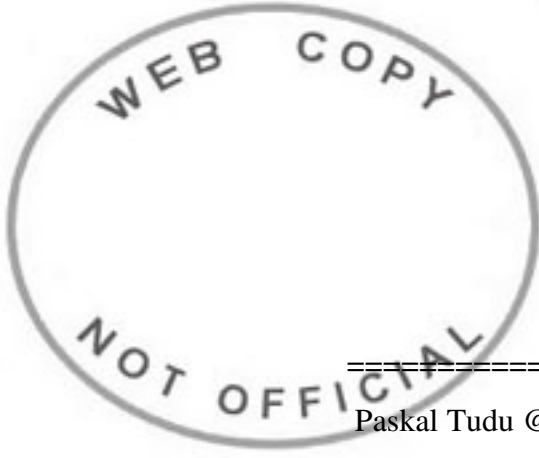


IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1702 of 2014
IN
Civil Writ Jurisdiction Case No. 10912 of 2010
With
Interlocutory Application No. 9607 of 2014
And
Interlocutory Application No. 9608 of 2014
In
Letters Patent Appeal No.1702 of 2014



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Paskal Tudu @ Pascal Tudu Son of Late Patwari Tudu, R/o Village Yogitla, P.O. -
Patharia, P.S. - Golgalia, District - Kishanganj.

.... Respondent/ Appellant

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna
2. The Principal Secretary, Human Resources Development Department, Govt. of Bihar, Patna.
3. The Director, Primary Education, Govt. of Bihar, Patna.
4. The District Magistrate, Kishanganj.
5. The District Superintendent of Education, Kishanganj.
6. The Block Development Officer, Block Thakurganj, Govt. of Bihar, Patna
7. The Block Education Extension Officer, Block Thakurganj, Govt. of Bihar, Patna
8. The Mukhiya, Gram Panchayat Raj Patharia, Block Thakurganj, District Kishanganj.
9. The Panchayat Secretary, Gram Panchayat Raj Patharia, Block Thakurganj, District- Kishanganj. Respondents /Respondents 1st set
10. Brahmlal Singh, S/O Shri Charan Singh, R/O Village Lebhiabitta, P.S. Thakurganj, District- Kishanganj.

.... Writ Petitioner/Respondent 2nd set Respondents

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Appearance :

For the Appellant/s : M/s. Nikhil Kumar Agrawal. Santosh Kumar
Mishra, Ms. Aditi Hansaria

For Respondent nos.1 to 7 :Mr. Rajiv Roy, GP 5

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: **HONOURABLE THE CHIEF JUSTICE**)

Date: 06-02-2015

Almost a primitive method of running the educational institutions was adopted by the State from which the intellectuals of international level have emerged. Unfortunately, the educational institutions at primary level were reduced to the status of dumping yards of persons who do not fit into any walk of life. The result is not difficult to imagine.

The State did not appoint any teachers in its schools, particularly in the past two decades. It adopted the method of running the schools by appointing the persons who are known as 'Shiksha Mitra' having the qualification of just Matriculation and posted as such, on a paltry sum of remuneration. One can easily imagine the quality of teaching that such people can impart. However, a stiff competition and a race ensued once the Government framed a scheme for regularizing the services of the Shiksha Mitras, as Panchayat Teachers, and brought them under the Government service.

The appellant herein was appointed as a Shiksha Mitra in a school at Gram Panchayat Patharia, in the district of Kishanganj on 4.4.2003. At that time he was a Matriculate. His initial appointment was for 11 months. It was extended for one more term of 11 months. On 11.8.2004, qualification for Shiksha Mitra was enhanced to Intermediate. Obviously because the appellant did not have that qualification, his contract was not extended for the third year and was removed through order dated 15.5.2005. In the resultant vacancy, the 10th respondent by name Brahmlal Singh was appointed on 27.5.2005.



A batch of writ petitions was filed before this Court in relation to the consequence of acquisition of qualification of Intermediate by Shiksha Mitras. A Division Bench of this Court held in **Renu Kumari Pandey vs. State of Bihar [2011 (4) PLJR 297]** that in case a Shiksha Mitra has acquired Intermediate qualification within 33 months from the date of his initial appointment, he would be eligible to be considered for absorption as Panchayat Teacher. Following this, executive instructions were also issued by the Government.

The appellant approached the District Superintendent of Education, Kishanganj, the 5th respondent, with a representation, in this behalf. He passed an order dated 24.5.2010 observing that the appellant is entitled to be treated as a qualified Shiksha Mitra for being absorbed as a Teacher. On that basis, he directed that the appointment of 10th respondent as teacher shall stand set aside and that in his place the appellant shall be appointed.

The 10th respondent filed CWJC No. 10912 of 2010 before this Court, challenging the order dated 24.5.2010. He raised several grounds, including the one of violation of the principles of natural justice. The learned Single Judge allowed the writ petition through order dated 26.8.2014. It was also observed that the appellant herein is not entitled to the benefit of the order passed by the Division Bench of this Court since he was not in service as on 1.7.2006. Accordingly, the writ petition was allowed and the order dated 24.5.2010 was set aside. Hence, this appeal.

Heard Sri Nikhil Kumar Agrawal, learned counsel for the appellant, and Sri Rajiv Roy, learned counsel for the State.

As observed in the preceding paragraphs, heavy competition ensued among various persons, once the Government

launched a scheme for absorption of Shiksha Mitras as Panchayat Teachers. The scheme came into force with effect from 1.7.2006.

It may be true that the appellant was appointed as Shiksha Mitra on 4.4.2003. The fact however remains that he was removed on 15.5.2005 and in his place the 10th respondent was appointed as on 27.5.2005. Since the 10th respondent was working as on 1.7.2006 he was appointed as Panchayat Teacher.

In case the petitioner is of the view that either his removal on 15.5.2005 or the appointment of the 10th respondent was not correct, he should have pursued the remedies before a court of law or any authority conferred with the power, in this behalf. He has simply approached the 5th respondent who is not conferred with any power in matters of this nature. Further, even before the 5th respondent, the appellant did not challenge the appointment of the 10th respondent. However, obviously because there could not have been any possibility to accommodate the appellant herein the 5th respondent has chosen to set aside the appointment of the 10th respondent. He did not even choose to issue notice to the 10th respondent. The 5th respondent is not conferred with the power to adjudicate the disputes of this nature. The question as to whether the appellant is entitled to any benefit in terms of the judgment of this Court, can be adjudicated by this Court, only after the remedy of appeal is exhausted before the proper Authority. The learned Single Judge has taken a correct view in the matter.

Hence the appeal is dismissed. We however leave it open to the petitioner to work out his remedy, if he otherwise entitled to, in law.

We make it clear that the order of the learned Single Judge is confined only to the effect of setting aside the order of

removal of the 10th respondent, and not eligibility or otherwise of the appellant.

All the Interlocutory Applications stand disposed of.
There shall be no order as to costs.

(L. Narasimha Reddy,CJ)

(Vikash Jain, J)

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