

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1885 of 2012

IN

Civil Writ Jurisdiction Case No. 4794 of 2012

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Pawan Kumar Safi S/O Sri Basudeo Safi R/O Village + P.O.- Lagama,
P.S.- Sakatpur, Distt.- Darbhanga

.... Appellant

Versus

1. The State of Bihar
2. District Magistrate, Darbhanga
3. District Teacher Appointment Tribunal, Darbhanga
4. District Education Officer-Cum-District Programme Officer,
Darbhanga
5. Block Development Officer Tardih, P.S.- Sakatpur, Distt.-
Darbhanga
6. Panchayat Secretary Gram Panchayat Raj Lagama, P.S.- Sakatpur,
Distt.- Darbhanga
7. Mukhiya, Gram Panchayat Raj Lagama, P.S.- Sakatpur, Distt.-
Darbhanga
8. Headmaster, Govt. Primary School Navtoliya, Yadav Toli, Gram
Panchayat Raj, Lagama, P.S. Sakatpur, Distt.- Darbhanga
9. Rajesh Kumar Raushan S/O Sri Shivilal Safi R/O Village- Lagama,
P.S.- Sakatpur, Distt.- Darbhanga

.... Respondents

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Appearance :

For the Appellant	:	Mr. Bishwanath Prasad Singh, Advocate
For Respondent no. 9	:	Mr. Shivendra Kishore, Sr. Advocate
		Mr. Ashok Kumar Prasad, Advocate
For the State	:	Mr. Y.P. Sinha, AAG-15
		Mr. Ram Subhas Singh, AC to AAG-15

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

And

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 14-10-2015

This Letters Patent Appeal is directed against judgment
and order dated 16.03.2012 passed in CWJC No. 4794/2012 (Rajesh
Kumar Raushan Vs. The State of Bihar & others). The grievance of the

appellant primarily is that the writ court granted full relief to the writ petitioner, who is respondent no. 9 in this appeal, without the appellant being made a party to the writ proceeding. The writ petitioner had sought directions for accepting his joining on the post of Primary Teacher, upon the appellant being removed from the said post, but the appellant was never made a party to any of the proceedings.

2. We have heard learned counsel for the appellant, learned Senior Counsel for private contesting respondent no. 9 who was the writ petitioner and learned counsel for the State, and with their consent this appeal has been heard for final disposal at this stage itself.

3. Justice delayed is justice denied Justice hurried is justice burried. This case completely illustrates the aforesaid. In an anxiety to do quick justice, the learned Single Judge proceeded to dispose of the writ petition, on the very day that it was first taken up. Justice was tried to be hurried. It completely lost sight that, there was a person who was a necessary party but in anxiety to do justice without delay, Mandamus was issued ensuring removal of the appellant, without the appellant being made a party to the writ proceeding. The hurried justice is burried justice. Ordinarily, we would have set aside the order of the learned Single Judge and remanded the matter with the direction to add the appellant as a party respondent and then hear the writ petition all over again. We are advisedly not adopting that

procedure for all the parties appearing and pleadings being completed, what could be done by learned Single Judge can quickly be done in this Intra Court Letters Patent Appeal, which is nothing but a re-hearing of the writ proceedings.

4. Respondent no. 9 to this appeal, who was the writ petitioner and the appellant to this appeal, was not made a party to the writ proceeding, both had applied for the post of Shiksha Mitra, as was advertised in the year 2003. Shiksha Mitra, the post was created by the State Government at the Panchayat level with academic qualification of mere matriculation. It was purely contractual post for a period of 11 months, though extendable on satisfactory service. In the selection process carried out in 2003, the appellant was selected and respondent no. 9, who was the writ petitioner, was not selected, even though allegedly he was more meritorious. Respondent no. 9 allegedly made protest. After expiry of 11 months, the term of service of the appellant was extended and respondent no. 9, writ petitioner, apparently lost interest. The appellant was already an Intermediate graduate. The Rules were subsequently amended making Intermediate as a basic qualification for Shiksha Mitra.

5. In 2006, the State Government took a policy decision that all the Shiksha Mitra, who were working on that day, would now be absorbed and would become Primary Teachers, which was a

permanent post. Appellant, who was working as a Shiksha Mitra, accordingly got absorbed as Primary Teacher and from that day the post of Shiksha Mitra stood abolished and became extinct. The service condition now being more remunerative, in 2008, respondent no. 9, the writ petitioner and others sent petitions to the Chief Minister amongst others, the District Magistrate cum Collector, Darbhanga protesting, that in the year 2003, respondent no. 9, the writ petitioner, was wrongly not selected and appellant was wrongly selected and appointed as Shiksha Mitra. Accordingly, he prayed in 2008 that the appointment of the appellant as Shiksha Mitra in the year 2003 be cancelled, and instead, respondent no. 9, the writ petitioner, be directed to be appointed as Shiksha Mitra and deemed to be absorbed in 2006 as Panchayat Teacher in place of the appellant.

6. Curious to note that upon this application, the District Magistrate-cum-Collector, Darbhanga ordered an internal inquiry. He also did not think it proper to notice the appellant. He did not even think it proper, to enquire, whether the post of Shiksha Mitra having been abolished in 2006 and selection process being of the year 2003, whether, he should at all enquire into the matter. The inquiry report having been received, he immediately issued order on 29.12.2008, which is Annexure – 1 to the writ petition, clearly stating that upon the report received, he is cancelling the appointment of the appellant

Pawan Kumar Safi as Shiksha Mitra as made under the Shiksha Mitra Recruitment Rules 2003, and directing the appointment of the respondent no. 9, the writ petitioner, Rajesh Kumar Raushan in his place. His order was to remove the appellant as a Panchayat Teacher and in his place appoint the writ petitioner. Thus, the order of removal and appointment by way of substitution was simultaneous. Appointment letter was subsequently issued to the writ petitioner on 02.03.2009. It is non implementation of this that led to the filing of writ application but without making the appellant, herein, a party.

