

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7751 of 2013

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1. Meera Kumari Wife Of Shri Sanjeev Kumar Resident Of Village - Sadanandpur,
P.S. Balia, District - Begusarai

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Block Development Officer, Balia Block, District - Begusarai
3. The Block Education Officer, Balia Block, District - Begusarai
4. The Secretary, Gram Panchayat Fatehpur, Balia Block, District Begusarai
5. The Headmaster, Nationalized Middle School, Sadanandpur Balia Block, District - Begusarai
6. The District Teachers Appointment Appellate Authority, Begusarai Through Its Member

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Amaresh Kumar Singh,
Mr. Sushil Kumar Ray, Advocates.

For the State : Mr. Alok Ranjan, AC to GA13

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 09-05-2016

Heard learned counsel for the petitioner and learned
counsel for the State.

2. Learned counsel for the petitioner is permitted to make
necessary correction in paragraph 4 of this writ petition.

3. This writ petition has been filed for quashing the letter
no.218 dated 6.2.201 issued by the Block Education Officer,
Balia whereby and whereunder joining of the petitioner has been
rejected and also order dated 31.1.2013 in Case No.21 of 2012 by
which the District Teachers Appellate Authority, Begusarai has

rejected the claim of the petitioner and refused to grant relief of reinstatement and payment of honorarium-cum-arrears of salary.

4. Primarily this matter relates to appointment of Shiksha Mitra in the year 2003-2004 for three posts which had fallen vacant in Gram Panchayat Fatehpur. Two posts were meant for general category and one post from MBC category. This dispute relates to the appointment to the general category candidate. Petitioner and others applied for the post of Shiksha Mitra being female candidates of general category having marks of first division in Matriculation with 543 marks, and Intermediate in second division with 533 marks. It appears that there was some illegality in the appointment of Shiksha Mitra with respect to general category of candidates which attracted enquiry by the Sub Divisional Officer, Balia who wrote a letter vide Memo No. 288 dated 5.6.2008 to the Mukhiya and Panchayat Secretary of Fatehpur Gram Panchayat pointed out illegality in the matter of appointment of Shiksha Mitra as appointment was not made on the basis of the seniority in merit list and without following the reservation policy. Hence the earlier selection was cancelled, directed to relieve the Shiskha Mitra who were illegally appointed, but that direction was not carried out, directed them to submit explanation, otherwise,



disciplinary action would be taken against them. The Sub Divisional Officer, Balia vide letter no.518 dated 11.9.2008 replied the letter dated 29.8.2008 of the In-charge Officer, District Development Branch, Begusarai with respect to the illegal appointment of Panchayat Shiksha Mitra stating that matter has been referred to the Block Development Officer, Balia to take a final decision and he has informed that suitable action was under consideration. It appears that in pursuance of the letter of the Sub Divisional Officer, Balia as well as action taken by the District Magistrate, Begusarai, the Block Development Officer vide Memo No. 1722 dated 14.10.2008 issued the office order by way of corrective measure thereby appointed two persons in general category, namely, Chunnu Poddar and Amod Kumar Nirala and Ram Prakash Kumar Tanti in backward category. The said letter indicates, the office of the Block Development Officer, Balia repeatedly sent registered letters requesting Amod Kumar Nirala to join but his family members refused to receive the letters, in such circumstances the present petitioner was appointed as Shiksha Mitra in his place.

5. It will be very relevant to state that after the enforcement of Bihar Panchayat Elementary Teachers (Employment and Service Condition) Rules, 2006 the posts of Shiksha Mitra have

been abolished and those who were working as Shiksha Mitra in terms of Rule 20(iii) of the Rules they have been converted to the posts of Panchayat Teacher. In such view of the matter after 2006 no one could be appointed to the post of Shiksha Mitra who ever were discharging the duty on the post of Shiksha Mitra were deemed to have been converted as Panchayat Teacher.

6. But in pursuance of the aforesaid letter of the Block Development Officer, Balia, the Panchayat Secretary vide letter no. 3 dated 16.10.2008 issued office order by which appointed the present petitioner to the post of Shiksha Mitra and directed to join the post within one week otherwise her appointment would be deemed to have been cancelled.

