

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10570 of 2010

1. Pramod Kumar, Son of Ganesh Prasad, resident of Village-Sherpur, P.S.-Harnaut, District-Nalanda.

2. Kiran Kumari, Wife of Sunil Kumar, resident of Village-Sherpur, P.S.-Harnaut, District-Nalanda.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Human Resources Development Department Bihar, Patna.

2. The District Magistrate, Nalanda.

3. The District Superintendent of Education Nalanda at Bihar Sharif.

4. The Block Education Extension Officer, Harnaut, Nalanda.

5. The Mukhiya Gram Panchayat, Nehusa, Harnaut.

6. Surendra Kumar Singh, Son of Late Bindeshwar Singh, resident of village-Tira, P.O.-Chero, P.S.-Harnaut, District-Nalanda.

7. Shrawan Kumar, Son of Late Yugeshwar Das, resident of village-Nehusa Sudama Puki, P.O.-Nehusa, P.S.-Harnaut, District-Nalanda.

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Sanjay Prasad, Advocate

For the Respondent/s : Mr. (AAG-8), Advocate

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

C.A.V. JUDGMENT

Date: 22-06-2015

The dispute in the present writ application under
Article 226 of the Constitution of India relates to

absorption/deemed appointment of a person working as Shiksha Mitra under some scheme of the State Government, as Panchayat Teacher, by operation of Rule 20 (iii) of Bihar Panchayat Primary Teachers (Appointment and Service Condition) Rules, 2006.

2. In the present writ application, the respondent nos. 6 and 7 have been added subsequently as they are being sought to be reinstated as Panchayat Teachers. They were earlier appointed as Shiksha Mitra for a fixed period but were not allowed to continue as they did not possess the enhanced requisite educational qualification for Shiksha Mitra of “Intermediate” and admittedly they were not working as Shiksha Mitra as on the crucial date, i.e., 01.07.2006. On the ground that they (respondent nos. 6 and 7) acquired qualification equivalent to Intermediate, in the meanwhile, in terms of Division Bench decision of this Court in case of **“Kishori Prasad Vs. The State of Bihar & Ors.”** reported in **“2008 (2) PLJR 458”** and consequent direction of the State Government dated 04.07.2008, the respondent nos. 6 and 7 are sought to be reinstated as Panchayat Teachers. The petitioners were admittedly appointed as Shiksha Mitra against the vacancies caused due to discontinuance of respondent nos. 6

and 7 as Shiksha Mitra because of their lack of requisite qualification and, indisputably, the petitioners were working as Shiksha Mitra as on 01.07.2006, the crucial date.

3. The petitioners had initially sought for a direction to the respondents for payment of their salary, which they were entitled to, but the same was not being paid since 01.04.2009, as Panchayat Teachers. By filing I.A. No. 6429 of 2014, the petitioners have sought for quashing of an order issued vide Memo No. 159 dated 23.06.2010, passed by the District Teachers Appointment Appellate Authority, Nalanda at Bihar Sharif in Appeal No. 1616 of 2009 (Pramod Kumar Vs. Surendra Kumar Singh and Others) and Appeal No. 1617 of 2009 (Kiran Kumari Vs. Shrawan Kumar and Others). The appellants before the Appellate Authority are the petitioners in the present writ application. I.A. No. 6429 of 2014 is allowed. The petitioners are allowed to challenge the said order dated 23.06.2010, passed by District Teachers Appointment Appellate Authority, Nalanda (Bihar Sharif). The averments made in I.A. No. 6429 of 2014 shall be treated to be averments made in the writ application.

4. The respondent nos. 6 and 7 had filed I.A. No. 3692 of 2011, seeking their impleadment, as respondents, in the writ



application on the ground that they are necessary parties. The petitioners also filed I.A. No. 4697 of 2011, seeking their impleadment, as party respondents, in the writ application. By an order dated 18.07.2011, the intervener-respondents have been allowed to be impleaded as respondents. I.A. No. 3692 of 2011, filed by the intervener-respondents, thus, also stands disposed of. The averments made in I.A. No. 3692 of 2011 has been treated to be counter affidavit filed on their behalf read with a supplementary affidavit, filed on 01.09.2014 in the present case.

