

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15375 of 2010

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1. Sawalia Rai, S/O Shri Kallu Rai, R/O Village- Chakmunda, P.O.- Bankat, P.S.- Bhagwanpur Hat, District- Siwan, At present posted and working as Panchayat Teacher in Govt. Primary School, Beera Bankat, Anchal- Bhagwanpur Hat, Distt.- Siwan.
 2. Shiv Narayan Rai, S/O Shri Mahanth Rai, R/O Village- Mahammadpur, P.O.- Aruwan, P.S.- Bhagwanpur Hat, District- Siwan, at present posted and working as Prakhand Teacher in Govt. Kanya Middle School, Mahammadpur, Anchal- Bhagwanpur Hat, District- Siwan.

.... 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, Bihar, Patna.
4. The Divisional Commissioner, Saran Division at Chapra.
5. The District Magistrate, Siwan.
6. The Deputy Development Commissioner -Cum- Chairman, District Education Establishment Committee, Siwan.
7. The District Superintendent of Education, Siwan.
8. The Block Development Officer, Bhagwanpur Hat, District- Siwan.
9. The Block Education Officer, Bhagwanpur Hat, District- Siwan.
10. The Prakhand Pramukh, Bhagwanpur Hat Prakhand, District- Siwan.
11. The Mukhiya of Gram Panchayat Raj, Mahammadpur, Block-Bhagwanpur Hat, District- Siwan.
12. The Panchayat Secretary of Gram Panchayat Raj, Mahammadpur, Block- Bhagwanpur Hat, District- Siwan.
13. The Headmaster, Govt. Primary School, Beera Bankat, Anchal- Bhagwanpur Hat, District- Siwan.
14. The Headmaster, Govt. Kanya Middle School, Mahammadpur, Anchal- Bhagwanpur Hat, District- Siwan.
15. The Member, District Teacher's Employment Appellate Authority, Siwan.

..... **Respondents.**

16. Bijendra Kumar Singh, S/O Shri Lal Babu Singh, R/O Village- Mahammadpur, P.O.- Aruwan, P.S.- Bhagwanpur Hat, District- Siwan.
17. Shri Ishwar Prasad, S/O Lakhan Sah, R/O Village- Rampur Kothi, P.S.- Bhagwanpur Hat, District- Siwan.
18. Shailesh Kumar Singh, S/O Shri Ramnath Singh, R/O Village- Mahammadpur, P.O.- Aruwan, P.S.- Bhgwanpur Hat, District- Siwan.

.... **Private Respondent/s**

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Appearance :

For the Petitioner/s : Mr. Ashok Kumar Singh, Sr. Adv. with
Mr. Umesh Kumar Mishra, Adv.
For the Respondent-State : Mr. Kumar Alok, SC-7
For Respondent Nos.16& 17: Mr. Uday Bhan Singh, Advocate
For the Respondent No.18 : Mr. Bipin Bihari, Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN



ORAL JUDGMENT

Date: 29-11-2016

Heard Mr. Ashok Kumar Singh, learned senior counsel appearing for the petitioners, Mr. Kumar Alok, learned Standing Counsel No.7 for the State, Mr. Uday Bhan Singh, learned counsel appearing for the respondent nos.16 and 17 and Mr. Bipin Bihari Singh, learned counsel appearing for the respondent no.18 as well as for the intervener in I.A. No.8365 of 2011, namely Jai Prakash Rai.

Re: I.A. No.8365 of 2011:

Heard the parties.

This interlocutory application has been filed by one Jai Prakash Rai seeking to intervene in the matter as according to him, the enquiry into the appointment of the two writ petitioners as Panchayat Shiksha Mitra was initiated pursuant to an order passed by this Court on his writ petition arising from CWJC No.8146 of 2009, a copy of which is enclosed at Annexure-1 to the intervention petition at running page 140.

It is the argument of Mr. Singh, learned counsel appearing for the intervener that this intervener had better marks for appointment as Panchayat Shiksha Mitra and that the appointment of the writ petitioners was on the basis of forged documents and in fact they possess lesser marks than the intervener. He submits that since the enquiry into the appointment was following the order



passed on his writ petition arising from CWJC No.8146 of 2009, hence he is a necessary party.

I have heard learned counsel for the intervener and counsel for the other parties in the present proceeding.

