

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No 1409 of 2014

IN

Civil Writ Jurisdiction Case No 19744 of 2012

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Ganesh Kumar Gautam S/O Sri Laxmeshwar Yadav R/O Village - Piprahi, Post Office - Dimno, Under Gram Panchayat - Mahisaut, Police Station - Kuseswar Asthan, Block - Kuseswar Asthan East, District - Darbhanga.

.. Petitioner/Appellant.

Versus

1. The State of Bihar
 2. The Principal Secretary, Department of Human Resources, Government of Bihar, Patna.
 3. The Director, Primary Education Department of Human Resources, Government of Bihar, Patna.
 4. The District Magistrate, Darbhanga.
 5. The District Education Officer, Darbhanga.
 6. The District Programme Officer, Establishment, Darbhanga.
 7. The Sub - Divisional Education Officer, Benipur, District – Darbhanga.
 8. The Block Development Officer Kusheshwar Asthan East, District – Darbhanga.
 9. The Block Education Officer, Kusheshwar Asthan East District – Darbhanga.
 10. The District Teachers Appellate Authority through its Secretary, Darbhanga.
 11. The Mukhiya, Mahisaut Gram Panchayat , Police Station - Kusheshwar Asthan, District – Darbhanga.
 12. The Panchayat Secretary Mahisaut Gram Panchayat, Police Station - Kusheshwar Asthan, District – Darbhanga.
 13. Arbind Kumar Manjhi S/O Ram Sakal Manjhi R/O Village - Rahipur, Post Office - Dinmo, Gram Panchayat - Mahisaut, Police Station - Kusheshwar Asthan East, District – Darbhanga.
- Respondents
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For the Appellant : M/s Jitendra Kr Roy, Rajesh Kr, Sumit Kr,
Nikki Singh, Advocates

For the State : Mr Anjani Parashar, AC to GP 4

For Respondent No 12 : Mr Ajay Kumar, Advocate

For Respondent No 11 : Mr Ranjit Kumar Yadav, Advocate

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CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH

And

HON'BLE JUSTICE SMT NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE NAVANITI PRASAD SINGH)

Date: 08-01-2016

I.A. No. 7894 of 2014 has been filed for condoning the

delay in filing the appeal.

2 For the reasons mentioned therein, delay in filing the appeal is condoned. I.A. No. 7894 of 2014 stands disposed of.

3 With consent of parties, this appeal has been heard for its final disposal at this stage itself

4 The unsuccessful writ petitioner is the appellant. His grievance was short. He had been selected for being appointed as Shiksha Mitra. When he went to join, the Headmaster did not permit him to join. He moved different authorities being unable to join. In the meantime, the State Government enacted the Bihar Panchayat Primary Teacher's (Selection and Service Condition) Rules, 2006. It was, inter alia, provided by Rule 20 (iii) that all Shiksha Mitras appointed and working on the date when this Rule came into force, i.e. 01.07.2006, would be deemed to be selected and appointed as Panchayat Teachers under these Rules. This writ petition was then filed by the writ petitioner claiming that writ be issued for his appointment as a Shiksha Mitra. The learned Single Judge rejected the same on the ground and in view of the fact that the Division Bench and Full Bench of this Court had already held that upon the aforesaid Rules being enacted, the post of Shiksha Mitra stood abolished. The post having been abolished, the writ petitioner cannot be directed to be appointed as a Shiksha Mitra. He could not be

considered for Panchayat Teacher because by virtue of Rule 20 (iii) as aforesaid, he was not working though may be appointed as Shiksha Mitra and, hence, he cannot be considered for Panchayat Teacher as well.

5 We have heard learned counsel for the appellant at length and we are not inclined to interfere with, in the matter. Learned counsel tried to persuade us that post of Shiksha Mitra has neither been abolished nor discontinued and it is still available. We regret our inability to accept the contention.

6 In the year 2002, Government decided to provide primary education as a part of the responsibility of Gram Panchayat and, accordingly, issued executive instructions creating the post of Shiksha Mitra, the number whereof depended upon certain parameters to be evaluated by the Collectors of the District in consultation with the Gram Panchayat. By executive instructions, procedure for selection and appointment was laid down. These posts were permanent but the appointment to them was not permanent. The appointments were purely contractual for a period of 11 months only renewable from time to time on fixed remuneration basis. From time to time, selection and appointments were made. In 2005, the writ petitioner applied. He was selected. He claims to have been appointed but when he went to join, the Headmaster refused to

accept his joining on certain technical issues. Before he could get any relief in the matter from any authority, the 2006 Rules came. The 2006 Rules clearly provide that now the primary teaching at the Panchayat level would be by Panchayat Teachers as distinct from Shiksha Mitras. The posts of Panchayat Teachers were permanent posts and on selection and appointment, they would be permanent employees of the Gram Panchayat. Their remuneration and service conditions were entirely different. Rule 20 (iii) provided that all Shiksha Mitras who were appointed and working on the date when the Rules came into effect that is w.e.f, i.e., 01.07.2006, all of them would be deemed to be appointed as Panchayat Teachers under the 2006 Rules. What is the cumulative effect of this entire exercise, if not to abolish and discontinue the post of Shiksha Mitra? Shiksha Mitra lost its identity. It lost its status. It lost its utility. It lost its position. It was mere contractual. It lapsed. Then what was left of it? In our view, nothing. Technically may be, the last rites were not performed but practically it was dead and gone. Nothing survived after 01.07.2006. Then to say and on the strength of the judgment of the Apex court in the case of *Dr S C V Reddy & Others Vs. State of Karnataka & Others* since reported in (1997) 4 Supreme Court Cases 337, that it is mere change of nomenclature, is not correct nor acceptable to us. Everything had changed, as noted above. There

was complete metamorphosis and nothing remained.

7 Thus, in our view, it is wrong to say or submit that the post of Shiksha Mitra was not abolished and continues till date where the petitioner could have been placed. In our view, it ceased to exist after 01.07.2006 and all those who were selected, appointed and found working on that date were absorbed as Panchayat Teachers. Unfortunately, the writ petitioner missed the bus.

8 We, thus, find no merit in this appeal. It is, accordingly, dismissed.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

M.E.H./-AFR

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