

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1920 of 2013

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Chuneshwar Das S/o Late Baishakhi Das R/o Village- Makaipur, Post Office
Madhura, Police Station- Korha, District- Katihar, Working As Panchayat Teacher
Primary School, Pekaha, Presently Upgraded Middle School Pekaha, Under Block
Korha, District- Katihar

.... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary Human Resources Development Department,
Government of Bihar, Patna
3. The Director, Primary Education, Government of Bihar, Patna
4. The Member, District Teachers Appointment Appellate Tribunal, Katihar
5. The District Education Officer, Katihar
6. The District Superintendent of Education-Cum-District Programme
Coordinator, Katihar
7. The Block Education Officer, Block- Korha, District- Katihar
8. The Mukhiya, Gram Panchayat Raj Madhura, Under Block & P.S.- Korha,
District- Katihar
9. The Secretary, Gram Panchayat Raj Madhura, Under Block & P.S.- Korha,
District- Katihar
10. Md. Javed Akhtar S/o Md. Fani R/o Village- Madhura, P.S.- Korha, District-
Katihar, Panchayat Teacher, Primary School Pekaha, Under Block- Korha,
District- Katihar, Presently Upgraded Middle School, Pekaha Under Block-
Korha, District- Katihar

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Dharendra Kumar Jha, Advocate
Mr. JIBENDRA MISHRA
For the State : Ms. Manisha Singh, AC to G.P.-7
For the Respondent No. 8 & 9: Mr. Mukesh Kumar Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 06-10-2016

Heard Mr. Dharendra Kumar Jha, learned counsel
appearing for the petitioner, Ms. Manisha Singh, Assisting Counsel to
G.P.-7 for the State and Mr. Mukesh Kumar Jha, learned counsel
appearing for the Panchayat Secretary and the Mukhiya. Though

served, the respondent no. 10 has not chosen to appear.

With the consent of the parties the writ petition has been taken up for consideration with a view to final disposal at the stage of admission itself.

The petitioner is aggrieved by the order dated 22.5.2009 issued under the joint signature of the Mukhiya and the Panchayat Secretary, Gram Panchayat, Madhura, Block-Korha in the District of Katihar whereby the petitioner has been removed from the post of Panchayat Teacher, a copy of which order is impugned at Annexure-13 to the writ petition. The petitioner questioned this order before the District Panchayat Teachers Employment Appellate Authority, Katihar and vide order placed at Annexure-14/1, the appeal has been rejected. The petitioner questioned the order of the appellate authority before this Court in CWJC No. 2355 of 2011 but which has been dismissed for non-prosecution and the petitioner being aggrieved not only by the order of termination impugned but also with his counsel in not pursuing his matter, has chosen to file the present writ petition.

Although technically the petitioner ought to have taken steps for restoration of his earlier writ petition but in the nature of the submissions advanced by Mr. Jha and considering that the order of dismissal of the writ petition on default is not an order on merits



which does not constitute a merger, I do permit the petitioner to question the impugned order in the present proceedings. There is no gainsaying that an order of dismissal for non-prosecution would normally invite a restoration application but in given circumstances it would not strictly debar the petitioner from filing a second writ petition, in absence of any such stipulation present in the order.

Mr. Jha, learned counsel for the petitioner has taken this Court through the sequence of events to first refer to Annexure-3 which is the clearance of the roster for the post in question and the two posts available are earmarked for a Scheduled Caste, male candidate and for a female candidate in the open category. The respondent no. 10 coming from the general category, was appointed against the post earmarked for a Scheduled Caste candidate since according to the Mukhiya there was no eligible Scheduled Caste candidate within the Panchayat. According to Mr. Jha a guideline was issued by the District Superintendent of Education-cum-District Coordinator, Katihar to all Block Development Officers to the effect that where a post is earmarked for a reserved category or for a female candidate and eligible candidates are not available, they can explore their availability in the nearby Panchayats. He submits that it is following this guideline and since no such exercise was carried out before the appointment of the respondent no. 10 from the general category, that