The prayer for intervention made by Jai Prakash Rai is only taken to be rejected for the simple reason that this Court while considering the claim of the intervener for appointment as a Panchayat Shiksha Mitra in CWJC No.8146 of 2009, had rejected the same, inter alia, taking note of the fact that the post of Panchayat Shiksha Mitra was no more in existence. It is not in dispute rather admitted that the said Jai Prakash Rai did not choose to question the said order of the Writ Court before the superior court. Meaning thereby the order passed in CWJC No.8146 of 2009 has attained finality.

It is rather strange that despite this position an attempt is being made by the intervener to again reopen the issue by entering into the controversy arising from the enquiry held into the appointment of the writ petitioners which certainly cannot enure to his benefit once his claim for appointment as Panchayat Shiksha Mitra has been rejected by this Court and even if the enquiry would go against the writ petitioners.

The second aspect of the matter which again disentitles



the intervener to intervene in the present proceeding is that the order put to challenge in the present proceeding is not on the complaint made by him rather it is on a complaint made by the private respondents.

For the reasons aforementioned the prayer for intervention made by the intervener Jai Prakash Rai cannot be entertained and is accordingly rejected.

I.A. No.8365 of 2011 is rejected.

Re: CWJC No.15375 of 2010:

Heard Mr. Ashok Kumar Singh, learned senior counsel appearing for the petitioners, Mr. Kumar Alok, learned Standing Counsel No.7 for the State, Mr. Uday Bhan Singh, learned counsel appearing for the respondent nos.16 and 17 and Mr. Bipin Bihari Singh, learned counsel appearing for the respondent no.18.

With the consent of the parties this writ petition has been heard with a view to its final disposal at the stage of admission itself.

The two writ petitioners are aggrieved by the order dated 14.8.2010 passed by the District Teachers Employment Appellate Authority, Siwan (hereinafter referred to as 'the Appellate Authority') whereby the appointment of these petitioners to the post of Panchayat Teacher has been cancelled.



Although this writ petition has travelled a long distance but considering the issue in contest I do not think that it would require this Court to enter into the minute details of the matter. Suffice it to say that following an appointment process initiated in the year 2005 that these two petitioners along with others were appointed as Panchayat Shiksha Mitra and following the enforcement of the Bihar Elementary Panchayat Teachers (Appointment and Service Condition) Rules, 2006 (hereinafter referred to as 'the Rules'), whereas the petitioner no.1 was absorbed as Panchayat Teacher, the petitioner no.2 was absorbed as Prakhanda Teacher. It is four years after the appointment of these petitioners as Panchayat Shiksha Mitra and three years after their absorption as Panchayat Teacher and Prakhanda Teacher respectively that objections were raised as regarding their appointment, inter alia, on grounds that it was resting on forged documents and contrary to roster. Several rounds of litigation including one by the intervener as discussed above, was initiated and the matter led to an enquiry into the appointment of the petitioners to confirm whether it was resting on forged documents. The issue raised by the complainant was that whereas petitioner no.1, Sawalia Rai had obtained 554 marks in Intermediate but he had obtained appointment on the basis of 676 marks and similarly whereas the petitioner no.2 Shiv Narayan Rai



had obtained 553 marks in Intermediate but had obtained appointment on the basis of 678 marks in Intermediate on the basis of forged documents. The enquiry into the matter went against the petitioners relying on certificate(s) which showed higher marks than the marks actually obtained by these petitioners.

While the complaint of the intervener Jai Prakash Rai that the appointment of the petitioners is resting on forged documents, was relegated to enquiry by the District Magistrate, some other complaints were also filed before the 'Appellate Authority', constituted under 'the Rules'. One of such complaint is present at Annexure-14, made by one Ishwar Prasad, the respondent no.17 herein, who claimed appointment as Panchayat Shiksha Mitra on the basis of better marks giving rise to Case No.36 of 2009. The matter was considered by the 'Appellate Authority' on 10.7.2010 and vide order present at Annexure-15 the 'Appellate Authority' taking note of the complaint raised by Ishwar Prasad and Shailesh Kumar Singh, while issued directions to the Appointment Committee to consider the claim of Ishwar Prasad against any vacant post, dismissed the complaint of Bijendra Kumar Singh, respondent no.16 and Shailesh Kumar Singh, respondent no.18 as being barred by limitation.

