

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.859 of 2014
Arising out of
Civil Writ Jurisdiction Case No. 2545 of 2014**

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Kumari Rita Singh, W/o Sri Brajesh Kumar Singh, Resident of Village Bharkhuria,
Gram Panchayat Berkup Block Dehari, P.O. & P.S. Darihat, District Rohtas
(Sasaram).

.... Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Human Resources Development, Govt. of Bihar, Patna.
2. The District Magistrate, Rohtas at Sasaram.
3. The District Education Officer, Rohtas at Sasaram.
4. The District Programme Officer (Establishment), Rohtas at Sasaram.
5. The Block Education Extension Officer, Dehari District Rohtas at Sasaram.
6. The Mukhia, Gram Panchayat Berkup, Block Dehari, District Rohtas at Sasaram.
7. The Panchayat Secretary, Berkup Gram Panchayat Block Dehari, District Rohtas (Sasaram).

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Raghunandan Kumar Singh, Advocate.
For the Respondent/s : Mr. Rajesh Kumar Singh, Advocate.

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 04-10-2016

Heard learned counsel for the parties.

2. In the present Letters Patent Appeal, the challenge is to the order dated 26th February, 2014 passed by the learned Single Bench whereby the writ application filed by the appellant for claiming salary for the period from the date of termination till date of reinstatement in service, in view of the order passed by this Court in CWJC No. 11431 of 2010 on 17th March 2011, remained unsuccessful.



3. The appellant was appointed as a Shiksha Mitra, but her services were terminated in June, 2005 for the reason that the appellant has not acquired the qualification of Intermediate. Although at the time of appointment of the appellant as a Shiksha Mitra, the eligibility criteria was Matriculation, but by virtue of subsequent amendment, continuation of Shiksha Mira was made conditional to acquiring the qualification of Intermediate. Since, the appellant has not acquired the said qualification, her services were terminated in June, 2005.

4. The appellant challenged the said order before the District Teacher Employment Appellate Authority (hereinafter referred to as the Appellate Authority'), which set aside the order of termination, but this Court, by order dated 17.03.2011 in CWJC No. 11431 of 2010, set aside the order of the Appellate Authority and the appellant was ordered to continue on the post. The operative part of the order reads as follows:

“Since that is the only ground on which petitioner was removed, which has been upheld by the appellate authority, the decision of the appellate authority is erroneous in law and the same is quashed.

The writ application is allowed. The petitioner would be entitled to continue on the post.”

5. Since, the appellant was not paid wages from the date of her termination till the date of her reinstatement, hence, the appellant has filed the present writ application which has been dismissed, *inter*



alia, on the ground that the appellant has claimed consequential benefits in her earlier writ application being CWJC No. 11431 of 2010 and that this Court having not granted the consequential benefits, the appellant cannot claim such benefit in subsequent writ application. The other consideration which weighed with the learned Single Bench was that the appellant was not working as Panchayat Shiksha Mitra on 1st July, 2006, therefore, she is not entitled to the benefit of the absorption in terms of the Bihar Panchayat Elementary Teacher (Appointment and Service Conditions) Rules, 2006, as after May, 2005 the appellant was not entitled to any extension of her services.

6. Learned counsel for the appellant, before this Court, relies upon an order of the Hon'ble Supreme Court reported as Deepali Gundu Surwase v Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) & Ors., (2013)10 SCC 324, to contend that once the order of termination is set aside, the appellant is entitled to all consequential benefits and that the appellant may be put in the same position in which she would have been but for the illegal action taken by the employer.

7. We find that such order is not helpful to the appellant for two reasons. Firstly, the claim of the appellant for the same benefits was an issue raised in the earlier writ application. Once such benefit was not granted, the appellant cannot claim same benefit by

filing a subsequent writ application. Secondly, in May, 2005, her services could not be extended because the appellant was not qualified to act as Shiksha Mitra because as the qualification of Intermediate was the necessary qualification for continuation of the services. It was only in the year 2008 by virtue of a Circular of the State Government dated 4.07.2008 as interpreted by this Court, it was held that if a Shiksha Mitra acquired qualification of Intermediate within 33 months of appointment, the candidate will be allowed to continue as Shiksha Mitra. Therefore, non-extension of services of the appellant in May, 2005 was not illegal. It was on account of subsequent decision of the State Government, the appellant got a right for re-appointment. Therefore, the appellant is not entitled to the salary for the period she was out of service.

8. We do not find any merit in the present Letters Patent Appeal, It is accordingly dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

Sujit/-

AFR/NAFR	NAFR
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