the appointment of the respondent no. 10 was set aside vide order dated 06.8.2005 placed at Annexure-4. He submits that since the petitioner was coming from a Scheduled Caste category hence he was appointed as Panchayat Shiksha Mitra vide order dated 24.2.2006 placed at Annexure-6 and continued as such, when absorbed as Panchayat Teacher by virtue of the enforcement of the Bihar Panchayat Teachers Appointment and Service Conditions Rules, 2006 (hereinafter referred to as the 'Rules 2006') with effect from 01.7.2006. It is submitted that no issue was raised by the respondent no. 10 at any stage and it is three years thereafter that the District Superintendent of Education on 12.5.2009 has raked up the subject to state that the post was not meant for reserved category and thus the termination of service of the respondent no. 10 was not correct and even the appointment of the petitioner as a Scheduled Caste candidate was illegal. It is following the order passed by the District Superintendent of Education dated 12.5.2009 that an order of termination was passed under the joint signature of the Panchayat Secretary and the Mukhiya on 22.5.2009 and which has been affirmed by the appellate authority. It is submitted by Mr. Jha that the District Superintendent of Education having realized his mistake has subsequently requested the District Panchayat Teachers Employment Appellate Authority to reconsider the matter in the background of the



guidelines present at Annexure-5 as well as the roster clearance present at Annexure-3. He submits that since nothing progressed that he is before this Court. According to Mr. Jha, in view of the uncontested position reflecting from Annexure-5 as well as the review prayer made by the District Superintendent of Education himself, it is apparent that the termination of the petitioner is illegal and not sustainable.

Although learned counsel for the State and the Panchayat have endeavoured to contest the argument of Mr. Jha *inter alia* on grounds that the rethinking by the District Superintendent of Education is founded on subsequent developments but in my opinion the opposition by the State counsel as well as the Panchayat counsel is a mere objection on technicality for in view of the law so settled as well as the eloquent facts on record, the appointment of the petitioner was not required to be interfered with and the reasons are as follow:

- (a) The appointment of the respondent no. 10 was cancelled as back as on 06.8.2005 but he never chose to question the same before an appropriate forum nor before this Court;
- (b) The petitioner was appointed on his place on 24.02.2006, yet the respondent no. 10 did not seek to question his appointment;
- (c) By virtue of operation of law in view of



the 'Rules 2006' the petitioner who was appointed as Panchayat Shiksha Mitra got absorbed as a Panchayat Teacher and whereafter his appointment as panchayata Shiksha Mitra was not open to question except if it had been founded on a fraud or a lack of qualification or a patent illegality, all of which are not present in the present case;

- (d) Even on facts in view of the uncontested roster position reflecting from Annexure-3 read alongwith guidelines issued at Annexure-5, there was no occasion for the Mukhiya and the Panchayat Secretary to interfere in any manner with the appointment of the petitioner to the post of Shiksha Mitra vide order dated 24.2.2006 for neither the petitioner lacked in qualification nor he lacked in the category for which the post was earmarked as manifest from Annexure-3.
- (e) The interference with the settled position at the instance of the District Superintendent of Education vide his letter dated 12.5.2009 is also put at rest by his own prayer for review dated 16.2.2012 present at Annexure-19 when the District Superintendent of Education, Katihar realizing his mistake has chosen



to request the Appellate Authority for a review / recall for of the matter and the reasons are well discussed in the letter which also stands noted in the order of this Court hereinabove.

For the reasons discussed, the order of termination passed against the petitioner impugned at Annexure-12 and 13 cannot be upheld and is accordingly quashed and set aside. The petitioner stands restored to his post of Panchayat Teacher.

The writ petition is allowed.

(Jyoti Saran, J)

S.Sb/-

AFR	
CAV DATE	
Uploading Date	
Transmission Date	