

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1471 of 2012

IN

Civil Writ Jurisdiction Case No. 19506 of 2010

=====

Kamlawati Devi W/O Sri Nathuni Prasad Gupta R/O Village-Belawa Lala,P.O.-
Sahdegree, Police Station- Vijayeeppur, District- Gopalganj, At Present Posted And
Working As Panchayat Teacher In Govt. Primary School, Purnea, Anchal
Vijayeeppur, District- Gopalganj

.... Petitioner- Appellant/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Human Resources Development Department,
Government of Bihar, Patna
3. The Director, Primary Education, Bihar, Patna
4. The Divisional Commissioner, Saran Division at Chapra
5. The District Magistrate, Gopalganj
6. The Deputy Development Commissioner-Cum-Chairman, District Education
Establishment Committee, Gopalganj
7. The District Superintendent of Education, Gopalganj
8. The Block Development Officer, Vijayeeppur, District- Gopalganj
9. The Block Education Officer, Vijayeeppur, District-Gopalganj
10. Shri Chhakauri Yadav S/O Late Bandhu Yadav R/O Village-Pagra Bazar, P.O.-
Sahdegree, Police Station- Vijayeeppur, District- Gopalganj, The Mukhiya Of Gram
Panchayat, Raj Belawa, Block Vijayeeppur, District- Gopalganj
11. Shri Lalan Yadav S/O Late Ramjee Yadav R/O Village-Trilokawa,P.O.- Biliehi,
Police Station- Kateya, District- Gopalganj, The Panchayat Secretary Of Gram
Panchayat Raj Belawa, Block- Vijayeeppur, District- Gopalganj
12. The Headmaster, Govt. Primary School, Purnea, Anchal-Vijayeeppur, District-
Gopalganj

.... Respondents- Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Y. V. Giri, Sr. Advocate
Mr Sanjeev Kumar

For the Respondent/s : Mr. Anjani Kumar, Sr. Advocate, AAG 6
Mrs. Neetu Jha, AC to AAG 6

=====

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 16-07-2015

The appeal is against the order dated 8.8.2012 passed in

CWJC No.19506 of 2010. The learned Single Judge by virtue of the said order has refused to grant any relief to the appellant under Article 226 of the Constitution of India for the facts and reasons indicated therein.

2. The brief facts are that the appellant moved the learned Single Judge seeking quashing of a letter dated 25.3.2009, which was Annexure- 11 to the writ application. The said letter was a show cause to the petitioner as to why her engagement from the post be not cancelled and even an order of recovery of emoluments be not passed. Yet another order subsequently contained in Annexure- 21 of the writ application was issued by the Mukhiya addressed to the Headmaster of Government Primary School, Puraina that petitioner's appointment had been cancelled. Another order whose quashing was sought was Annexure- 20, which was issued by the District Superintendent of Education, Gopalganj addressed to the Mukhiya and the Panchayat Secretary that the petitioner's marks were forged and that her appointment was made without preparation of any roster or merit list.

3. From a reading of the order of the learned Single Judge especially the factual aspect it is apparent that two kinds of marks-sheet had been used for begetting employment as a Panchayat Shiksha Mitra. There was a wide variance in the date of birth as well as the marks. No proper procedure for selection was also made by the

Panchayat. All these things were pointed out by the respondents in their counter affidavit when the petitioner sought the reliefs indicated earlier.

4. Minus the controversy with regard to the forged marks-sheet, the appellant stuck to the point that her actual date of birth was 1.1.1966. That position is not resiled even by the learned senior counsel in the present appeal. The legal question which is urged at the bar now is that the petitioner came to be appointed as a Panchayat Teacher in the year 2006. The 2006 Rules, which were notified and are kind of statutory in nature, is known as Bihar Panchayat Primary Teacher (Appointment and Service Condition) Rules 2006, lays down the age to be 37 years with some concession for woman candidates for three years. The maximum age, which was needed for appointment as a Panchayat Teacher, had not been crossed by the petitioner, if Rule 8 (iii) (kha) is taken into consideration. The learned senior counsel contends that the learned Single Judge has committed an error by going into the issue that the petitioner was not eligible by virtue of her age at the time of her appointment as a Panchayat Teacher.

5. There is a basic fallacy in the submission of the learned senior counsel. The appellant's initial engagement was that of a Panchayat Shiksha Mitra. The earlier guidelines lay down the maximum age for such engagement as 30 years. It was by virtue of

her engagement as a Panchayat Shiksha Mitra that by a deeming fiction with effect from 1.7.2006, the appellant became a Panchayat Teacher.

6. It cannot be the case of the appellant that she was appointed as a Panchayat Teacher in terms of 2006 Rules as a de novo exercise. She was absorbed as a Panchayat Teacher by deeming fiction of that rule and since the allegation is that her initial engagement as a Panchayat Shiksha Mitra was obtained fraudulently on the basis of varying marks-sheet without following any procedure, without any roster clearance etc. etc. Her very entry at the threshold, as a Shiksha Mitra made her eligible to be absorbed as a Panchayat Teacher and not her appointment as a Panchayat Teacher.

7. The learned Single Judge has very rightly considered all these aspects and submissions and came to a considered opinion that her eligibility in terms of age besides other infirmities talked about has to relate to her initial engagement as a Panchayat Shiksha Mitra and not her selection as a Panchayat Teacher because it was not a case of selection of the appellant as a Panchayat Teacher but absorption on the post of a Panchayat Teacher.

8. Learned Additional Advocate General representing the State has rightly pointed out that the benefit which the appellant is looking for in terms of the 2006 Rules will relate to such cases where

appointment has been made by virtue of an exercise carried out in terms of the 2006 Rules and prospectively. That is not the case of the appellant. It is a case of absorption by a deeming fiction. If this is so then the learned Single Judge has committed no error by holding that the petitioner had no right to be appointed on forged and created kind of documents as well as the fact that she was 39 years of age when she was initially engaged as a Panchayat Shiksha Mitra, which was not permissible.

9. The subsequent guidelines or Rules with regard to the age cannot be taken advantage of, to stay on on a responsibility, which was obtained in the very first place by fraud and manipulation.

10. The impugned order of the learned Single Judge, therefore, does not suffer from any vice. The appeal is rejected.

(Ajay Kumar Tripathi, J)

(Anjana Mishra, J)

sk

U			
---	--	--	--