7. In pursuance of the aforesaid letter it appears that petitioner went to the School and gave her joining, in the left side of the joining letter, the Headmaster of the School has accepted the joining with the note subject to the condition of direction received from departmental higher authority. The Headmaster vide letter no.17-18 dated 24.20.2008 informed the petitioner that her joining was provisionally accepted subject to the instruction received from the higher authority. If any adverse instruction is received in such circumstances her appointment will be treated to have been cancelled.

8. The Panchayat Secretary vide letter no.4 dated 8.11.2008 informed the District Superintendent of Education, Begusarai that petitioner has been appointed on the place of Amod Kumar Nirala on the direction of the Block Development Officer, Balia requested for taking action on payment of honorarium.

9. The District Superintendent of Education-cum-District Programme Officer vide letter no. 3648 dated 11.11.2008 addressed to the Headmaster of the School about the appointment of the petitioner wherein it has been mentioned, that the appointment of petitioner to the post of Shiksha Mitra has been stayed and placed for enquiry on the back ground of facts that the post of Shiksha Mitra has been abolished after enforcement of 2006 and as such no one can be appointed to the post of Shiksha Mitra. So no purpose would be served in taking joining of the petitioner on the post of Shiksha Mitra but the Block Development Officer, Balia vide letter no.2023 dated 10.12.2008 stayed the letter no.3648 dated 11.11.2008 of District Superintendent of Education-cum-District Programme Officer and directed to maintain status quo. The Sub Divisional Officer, Balia vide letter no.99 dated 19.2.2009 directed Panchayat Secretary to submit explanation for non-payment of honorarium/salary to the petitioner and other three persons who were appointed as Shiksha

Mitra.

10. The Block Development Officer, Balia vide Memo No.96 dated 20.2.2009 directed Panchayat Secretary for making payment of honorarium/salary to the petitioner and three others.

11. The District Magistrate, Begusarai vide Memo No.166 dated 2.4.2009 directed the Block Development Officer, Balia to take action for not making payment of honorarium/salary to the petitioner and others. Even then the petitioner was not paid any honorarium/salary. The matter of non-payment of salary was again placed for consideration before the Block Development Officer, Balia who vide Memo No.914 dated 15.6.2009 recorded details of facts, directed for payment of honorarium/salary to the petitioner and others.

12. While she was discharging the duty she was in need of maternity leave which she availed for the period 21.7.2009 to 31.9.2009, when she returned to join, she was not allowed, whereupon she wrote a letter to the Block Development Officer, Balia requested him to allow her joining as well direction be issued for payment of honorarium/salary but it turned invain. The Block Development Officer, Balia wrote a letter to the Block Education Officer, Balia informing him that she was appointed by the Appellate Tribunal, directed that her joining should be



accepted. When all efforts did not give any positive result the petitioner approached this Court vide C.W.J.C. No.703 of 2010 which was disposed of vide order dated 21.12.2011 with direction to respondent nos. 4 and 5 to hold an enquiry as to why joining of the petitioner was not accepted in the School and if it is found that for no legal and valid reasons she has been deprived, her joining should be accepted.

13. The matter was placed before the Block Education Officer, Balia who examined the matter in detail and found that petitioner cannot be appointed on the post of Shiksha Mitra after the enforcement of 2006 Rule as post of Shiksha Mitra has been abolished and as such joining of the petitioner was not legal, accordingly information was given to the District Programme Officer (Establishment), Balia, District Education Officer, Begusarai as well as Registrar of this Court. After the order passed by the Block Education Officer the petitioner approached this court vide C.W.J.C. No. 7588 of 2012, this Court has disposed of the said writ petition vide order dated 18.4.2012, directed the petitioner to approach the Appellate Authority would call the original records hearing the parties would dispose of the matter in accordance with law.