7. We would like to note two things, firstly, the District Magistrate-cum-Collector, Darbhanga was cancelling appointment of the appellant. Yet, even though, he was senior and experienced officer, he did not think it desirable to notice the appellant or of hearing him. It is not being disputed by anybody that the appellant was not made a party to the proceeding before the District Magistrate-cum-Collector, Darbhanga at any moment of time nor was he required to show cause nor was he noticed at all. The second, we would like to notice is, what was the authority of the District Magistrate-cum-Collector, Darbhanga, who enquired in the matter and that too in the year 2008, when the Shiksha Mitra Recruitment Rules 2003 had long since been repealed in 2006 and had been replaced by new Rules being the Bihar Panchayat Elementary Teachers (Employment and Service Conditions) Rules,

2006. He had no authority under either of the Rules. Under 2006 Rules, statutory authority was created in terms of Rule 18 conferring power, first, on the Block Development Officer to enquire into the matters of irregularity in appointment of Primary Teachers who was recruited afresh under the Rules. Subsequently, Block Development Officers were replaced by District Teachers Appellate Authority. District Magistrate-cum-Collector, Darbhanga did not figure anywhere. This power related to fresh appointees of Panchayat Teachers only and not Shiksha Mitra absorbed as Panchayat Teachers.

8. On the two issues aforesaid, serious legal consequences flow. First the appellant's right to continue as a Teacher, earning his livelihood, was taken away by an order passed in flagrant violation of basic principles of natural justice. In our view, this renders the order of the Collector not only illegal, but *void ab initio*. In terms of the Judgment of the Apex Court in the case of **Nawabkhan Abbaskhan Vs. State of Gujarat** since reported in **AIR 1974 SC 1471**; an order passed in violation of principles of natural justice affecting the fundamental rights of a citizen is *void ab initio* and is a nullity.

9. On this finding alone, we have no option but to hold that order of the Collector was wholly without jurisdiction, a rank illegality and *void ab initio*. It never legally existed. On the second

issue again, we have to hold that in the year 2008, the Collector had no jurisdiction to go into the question of appointment that was made in 2003 under 2003 Rules. It was only Shiksha Mitra who were working, those were absorbed and became Primary Teachers. Admittedly, the writ petitioner was not working and it was the appellant who was working, the appellant got absorbed. The post of Shiksha Mitra was abolished. Surely, even if, Collector could have interfered, he could not have directed for appointment of the writ petitioner to the post of Shiksha Mitra, at the first instance, which was non-existent and then by virtue of Rules being Shiksha Mitra deemed that he became absorbed and became a Primary Teacher. Thus, the very interference by the District Magistrate-cum-Collector, Darbhanga was unauthorized and the order passed by him was *void ab initio* and unenforceable in law. The learned Single Judge could not have been asked to issue mandamus to enforce nullity.

10. What followed is even more curious. The writ petitioner, who is respondent no. 9 in this appeal, followed with the orders of the District Magistrate-cum-Collector, Darbhanga to various authorities including the Teacher Appellate Tribunal which was constituted under Rule 18 of the 2006 Rules, to look over the appointments of directly recruited Primary Teachers, and before other authorities and everywhere, without the appellant being noticed or

being made a party and obtained orders to the Headmaster of the School in which the appellant was teaching, asking the appellant to be removed and in his place appoint respondent no. 9, the writ petitioner. Naturally, the Headmaster was not accepting these orders as valid orders. This is what brought by the writ petitioner to the writ court. Virtually, what the writ petitioner had sought was removal from the post of Primary Teacher of the appellant who continued to work, in spite of order of the Collector and in his place posting him as a Primary Teacher. In the writ proceeding, the appellant who was to be thrown out was not made a party, the learned Single Judge also noticed everything i.e. Collector's order, the Tribunal's order, the order of District Superintendent of Education to the Headmaster and went to the extent of directing disciplinary proceedings to be initiated against the Headmaster for not obeying the orders of superior. Yet, in the anxiety to do justice, the learned Single Judge lost sight that the appellant was a necessary party to be heard in the matter. The learned Single Judge further forgot that at least the Headmaster, who was purportedly disobeying orders, had to be heard. Had the Headmaster, who was the party, been noticed, he would have come to the court disclosing the facts. He could have pointed out to the court that the order of the District Magistrate was *void ab initio*. The Tribunal had no jurisdiction in the matter, but in anxiety to do justice, everything was forgotten. It

this was done, the result of the proceedings would have been otherwise.

11. In view of the above finding, we have no hesitation in holding that order of the District Magistrate as contained in Annexure – 1 to the writ petition, was in order that was *void ab initio* and, it could not be sought to be enforced. The appellant was never disclosed the said order. He was never made the parties to those proceedings. That order cannot bind him in any case. It could not be used adverse to the interest of the appellant. If that be the position, this cannot be enforced at all.

12. Thus, we have no option, but to allow this appeal, set aside the order of the learned Single Judge, and while doing so, hold that the order of the Collector dated 29.12.2008, as contained in Annexure – 1 to the writ petition, is an order which is *void ab initio* and unenforceable in law. As a natural consequence of the aforesaid, the appellant would have to be reinstated and be deemed to be continuing in service with all consequential benefits to the detriment and to the exclusion of the writ petitioner who is Respondent no. 9 to this appeal.

13. The appeal is, accordingly, allowed.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

Rajeev/A.F.R.

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