5. The matter relates to appointment of Shiksha Mitra/Panchayat Teachers in Gram Panchayat Nehusa in Harnaut Block of the District of Nalanda (Bihar Sharif). There are certain facts which are not at all in dispute, which are evident from the averments made by the private respondent nos. 6 and 7 in I.A. No. 3692 of 2011. In May, 2003, the intervener-respondent nos. 6 and 7 were appointed as Panchayat Shiksha Mitra in Primary School, Ukhara and Primary School, Sherpur Dih, respectively, under Gram Panchayat Raj Nehusa. These appointments were made under the scheme of the State Government, as contained in Resolution dated 21.06.2002, issued by the State Government



of Bihar for selection and employment of Panchayat Shiksha Mitra under Gram Panchayat. The scheme provided, *inter alia*, that employment would be contractual on monthly honorarium of Rs. 1500/- (Rupees Fifteen Hundred) and the contractual period would be the 11 months excluding summer vacation. It further provided that in case of satisfactory service, the employment may be extended for a period of 11 months. It further provided that no Panchayat Shiksha Mitra would be employed for more than $11 \times 3 = 33$ months. The Matriculation was the minimum qualification initially prescribed for the post, by the said Resolution of 2002, which was modified subsequently on 11.08.2004 and the minimum qualification was enhanced to Intermediate. It also provided that in the event, in any Panchayat, women candidates having Intermediate qualification were not available, women candidates having Matriculation or equivalent qualification might be employed on the condition that such candidate will acquire the Intermediate or equivalent qualification within 3 years.

6. Naturally, the contractual period of the private respondents was extended after their initial appointment in May, 2003 from time to time, but after 30.05.2005, no

extension was granted to them, as they did not possess the Intermediate qualification. This was in terms of the modification in the scheme, as noted above.

7. One Kishori Prasad had approached this Court and a Division Bench of this Court vide an order dated 12.02.2008 passed in L.P.A. No. 940 of 2007 in Paragraphs – 6 and 7 had held as follows:-

“6. Undisputedly, on the date when the petitioner’s services were terminated vide Annexure-8 dated 21.7.2005, 33 months’ time had not expired since his date of appointment but only 27 months had expired. Before expiry of 33 months from the date of his appointment, the petitioner had already acquired the qualification of Intermediate as per the certificate issued on 22.9.2005. Apparently on this undisputed fact, the petitioner’s services could not be terminated by Annexure-8 and said order cannot be sustained.

7. Accordingly, the appeal is allowed and the judgment and order under appeal dated 3.10.2007 is set aside. The impugned order, Annexure-8, dated 20.7.2005 is quashed. The petitioner-appellant is directed to be reinstated in continuity in service from the date when he was

terminated. This will entail all consequential benefits.”

In the meanwhile, against the vacancies of Shiksha Mitra caused because of discontinuance of the private respondents; after following a selection procedure, the petitioners were appointed as Shiksha Mitra in July, 2005, whereafter, they joined in the concerned school under Nehusa Gram Panchayat Raj on 01.08.2005. The Bihar Panchayat Elementary Teachers (Employment and Service Conditions) Rules, 2006 (hereinafter referred to as the “Rules of 2006”) framed under Article 243-G of the Constitution of India and Sections 47 and 48 read with Section 146 of Bihar Panchayat Raj Act, 2006 came into being with effect from 01.07.2006. The Rules of 2006 deals with appointment of Panchayat Teachers, selection and appointment of Panchayat Teachers and Block Teachers, the minimum qualification etc. amongst other things. Rule 20 (iii) provides that Panchayat Shiksha Mitra appointed and working shall be treated to have been appointed as Panchayat Teachers under Rules of 2006. This is not in dispute that as on 01.07.2006, the petitioners were working as Panchayat Shiksha Mitra and, thus, by operation of Rule 20 (iii) of Rules of 2006, they acquired status of Panchayat Teachers

under Nehusa Gram Panchayat Raj.

8. On the other hand, in the light of Division Bench decision of this Court in case of Kishori Prasad Vs. The State of Bihar & Others (**Supra**), the State Government came out with a Resolution on 04.07.2008 providing that such persons, who were appointed as Shiksha Mitra on the basis of their Matriculation qualification, will be treated to have been appointed as Panchayat Teachers with effect from 01.06.2007, the crucial date, if they acquired the qualification of Intermediate within 33 months from their initial engagement. It further provided that such Shiksha Mitra, whose services were not extended because of lack of Intermediate qualification, shall be treated to have reinstated with effect from the respective dates of termination of their contractual appointment. It is the case of the interveners that in the light of said Resolution dated 04.07.2008, they were re-employed on the post of Panchayat Teachers/Prakhand Teachers, as they had acquired qualification equivalent of Intermediate level within 33 months of their employment. It is their further case that though they are accordingly discharging their duties, they are not being paid salaries. It is their further case that they passed the examination of Sahitya Bhushan from Hindi

Vidyapith, Deoghar, which had commenced on 22.05.2005, which qualification is equivalent to Intermediate qualification.