The order of the 'Appellate Authority' in Case No.36 of



2009 is placed at Annexure-15 to the writ petition. Since this order in no manner commented upon the appointment of the writ petitioners, they had no grievance up to this stage.

Despite the rejection, a second application was filed by the respondent no.16, Bijendra Kumar Singh which was registered as Case No.125 of 2010. Strangely, the 'Appellate Authority' even after taking note of the position that the earlier claim of respondent no.16, Bijendra Kumar Singh had been rejected on grounds of limitation, yet proceeded to entertain his complaint which now rested on the fact that the appointment of the two petitioners was contrary to the roster position. The respondent no.18, Shailesh Kumar Singh appeared in the proceeding and gave up his claim for appointment, as having lost interest in the same.

The 'Appellate Authority' in consideration of the matter held that the appointment of petitioner no.1, Sawalia Rai against the unreserved post and the appointment of petitioner no.2 on the post earmarked for Backward Category, was not correct having been obtained on forged documents and accordingly set aside the appointments. A direction was issued to appoint the respondent no.17, Ishwar Prasad against the post of Backward Category and to appoint the respondent no.16, against the unreserved post. Being aggrieved the petitioners are before this Court.



I have heard learned counsel for the parties and I have perused the records.

Confirmingly the appointment of the petitioners has been interfered with inter alia, on grounds that they were resting on the forged documents copies of which also finds enclosed with the affidavit so filed in the proceeding.

Having heard learned counsel for the parties on the merits of the contest, two issues crop up for consideration, namely:

- (a) The complaint of the private respondents having been disposed of by the 'Appellate Authority' vide order dated 10.7.2010 placed at Annexure-15 whether the 'Appellate Authority' had jurisdiction to review its decision vide Annexure-16 while entertaining a subsequent application filed by the private respondent no.16 in Case No.125 of 2010; and
- (b) Whether the appointments of these petitioners was resting on forged documents?

In my opinion, even if the two petitioners would sail through the first issue on the exercise of review jurisdiction by the 'Appellate Authority' yet unless they would pass the test of bonafides and establish that the appointments was not obtained on forged documents, a mere quashing of the order, would not enure



their benefit

The record of the proceeding encloses two enquiry reports, conducted under the order of this Court. The enquiry report encloses mark sheet(s) stated to have been filed by these petitioners which demonstrate higher marks than the actual marks obtained by these petitioners in Intermediate examination. It also encloses a merit list of candidates who had responded to the appointment notice for the post of Panchayat Shiksha Mitra together with the marks obtained by them.

The issue is, whether or not the Intermediate certificate allegedly issued in the name of these petitioners showing higher marks was the basis for their appointment or these documents have been manufactured subsequent to the appointments, with ulterior motives.

I shall be dealing with the issue(s) one by one. In so far as the issue of review jurisdiction exercised by the 'Appellate Authority' is concerned, the view expressed by a Bench of this Court in CWJC No.11568 of 2010 (**Lata Kumari vs. The State of Bihar**) is an answer thereto. The Bench while examining a review jurisdiction by the 'Appellate Authority', has held that it had exceeded its jurisdiction since the Rules do not vest the 'Appellate Authority', with a power of review. The opinion of the Bench in the



case of **Lata Kumari** (supra) is conclusive on the issue that the ‘Appellate Authority’ has no power of review and which runs as under:

“Having considered the submissions made at Bar, in my considered opinion, once the authority decided the matter on the complaint made by the respondent no.11 it becomes functus officio. It is to be borne in mind that the Authority is a statutory quasi judicial functionary. The Rule provisions provide no appeal or review there against. There is no provision in the Rule especially conferring the authority with the power of review. In such view of the matter, the order of the authority would be final subject to the judicial review of this Court and not by any other authority. In this context, this Court may usefully refer to the notification no. 3716 dated 23.10.2008 issued by the government in the Department of Human Resources, Govt. of Bihar, whereby having constituted the Authority the State Government provided for various functions and matters related to the Authority. In Clause- Kh (xv) it is unambiguously pointed out that the order passed by the Authority is final and is not appealable before any superior authority. The Apex Court in the case of **Grindlays Bank Ltd. vs. The Central Government Industrial Tribunal and others** since reported in **AIR 1981 SC 606** held that power of review is a creature of the statute and in absence thereof no such power of review exist with the statutory quasi judicial authority.....” .

