Block Development Officer. This was in the year 2009. The effect was that the writ petitioner was being sought to be dismissed in the year 2009 by order of the Collector.

4. The writ petitioner challenged it before this court. The learned Single Judge, at that time, remanded the matter to the District Teachers Appellate Tribunal, which had since been constituted. It may be noted that the learned



Single Judge, at that instance, was not informed that the District Teachers Appellate Authority was a substitute of the Block Development Officer, as such, the Tribunal could not have exercised jurisdiction over the orders. The writ petitioner was directed to go to the Tribunal. The Tribunal has ruled against the writ petitioner. This was in the year 2012. The effect is that the order of the Tribunal now non-suits the writ petitioner. In other words, the Tribunal cancels his appointment as Shiksha Mitra, as may, prior to 2006.

5. It is not in dispute that the writ petitioner was absorbed as Panchayat Teacher and was working as such, and because, the Collector had cancelled his appointment, he had to seek reinstatement.

6. Sri Anand Kumar Ojha, learned counsel for the appellant, submits that the private respondent, having initiated this fight, has, since, got employment in another Panchayat i.e. Pandura Panchayat, Block Sandesh, District - Bhojpur and joined on 06.08.2014.

7. In our view, the initial order of Block Development Officer, having been in favour of writ petitioner, could not have been interfered with by either the Collector or the Tribunal. The reason being that the Collector had no jurisdiction in the matter and the Tribunal was the

substitute and not an Appellate Authority. The writ petitioner was continuing to work which could only be as Panchayat Teacher, when the Collector passed the order adverse to him in the year 2009. Therefore, the learned Single Judge was clearly in error in dismissing the writ petition holding that Shiksha Mitra post had been abolished and the Writ not to be maintained for that post.

8. We, thus, set aside the order of the District Appellate Authority restoring the order of the Block Development Officer and restore the appointment of the writ petitioner and set aside the order of the Appellate Authority and the Writ Court.

9. This Letters Patent Appeal is, accordingly, allowed.

10. However, he may notice that for the period for which the writ petitioner appellant has not actually worked, he shall not get any remuneration, and if, he is out of work, he shall be reinstated within one month.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

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