

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1363 of 2012

IN

Civil Writ Jurisdiction Case No. 10033 of 2010

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Santosh Kumar, Son of Sri Nand Kumar Pandit, resident of Village - Beldari Tola,
P.O. - Khanjahapur, P.S. - Muffasil, Gaya, District – Gaya. Appellant.

Versus

1. The State of Bihar through Commissioner cum Secretary, Human Resources Development Department, Government of Bihar, Patna.
 2. District Magistrate, Gaya, District Gaya
 3. District Superintendent of Education, Gaya, District – Gaya.
 4. Block Development Officer, Manpur Block, Gaya.
 5. Headmaster, Government Primary School, Shekha Bigha, Manpur, Gaya.
 6. Mukhiya, Usri Panchayat, Manpur Block, Gaya District. Respondents.
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Appearance :

For the Appellant : Mr. Shashi Bhushan Kumar, Adv.

Mr. Syed Asgher Najmi, Adv.

For the Respondents : Mr. Satyadeo Kumar, SC-5.

Mr. Mohan Kumar Singh, AC to SC-5.

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

And

HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 31-03-2015

The present appeal has been preferred by the writ petitioner/appellant being aggrieved by the judgment and order dated 10.04.2012 of the learned Single Judge passed in C.W.J.C. No.10033 of 2010. The petitioner/appellant was working as Panchayat Shiksha Mitra in respect of Usri Gram Panchayat, Manpur Block, District Gaya till 04.10.2006. He was liable to become Panchayat Teacher with effect from 01.07.2006 but was terminated on the solitary ground that while appointing him, there was mistake in calculating the roster point. The learned Single

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Judge has found the termination to be correct on the aforesaid ground and refused to interfere. Being aggrieved, this Intra-Court appeal.

2. We have heard learned counsel for the appellant and the learned counsel for the State. The sole issue to be decided is with regard to applicability of reservation and consequently the roster. It is not disputed that the roster points in respect of 100 points has been prescribed by the State Government under circular dated 30th of September, 2002. In respect of direct recruitment, the first 10 points are to be filled up in the following manner (1) General (2) E.B.C. (3) General (4) S.C. (5) General (6) B.C. (7) General (8) E.B.C. (9) General (10). S.C. The vacancies were advertised in the year 2005 for the Panchayat concerned and there were 9 vacancies. If we see the roster aforesaid, for 9 first vacancies, we would find that in all there are 5 general category, 2 E.B.C., 1 S.C., 1 B.C. What has been said by the authorities and accepted by the learned Single Judge, both without reference to this schedule, is that there would be only one post for E.B.C. which is patently wrong. From the chart, which was given for recruitment, we find that there is a similar fallacy. The chart shows that as per the circular out of 9 seats available, 5 are reserved for female and 4 for male candidates. In respect of

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female candidates, 3 are unreserved, 1 E.B.C. and 1 for S.C. In respect of 4 male candidates 2 are for unreserved, 1 for B.C. and the remaining 1 for E.B.C. That has been shifted to S.C. If this is correct then for the first 9 points, there would be 2 S.C. candidates which is not the roster. If this is correct then there would be only one position for E.B.C. which is again not correct as per the roster. Thus, the correct position would have been that for male candidates, 2 posts would be unreserved, 1 would be B.C. and 1 would be for E.B.C. and none for S.C. The moment this position is corrected then to say that the petitioner/appellant was wrongly selected and appointed would be wrong. He was meritorious E.B.C. candidate being third in the merit list. He could thus not be removed. Therefore, the order setting aside his appointment, which was passed much after 01.07.2006 when the new rules came into being, was bad. Accordingly, it has to be held that on the date when the new rules of Panchayat Teachers came on 01.07.2006, he was duly working as Shiksha Mitra and, consequently, would be absorbed as Panchayat Teacher, his termination being invalid. This is, however, subject to that as the original recruitment was for 9 posts and consequent to cancellation of petitioner/appellant's appointment there being one vacancy that has not been filled up.

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3. Learned counsel for the appellant submits that though there were 9 posts to be filled up, only 8 persons have been selected including the petitioner. Thus, there is vacancy.

4. In that view of the matter, we have no option but to allow this appeal and set aside the order of termination and/or cancellation of petitioner/appellant's appointment as Shiksha Mitra as also the order dated 10.04.2012 of the learned Single Judge passed in C.W.J.C. No.10033 of 2010. He would be deemed to be Panchayat Teacher by virtue of the new rules. The Panchayat Secretary would act accordingly and reinstate him but, as the time from which he had not worked, he would not be entitled to remuneration. It would be the responsibility of the concerned Panchayat Secretary to see that the writ petitioner /appellant is being reinstated forthwith.

5. Accordingly, this appeal is allowed.

(Navaniti Prasad Singh, J.)

(Jitendra Mohan Sharma, J.)

Trivedi/NAFR

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