

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.782 of 2016
IN
Civil Writ Jurisdiction Case No. 6305 of 2011**

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Umesh Kumar son of Shri Shatrughan Prasad Yadav, Resident of village- Maura Bharti, P.S.- Shankarpur, District- Madhepura

.... Appellant

Versus

1. The State of Bihar
2. The Member, District Teachers Appointment Appellate Authority, Madhepura
3. The District Magistrate, Madhepura
4. The Sub-Divisional Officer, Madhepura
5. The District Superintendent of Education, Madhepura
6. The Mukhiya, Maura Jharkaha Gram Panchayat, District-Madhepura
7. The Panchayat Sachiv, Maura Jharkaha Gram Panchayat, District-Madhepura
8. Manoj Kumar, son of Ram Nandan Prasad Yadav, resident of village- Chauraha, P.S.- Shankarpur, Via- Tribeniganj, District- Madhepura

.... Respondents

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Appearance:

For the Appellant	:	Mr. Durgesh Kumar, Advocate
For the State	:	Mr. S.D.Yadav, AAG IX
For the Resp. No. 8	:	Mr. Uday Chand Prasad, Advocate

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date: 08-12-2016

Heard learned counsel for the parties.

2. The challenge in the present Letters Patent Appeal is to an order passed by the learned Single Bench on 3rd of March, 2016 in CWJC No. 6305 of 2011 whereby the writ petition filed by the Respondent No. 8 was allowed and the appointment of the appellant as Shiksha Mitra was set aside.

3. The facts leading to the present appeal are as under:-



That the present appellant was appointed as Shiksha Mitra for 11 months on 19th of May, 2005, but he continued to work as Shiksha Mitra when the Bihar Panchayat Elementary Teachers (Employment and Service Conditions) Rules, 2006 (for short “2006 Rules”) came into force. By virtue of such Rules, the Shiksha Mitra stand absorbed as Panchayat Teacher with effect from 1st of July, 2006.

On 28th of July, 2006, the writ applicant filed a representation to the District Magistrate against the appointment of the present appellant as Shiksha Mitra. This Court in CWJC No. 11786 of 2006 and many other analogous cases passed an order on 25th of May, 2007 directing the District Magistrate to decide and dispose of the representation in cases in which there was allegation of wrong selection and shall look into that aspect and pass appropriate orders/directions to the concerned Gram Panchayat. In pursuance of such direction the District Magistrate passed an order on 26th of March, 2008 finding illegalities in the appointment process and set aside the appointment of the present appellant.

The appellant challenged the said order before this Court in CWJC No. 9946 of 2008. The writ petition was decided on 9th of September, 2010 remitting the matter to the District Teachers’ Employment Appellate Authority to decide the appeal filed by the



appellant. The District Teachers' Employment Appellate Authority vide order at Annexure-14 on 16th of March, 2011 allowed the appeal and restored the appointment of the appellant as Shiksha Mitra and consequently the absorption as Panchayat Teacher. It is the said order the appellant has challenged before this Court.

4. Learned counsel for the appellant has vehemently argued that the appellant was absorbed as Panchayat Teacher, thus in view of the Full Bench judgment of this Court in Kalpana Rani vs. The State of Bihar through the Principal Secretary, Human Resources Development Department, Government of Bihar and others, 2014 (2) PLJR 665, the appointment of the appellant as Shiksha Mitra could not be disputed as the appellant was not acting as a Shiksha Mitra, but as a Panchayat Teacher. It is also contended that the District Magistrate has no jurisdiction to set aside the appointment of the appellant as he has no authority under the 2006 Rules to examine the legality and validity of the appointment made either as Shiksha Mitra or as Panchayat Teacher.

5. We have heard learned counsel for the parties and find no merit in the present appeal. The question which is required to be examined is as to the nature of the order passed by the District Magistrate on 26th of March, 2008. It is the said order which was restored by the learned Single Bench. We find that such an order is



not an order in terms of the 2006 Rules to examine the legality and validity of the appointment either as Shiksha Mitra or Panchayat Teacher. But it is an order in terms of the direction of this Court directing the District Magistrate to conduct a fact finding enquiry and in such a fact finding enquiry, the District Magistrate has found irregularities in the process of appointment of Shiksha Mitra. Since this Court has directed the District Magistrate to issue appropriate orders or directions to the concerned Gram Panchayat, therefore, the District Magistrate was acting in terms of the direction of this Court when it passed an order on 26th of March, 2008. Such order thus cannot be said to be an order without jurisdiction as such jurisdiction exercised by the District Magistrate was not under the 2006 Rules, but in terms of the directions of this Court to conduct a fact finding enquiry and to issue such orders or directions.

6. Still further, we do not find any merit in the argument that in view of Kalpana Rani's case (supra), the absorption of the appellant as Panchayat Teacher cannot be examined. The entire issue is appointment of the appellant as Shiksha Mitra. Once the appointment as Shiksha Mitra has been held to be illegal, the absorption as Panchayat Teacher will not give a cover of legality of such appointment and illegality committed at the initial stage will not be held legal on account of subsequent events. The judgment in



Kalpana Rani’s case (supra) deals with the issue wherein the writ applicant has sought appointment as Shiksha Mitra, though 2006 Rules came into force. In the said circumstances, the Full Bench of this Court has held that the post of Shiksha Mitra is non-existent therefore; there cannot be any direction to appoint any candidate against the non-existent post.

7. But the issue in the present petition was as to whether the appointment of the appellant as Shiksha Mitra is legal and valid. Once on the basis of the fact finding report, the appointment of the appellant as Shiksha Mitra was not found valid, his subsequent appointment as Panchayat Teacher will not give a cover of legality to such appointment.

8. Considering the above, we do not find any illegality in the order passed by the learned Single Bench which may warrant interference in the present Letters Patent Appeal. The same is accordingly dismissed.

(Hemant Gupta, ACJ)

Chandran/Ibrar

(Vikash Jain, J)

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