14. The petitioner accordingly approached the Appellate



Authority, which was registered as Case No. 21 of 2012 on receipt of the notice the Block Education Officer vide letter no.2809 dated 18.12.2012 filed his response submitting that petitioner was appointed in a proper and legal manner by way of corrective measures, requested the Appellate Tribunal should pass an order giving direction of her joining as Shiksha Mitra-cum-Panchayat Teacher. Further stated, the Headmaster has wrongly terminated the services of the petitioner. The District Appellate Authority considered the case of the petitioner vide order dated 31.1.2013 rejected the claim of the petitioner, considered the matter very deeply from all angles and found that petitioner could not have been appointed as Shiksha Mitra as after 1.7.2006 post of Shiksha Mitra has already been abolished and who ever were working, converted as Panchayat Teacher and did not find any error in the action of the Headmaster.

15. Learned counsel for the petitioner submits that action of the Headmaster, order of Block Education Officer as well the order of the Appellate Authority suffers from illegality on the ground that petitioner was appointed by the competent authority by way of corrective measure as Shiksha Mitra-cum-Panchayat Teacher as earlier appointment were illegal and as such her appointment would relate back to the period 2003-2004, she will



be treated to be Shiskha Mitra, automatically will be converted into Panchayat Teacher, in support of his submission on the theory of relation back, he has placed reliance on the judgment of the Hon'ble Supreme Court in the case of Sasidhar Reddy Sura v. State of Andhra Pradesh and others, reported in (2014)2 SCC 158, paragraphs 18-22. He has further submitted that it is not proper and justified for the State officials of different agencies to take contradictory stand and in such circumstances the contradictory stand taken by them should be ignored. He has placed reliance on the judgment in the case of State of Bihar & others v. Bihar Rajya M.S.E.S.K.K. Mahasangh and others, reported in 2005(1) PLJR SC 464, paragraph 63. He has further submitted that appointment of the petitioner is with respect to the period 2003-2004 will be treated to have been extended from time to time and later on she will be treated to have been converted into Panchayat Teacher.

16. On the contra, learned counsel for the State has submitted that admittedly petitioner was not appointed as Panchayat Teacher but for the first time in 2008 the Block Development Officer has appointed her as Shiskha Mitra-cum-Panchayat Teacher. He has further submitted that question of appointment of the petitioner does not arise on the post of



Shiskha Mitra as that post was not in existence. When the post itself was not existed at the relevant time, the question of appointment does not arise. The issue with respect to illegal deprivation of appointment to the post of Shiskha Mitra came for consideration in Renu Kumari Pandey v. The State of Bihar, reported in 2011(4) PLJR 297 where this Court has taken the view that as the post of Shiskha Mitra has been abolished, the question of persons for bringing them back to the post of Shiskha Mitra does not arise, so much so no forum has been provided to examine the correctness of the appointment of Shiskha Mitra that again came for consideration in the Full Bench in the case of Kalpana Rani v. State of Bihar (F.B), reported in 2014(2) PLJR 665 where the Full Bench has approved the view taken in Renu Kumari Pandey (supra). In both the case it has been specifically stated that post of Shiskha Mitra is not available after 2006 and no mechanism has been provided for resolution of the dispute with regard to illegal appointment as Shiskha Mitra.

17. In the present case admittedly the petitioner was never appointed as Shiskha Mitra before the enforcement of 2006 Rule as admittedly it appears that the Block Development has appointed the petitioner in 2008 when the post itself was not available, the question of her appointment does not rise. So much

so each period of appointment of Shiskha Mitra is completely a separate and distinct having no nexus with another period.

18. In such view of the matter, the claim of the petitioner should be treated to have been appointed as Shiskha Mitra, subsequently converted to Panchayat Teacher does not arise, hence the submission that has been raised by the petitioner that Officials of State Government of different agencies should not take contradictory stand does not cut much ice, reason is that, the view taken by Block Development Officer and In-charge District Magistrate cannot be said to legal. When the post itself was not available, question of her appointment does not arise in 2008, in such situation, her appointment cannot be treated to have been appointed for the period 2003-04.

19. In such view of the matter, this Court does not find any merit in this writ petition. It is accordingly dismissed.

(Shivaji Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	
Uploading Date	8.6.2016
Transmission Date	