9. The petitioners had approached District Teacher Employment Appellate Authority, Nalanda (Bihar Sharif) by filing Appeal Nos. 1616 of 2009 and 1617 of 2009, questioning the decision of reinstatement of the intervener-respondents by the order of Sukh Subidha Committee of the Gram Panchayat Raj, Nehusa, on the ground that their degree of Sahitya Bhushan, obtained from Hindi Vidyapith, Deoghar, was not a valid qualification for the appointment as Panchayat Teacher. The aforesaid two appeals were disposed of by the Appellate Authority by an order dated 23.06.2010, which has been brought on the record by way of Annexure-11 of a supplementary affidavit filed on behalf of intervener-respondents. The Appellate Authority directed the District Superintendent of Education, Nalanda to allow the intervener-respondents to function as Panchayat Teacher and payment of emoluments, only after being satisfied that they had appeared in the examination held by Hindi Vidyapith, Deoghar, commencing from 22.05.2005, after having been granted leave and were not present in the school during that period. The said order of the Appellate Authority is under challenge in the

present writ application, by way of amendment.

10. The Division Bench decision of this Court in case of Kishori Prasad Vs. The State of Bihar & Others (**Supra**) and subsequent Government Resolution dated 04.07.2008, came to be considered subsequently by another Division Bench decision of this Court in case of “**Smt. Renu Kumari Pandey Vs. The State of Bihar & Others**” [with analogous cases] reported in “**2011 (4) PLJR 297**”. The Division Bench, referring to the said Resolution dated 04.07.2008, which is the sheet anchor of respondent nos. 6 and 7, held in Paragraph – 19 as follows:-

“19. To us it, prima facie, appears that aforesaid Resolution though has been passed pursuant to the Division Bench judgment of this Court in the matter of “Kishori Prasad Vs. The State of Bihar & Others [2008(2) PLJR 458] is contrary to Rule 20 (iii) of the Rules.”

11. The Division Bench of this Court in case of Smt. Renu Kumari Pandey Vs. The State of Bihar & Others (**Supra**), dealing with Rule 20 of the Rules of 2006, held in Paragraph – 17 as follows:-

“17. Coming to the second issue, we are of the opinion that the Rules are statutory in nature and have to be



implemented in letter and spirit. Under Clause (i) of Rule 20 of the Rules all earlier resolution of employment of Panchayat Shiksha Mitra are repealed. Consequently, the posts of Panchayat Shiksha Mitra stood abolished. Thereafter, no person can be employed as Panchayat Shiksha Mitra; nor can there be a deemed employment as Panchayat Shiksha Mitra; nor can there be a deemed absorption in the service as Panchayat Shikshak by operation of Rule 20 (iii) of the Rules. In our opinion, even in a case in respect of his or her non-selection as Panchayat Shiksha Mitra at the relevant time or non-continuance as Panchayat Shiksha Mitra, such person cannot be deemed to have been appointed as Panchayat Shiksha Mitra; nor can he/she be deemed to have been employed as Panchayat Shiksha Mitra as on 1st July, 2006; nor can such person be deemed to have been absorbed in service as Panchayat Shikshak under the Rules.”

12. The said Rule 20 (iii) of Rules of 2006 again came to be interpreted by a Full Bench of this Court in case of “Kalpana Rani Vs. The State of Bihar” reported in “2014 (2) P.L.J.R. 665”. Dealing, specifically, with the order of the



Division Bench of this Court in case of Kishori Prasad Vs. The State of Bihar & Others (**Supra**), the Full Bench held the said decision to be *per incurium* as in case of Kishori Prasad Vs. The State of Bihar & Others (**Supra**), this Court had failed to notice that under the modified scheme, while enhancing eligibility qualification to Intermediate from Matriculation, relaxation was granted only to female candidates, on the condition that they had to acquire the requisite qualification within 3 years, which concession was not extended to the male candidates. Paragraphs – 27 and 28 of the Full Bench decision in case of Kalpana Rani Vs. The State of Bihar (**Supra**) are relevant for the present purpose and are being quoted hereinbelow:-

