

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6255 of 2015

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Pramod Kumar S/o Suresh Prasad Resident of village- Fulwariya, P.O. Korawan, P.S. (Chiksaura) Hilsa, District- Nalanda. At Present Posted as Panchayat- Korawan, P.S. & Block - Hilsa, District- Nalanda.

.... Petitioner

Versus

1. The State of Bihar through the Education Secretary Human Resources Development Department, New Secretariate Patna.
2. The District Magistrate, Nalanda.
3. The Deputy Development Commissioner, Nalanda.
4. The District Education Officer, Nalanda.
5. The District Superintendent of Education, Nalanda.
6. The Block Development Officer, Hilsa Nalanda
7. The Block Education Extension Officer, Hilsa Nalanda.
8. The Mukhiya Gram Panchayat Korawan, Block Hilsa, P.S.- Hilsa, District- Nalanda.
9. Sanjay Kumar son of Ramjee Prasad resident of village- Damodarpur, P.S.- Chiksohra (Hilsa), Distt. Nalanda.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Raj Bansh Dubey, Advocate

For the Respondent/s : Mr. Mani Kant Mishra, GP 25

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH
ORAL ORDER

3 06-01-2016 Heard learned counsel for the petitioner, State and respondent no.9.

2. Petitioner seeks quashing of order dated 26.2.2015, passed by the Presiding officer, District Appellate Authority, Nalanda in Appeal no. 6 of 2010, declaring his appointment as Shiksha Mitra illegal and the appointment of respondent no.9 as valid.

3. The brief facts of the case are as follows:-

4. In the year 2002 Government framed a scheme for



selection/employment of Shiksha Mitra under Gram Panchayat in the State. They were initially to be appointed on the contractual period of 11 months which was to be extended for a further period of 11 months in case of satisfactory service, subject to maximum of three extensions and 33 months duration. The minimum qualification for the Shiksha Mitra was Matriculation. The resolution of the year 2002 was modified by resolution, dated 11.8.2004 and qualification was raised to Intermediate. However, there was relaxation in qualification of women candidates. Clause III of the resolution stated that in the event in any Panchayat women candidates having intermediate qualification are not available, then such candidates having passed Matriculation examination could be appointed provided they acquire the intermediate or equivalent qualification within three years.

5. In terms of the aforesaid policy decision, the petitioner was selected as Shiksha Mitra on 5.2.2003, as he fulfilled the minimum qualification of being Matriculate as prescribed under 2002 resolution. There is, however, some dispute as to when the petitioner was employed as Shiksha Mitra. The petitioner avers in paragraph 4 of the writ petition that on his selection as Shikha Mitra, he did training from



16.9.2003 to 22.10.2003 in Madhya Vidyalaya. On completion of training, Mukhiya of Gram Panchayat Korawan, issued letter to Headmaster, Primary School, Murliganj on 24.10.2003 to take his joining. As such, he would be deemed to be employed on 24.10.2003 in view of 2004 resolution. As the petitioner had only passed 'Pravesika', the Employment Committee, in view of letter of Secretary, Primary & Adult Education, Patna as well as letter, dated 8.7.2005 of the District Superintendent of Education, Nalanda decided not to extend the period of contract of three teaches including the petitioner Pramod Kumar. The Employment Committee further selected and employed respondent no.9 as Shiksha Mitra on 25.10.2005 in place of petitioner. Respondent no.9 claims to have regularly worked without any complain thereafter. In the year 2006, the Bihar Panchayat Elementary Teachers (Employment and Service Condition) Rules, 2006 was framed. Rule 20 provides for absorption of Panchayat Shiksha Mitra as Panchayat Shikshak. The Government vide its resolution, dated 1.7.2006 and he decided to absorb all Shiksha Mitra working as Panchayat Shikshak. Respondent no.9 too was absorbed as Panchayat Shikshak as he was working as Shiksha Mitra on 1.7.2006 and he continued to work thereafter.



6. In the meantime, in light of order, dated 12.2.2008, passed by a Division bench in LPA No. 940 of 2007, the respondents decided to re-employ Shiksha Mitra, who were earlier discharged from the service on the ground that they did not possess intermediate qualification. The petitioner was accordingly reengaged as Shiksha Mitra. The case of the petitioner is that he had acquired Intermediate qualification within 33 months of his appointment on 31.5.2006.

7. On the other hand, contention of respondent no.9 is that the petitioner was employed on 5.7.2003 and as such he acquired Intermediate qualification after 39 months and 26 days, much beyond the relaxation period provided by the Government in terms of High court direction. The Tribunal vide order dated 25.2.2015 accepted the contention of respondent no.9 that the petitioner acquired qualification after 39 months and 26 days and as such declared the employment of petitioner as invalid and upheld the employment of respondent no.9. Direction was issued for payment of honorarium to Rs.9 with effect from February, 2011.

8. The petitioner has assailed order dated 15.2.2015 as being contrary to materials on record. Learned counsel submits that the Tribunal erred in coming to the conclusion that he



acquired intermediate qualification after 39 months of his employment as Shiksha Mitra. The petitioner in support of his submission has drawn attention to letter dated 21.2.2008 of the Block Education Extension officer, Hilsa, wherein, he observed that the petitioner has acquired Intermediate qualification within 33 months, as such he was subsequently asked to give his joining in Murliganj Primary School.

9. The dispute before this Court is whether the petitioner had acquired Intermediate qualification within 33 months of his employment in terms of Government, resolution dated 4.7.2008 passed consequent to the direction of the Division bench of this Court rendered in LPA no. 940 of 2007 dated 12.2.2008.

10. There is no counter affidavit of the State on record which could have provided some materials to ascertain the actual date of employment of the petitioner. As the issue is one of facts, the case is remitted to the Tribunal for fresh consideration of the matter. The impugned order of Tribunal would be subject to fresh adjudication.

11. It is expected that the Tribunal would decide the matter within four months from the date of receipt of a copy of this order as all the factual aspects are not on record of the case.

12. The Tribunal would give notice to all the parties concerned to file additional affidavit and would consider the matter afresh preferably within four months from the date of receipt of a copy of this order.

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(Samarendra Pratap Singh, J)

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