This would bring this Court to the second issue raised and which puts more serious obstacles for the petitioners, for if their appointment was resting on forged documents, then even if they would succeed on the issue of jurisdiction, but until and unless they would come out clean from the allegation of obtaining appointment



on forged documents, they yet have a problem on their hands.

As I have noted, the enquiry report(s) enclosed in this proceeding do give divergent opinions but in my opinion the views so expressed in the two enquiry reports in so far as it is casting a stigma on these petitioners for obtaining appointment(s) on forged documents, would have to be considered in the backdrop of the records relating to appointment of Panchayat Shiksha Mitra.

The list of applicants is on record at running page 228 of the proceedings and while the name of the petitioner no.1 appears at serial no.14 with 554 marks in Intermediate, the name of petitioner no.2 appears at serial no.15 with 553 marks in Intermediate. The name of respondent no.16 appears at serial no.21 with 542 marks in Intermediate. Meaning thereby the respondent no.16 is much below the two petitioners. Now neither the name of respondent no.17 Ishwar Prasad nor the name of respondent no.18, Shailesh Kumar Singh is present in the list of applicants. The merit list so prepared on the basis of marks obtained by each of the applicants, is also enclosed at running page 237 onwards and while the name of petitioner no.2 appears at serial no.3 of the merit list again showing 553 marks in Intermediate, the name of petitioner no.1 appears at serial no.4 with 554 marks. The name of respondent no.16 again appears at serial no.14 with 542 marks.



In my opinion these two lists by itself are enough to confirm that these two petitioners have applied for appointment on the basis of certificates showing the actual marks obtained by them and their appointment is certainly not on the basis of the alleged forged certificates carrying higher marks. The records of the selection process very clearly shows the actual marks obtained by the petitioners and there is nothing on record to dispute the contentions of the petitioners that they have obtained their appointment on the basis of these very marks. These two lists i.e. the list of applicants and the merit-list, is again demonstrative of the fact that the Intermediate certificates so relied upon by the complainants were obviously generated subsequent to the appointment of these petitioners with sole intention to create a cloud on their appointment(s).

The undisputed position which surfaces from the discussions above is, that while these petitioners had applied for the post of Panchayat Shiksha Mitra on the basis of the actual marks obtained by them, their appointment as Panchayat Shiksha Mitra was also on the basis of such marks and was objected by none. On the other hand the respondent no.17 figured nowhere and respondent no.16 was far below in the merit list. It is again undisputed that by virtue of their appointment as Panchayat Shiksha Mitra in the year



2005, the petitioners got absorbed as Panchayat Teacher and Prakhanda Teacher respectively w.e.f. 1.7.2006, by enforcement of 'the Rules' and again none objected to this absorption. It is four years after the appointment and after three years since their absorption as Panchayat Teacher and Prakhanda Teacher that complaint(s) started flowing in, to culminate in the orders impugned.

In the uncontested position discussed above neither the appointment of these petitioners was worthy of interference on grounds of having obtained appointment on forged documents nor they could have been interfered with on the basis of roster after lapse of four years since their absorption as Panchayat Teacher and Prakhanda Teacher respectively.

In view of the legal position so settled by the Full Bench of this Court in the case of **Kalpna Rani vs. State of Bihar** since reported in **2014(2) PLJR 665**, the limited scope for intervention in appointment(s) of the Shiksha Mitra is, where it is resting on fraud and the discussions above clears all doubts in so far as the petitioners are concerned.

For the reasons so mentioned above, the order of the 'Appellate Authority' dated 14.8.2010 passed in Case No.125 of 2010 impugned at Annexure-16 cannot be upheld and is accordingly



quashed and set aside. The petitioners are reinstated on their respective posts. The consequences shall follow.

It is stated by Mr. Ashok Kumar Singh, learned senior counsel appearing on behalf of the petitioners that by virtue of the order passed on 15.2.2012, the petitioners are not being paid their salary. The District Programme Officer, Siwan or the authority concerned is directed to consider the grievance of the petitioners and in case the salary of the petitioners has not been paid, then steps be taken for its payment within 6 weeks from the date of receipt/production of a copy of this order. The restraint order passed on 15.2.2012 is hereby vacated.

The writ petition is allowed. Since the petitioners have continued on their respective post(s) by virtue of the interim order passed by this Court, the interim order so passed on 8.11.2010, is hereby confirmed.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	22-12-2016
Transmission Date	NA