“27. We may note that the Scheme framed under Government Resolution dated 21st June, 2002 was modified under Government Resolution dated 11th August, 2004. Under the modified Scheme the eligibility was enhanced from Matric or equivalent qualification to that of Intermediate or equivalent qualification within minimum of 45% marks. 50% of the posts were reserved for female candidates. In case qualified female candidates in adequate number were not available, the concerned



authorities were permitted to select female untrained candidates or the female candidates with lesser qualification of matriculation or equivalent qualification on condition that they acquired the requisite qualification within three years. For that purpose the permission be obtained from the National Council for Teachers Education to relax the standard of eligibility. This concession was made for female candidates alone. A similar concession was not extended to the male candidates [paragraph-5(ga))].

28. While allowing the said benefit of improvement of qualification to one Kishori Prasad [2008(2) PLJR 458], the Bench failed to appreciate that the benefit of relaxation in qualification was not extended to the male candidates. The Bench also did not notice the factum of abolition of cadre of Panchayat Shiksha Mitra and the replacement of the Scheme by the Statutory Rules of 2006. The judgment in the matter of Kishori Prasad vs. The State of Bihar & Ors. [2008(2) PLJR 458] is, therefore, *per incurium* and is expressly overruled. The decision in the matter of Rima Kumari vs. The State of Bihar & Ors. [2012(1) PLJR 107] is affirmed.”



13. The Full Bench, in Paragraph – 29 of the said judgment held that “any view contrary to the above view expressed by it stood impliedly overruled”. Reference may also be made to another Division Bench decision of this Court dated 24.08.2011, in case of “**Navneet Kumar Vs. The State of Bihar**” (L.P.A. No. 934 of 2011), wherein, this Court held, dealing with almost similar situation that after 1st July, 2006, no person could be appointed as Panchayat Teacher except in accordance with Rules of 2006 and further held that appointment of the private respondent in that case made on 19.09.2008 was in contravention of Rule 20 (iii) of the Rules of 2006. The Division Bench also held that neither the said appointment could be sustained nor such appointment could displace such persons, who had been validly appointed and absorbed as Panchayat Teacher by function of Rule 20 (iii) of the Rules of 2006.

14. Following the Division Bench decision of this Court in case of Smt. Renu Kumari Pandey Vs. The State of Bihar & Others (**Supra**) and Full Bench decision in case of Kalpna Rani Vs. The State of Bihar (**Supra**), I am of the view that respondent nos. 6 and 7 could not be reinstated as they were admittedly not working as Shiksha Mitra, as on the



crucial date, i.e., 01.07.2006. Further, the very basis of their claim of reinstatement does not survive anymore as not only the Division Bench decision in case of Kishori Prasad Vs. The State of Bihar & Others (**Supra**) has been held to be *per incurium*, the Government Resolution dated 04.07.2008, issued pursuant to the said order has been held to be contrary to Rule 20 (iii) of Rules of 2006. Accordingly, I am of the view that respondent nos. 6 and 7 could not be inducted as Panchayat Teachers by applying any provision of Rules of 2006 or Resolution of the State Government dated 04.07.2008. The Appellate Authority could not have issued the order dated 23.06.2010 passed in Appeal Nos. 1616 of 2009 and 1617 of 2009. The said order of the District Teachers Appointment Authority, Nalanda (Bihar Sharif) is, accordingly, set aside.

15. The petitioners appear to be right in their submission that respondent nos. 6 and 7 have not valid qualification recognized for the purpose of appointment as Teachers, while, relying upon a Division Bench decision of this Court in case of “**Govind Pd. and Others Vs. The State of Bihar**” dated 24.06.2014, passed in L.P.A. No. 995 of 2013, wherein, this Court held that certificate awarded by Hindi Vidyapith, Deoghar is not a recognized qualification in State

of Bihar for appointment as Teacher.

16. It is declared, in the background of undisputed facts, as noted above, that petitioners acquired the status of Panchayat Teachers as on 01.07.2006, by operation of Rule 20 (iii) of Rules of 2006, whereas, respondent nos. 6 and 7 have no basis to claim such position. The respondents are, accordingly, directed to pay to the petitioners the entire salary which they are entitled to from 01.04.2009, which must be paid within a period of 3 months from the date of receipt/production of a copy of this judgment.

17. This writ application is, accordingly, allowed.

18. There shall be no order as to costs.

(Chakradhari Sharan Singh, J)

Praveen-II/-

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