

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.20362 of 2010

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Arvind Roy S/O Ramchandra Rai R/O Vill.- Bathua Bujurg Milki, P.S.- Mushari
Gharari, Distt.- Samastipur

.... Petitioner

Versus

1. The State Of Bihar
2. The Principal Secretary Human Resources Development Department,
Government Of Bihar, Patna
3. The Joint Secretary Human Resources Development Department, Government
Of Bihar, Patna
4. The Director, Primary Education Human Resources Development Department,
Government Of Bihar, Patna
5. The District Magistrate, Samastipur
6. The District Superintendent Of Education, Samastipur
7. The Block Development Officer, Sarai Ranjan, Distt.- Samastipur
8. The Block Education Extension Officer Sarai Ranjan, Distt.- Samastipur
9. The Mukhiya Gram Panchayat Raj, Sarai Ranjan West, Block- Sarai Ranjan,
Distt.- Samastipur
10. The Panchayat Secretary Gram Panchayat Raj, Sarai Ranjan West, Block- Sarai
Ranjan, Distt.- Samastipur
11. The Headmaster Rajkiya Kanya Prathmik Vidyalaya, Gudama, Block- Sarai
Ranjan, Distt.- Samastipur
12. Shyam Kumar S/O Rudar Mahto R/O Vill.- Sarai Ranjan, Post And P.S.- Sarai
Ranjan, Distt.- Samastipur

.... Respondents

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Appearance :

For the Petitioner : M/s Ranjit Sinha, Prakash Kumar, Binod Kumar and
Manoranjan Kumar, Advocates

For the State : Mr. Din Bandhu Singh, GP 9
Mr. Sandip Singh, AC to GP 9

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 10-03-2016

Heard the parties.

Respondent No. 12 Shyam Kumar was appointed as
Panchayat Teacher in the Gram Panchayat on 24.02.2007 and started
discharging his duties, however, subsequently, an issue was raised
regarding legality of his appointment as he possessed Intermediate



qualification in the vocational course and not in a regular Intermediate course, thus, he was declared ineligible for appointment under the Bihar Panchayat Teachers Appointment and Service Condition Rule, 2006, in particular Rule 8 of the same. As a result of that, his appointment was terminated and such termination was challenged by him by filing C.W.J.C. No. 6850 of 2007 which was heard analogous to C.W.J.C. No. 10203 of 2007 and other matters and was allowed vide order dated 21.08.2008 as contained in Annexure 6. The learned Single Judge, after considering the matter in detail, came to the conclusion that the vocational Intermediate qualification will be equivalent to regular Intermediate qualification and, as such, his services were reinstated. However, during the interregnum period when he remain ousted from service, another notification came to be issued inviting applications for appointment on the post of Panchayat Teacher which fell vacant due to termination of the respondent no. 12. The petitioner applied pursuant to the aforesaid notification in the concerned Gram Pachayat and was selected on 28.05.2007 and started functioning as a Primary Teacher, however, after the order of reinstatement of the respondent no. 12, his post came in cloud as the respondent no. 12 was reinstated on the post on which he was working. On that post the petitioner was appointed as stated above after following the due process and

procedure.

It is contended on behalf of the petitioner that now his post has become shaky in view of the aforesaid reinstatement of the respondent no. 12 though he was appointed in a proper manner after following due process and procedure against the existing vacancy. It is further contended that he has worked to the satisfaction of the authority concerned and claims to be working till date even after reinstatement of the respondent no. 12 but his salary is not being paid.

Now the issue which has arisen in this case for adjudication is as to whether the petitioner should be directed to continue as a Panchayat Teacher in view of his appointment in a regular manner following proper procedure in the peculiar facts and circumstances of the case.

It is contended on behalf of the petitioner that his case is required to be considered by the competent authority by allowing him to continue against the available vacancy. The petitioner has claimed that the vacancies are still available in the Panchayat concerned and there is no need of throwing him away specially when he was appointed by following due process and procedure.

A counter affidavit has been filed on behalf of the Block Development Officer, Sarai Ranjan.



Learned counsel for the petitioner points out that in paragraphs 10 and 11 of the counter affidavit it has been stated in clear terms that even though the respondent no. 12 Shyam Kumar was allowed to join his duty in view of the direction of this Court as contained in Annexure 6, the petitioner was also allowed to discharge his duty on the respective post for a long time but payment has not been made for the said work and also that one seat of general category is vacant since 18.02.2012 in Heshar Middle School, Shitalpatti.

The issue concerned is no longer *res integra* as the same was considered and decided by a Division Bench of this Court in L.P.A. No. 75 of 2015 vide judgment dated 09.12.2015. For better appreciation of the matter, the relevant passages from the decision of the Division Bench are extracted as under:

“13. The only question, which has remained, is as to whether, in the peculiar facts and circumstances of the case, when selection of the appellant for the post of Panchayat Teacher and her appointment on the said post, cannot be said to be illegal, her case was required to be considered by the competent authority by allowing her to continue against available vacancy.

14. Learned Counsel, appearing on behalf of the appellant, on the basis of information received, under the Right to Information Act, has contended that there are vacancies existing in the said Panchayat against which the case of the appellant can be considered for her reinstatement.



15. Mr. Anjani Kumar, learned Additional Advocate General No. 6, referring to certain orders passed by this Court, brought on record by way of supplementary affidavit, has submitted that in the peculiar facts and circumstances of the case, the concerned Selection Committee of the Gram Panchayat may consider reinstatement of the present appellant against the existing vacancy.

16. In view of the given facts and circumstances of the present case, we consider it expedient and in the interest of justice to modify the order, under appeal, by issuing a direction to the Appointment Committee of the Morwa (South) Gram Panchayat to consider reinstatement of the appellant against available vacancy of Panchayat, as per the roster, duly sanctioned by the competent authority. Decision, in this regard, must be taken within one month from the date of receipt/production of a copy of this order.

17. With the above observations and directions, this appeal is disposed of.

It is manifest from the aforesaid decision of the Division Bench that having found vacancies existing in the concerned Gram Panchayat, direction was given to the Appointment Committee of the Gram Panchayat to consider the reinstatement of the appellant against available vacancy of the Panchayat as per the roster, duly sanctioned by the competent authority.

Accordingly, this writ application also stands disposed of in terms of the decision rendered in L.P.A. No. 75 of 2015.

Let the Appointment/Selection Committee of Sarai Ranjan

Gram Panchayat consider the case of the petitioner against the available vacancy of the Panchayat as per the roster, duly sanctioned by the competent authority.

Since the Block Development Officer has stated in the counter affidavit that even though the respondent no. 12 was allowed to join his earlier post, the work was still being taken from the petitioner but the salary has not been paid to him for the aforesaid period during which he has worked, in my view, it was the duty of the respondent authorities either to take a decision to adjust the petitioner on any other vacancy or to terminate his services. However, none of the aforesaid steps were taken and the petitioner was allowed to work without salary, therefore, in my view, the petitioner would also be entitled for the salary/emoluments and other benefits for the work which has been taken from him even after joining of the respondent no. 12.

It is expected that the entire exercise would be completed within a period of one month from the date of receipt/production of a copy of this order.

(Dr. Ravi Ranjan, J)

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