

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No.372 of 2011

IN

Civil Writ Jurisdiction Case No. 8975 of 2006

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Simmi Kumari, W/O Sri Sanjay Kumar, R/O Vill. - Hasanpur, P.O. Mahisona,
P.S. & District - Lakhisarai

Petitioner – Appellant Petitioner

Versus

1. The State Of Bihar through Secretary, Primary, Secondary & Adult Education,
Govt. Of Bihar, Patna
2. Director, Primary Education, Govt. Of Bihar, Patna
3. District Magistrate, Lakhisarai
4. District Superintendent of Education, Lakhisarai
5. Deputy Development Commissioner, Lakhisarai
6. Mukhiya, Mahisona, Gram Panchayat, P.S. & Distt. - Lakhisarai
7. Panchayat Sevak Mahisona Gram Panchayat, Lakhisarai
8. Poonam Kumari W/O Not Known, At Present Working As Shiksha Mitra, At
Middle School, Hasanpur, Lakhisarai

Respondents Respondents Opposite Parties

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Appearance :

For the Petitioner : Mr. PRAVEEN KUMAR
For the State : AC to G.P. 4
For Private Respondent : Mr. A.K. Vinayak, Advocate
No. 8

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 23-11-2016

Heard.

This application has been filed for review of the order dated 24.08.2010 passed by a Coordinate Bench of this Court in C.W.J.C. No. 8975 of 2006 filed by the petitioner by which writ application has been dismissed rejecting the ground taken by the petitioner that the post of Shiksha Mitra has not been abolished rather the same has been converted into Panchayat Shikshak. It has



been held that those persons who were continuing as Shiksha Mitra on the appointed date, i.e., 1.7.2006, were only given the benefit of deemed absorption on the post of Panchayat Shikshak. The learned Single Judge has held that the tenure of Shiksha Mitra being only 11 months and the petitioner's challenge to the select list of Shiksha Mitra dated 2.8.2005 must be held to have lost its all importance in view of the change of policy of the Government abolishing the post of Shiksha Mitra.

The writ petition was filed for grant of following relief(s):

“1. That the petitioner has been compelled to invoke the writ jurisdiction of this Hon'ble Court for issuance of a writ in the nature of Mandamus, to direct and command the respondents to consider the appointment of the petitioner on the post Shiksha Mitra, in the School of Mahisona Gram Panchait, as persons less qualified and less eligible than her, have been appointed as Shiksha Mitra which is violative her fundamental right guaranteed under Article 14 and 16 of the Constitution of India.

Further be pleased to quash the select list dated 2.8.2005 as contained in annexure-2/1 prepared by respondent no. 6 and 7 by making interpolation in the column of date of birth and name of the petitioner has



been excluded maliciously as petitioners name figured in the annexure-1 at Sl. No. 6 in unreserved category.”

It is contended on behalf of the petitioner that in other similar cases the matter has been remanded to the District Teachers Appointment Appellate Authority by different Benches of this Court and consequentially the Human Resource Development Department issued a direction dated 14.5.2009 which has been appended as Annexure 2 holding that the issue relating to discrepancies in engagement as Shiksha Mitra has also to be decided by the aforesaid authority. It is contended that there is apparent error in the engagement of the private respondent as less qualified persons than the petitioner were appointed as Shiksha Mitra.

However, in my view, the issue is no longer *res integra*. A Division Bench of this Court in **Smt. Renu Kumari Pandey & ors. Vs. The State of Bihar & ors. [2011(4) PLJR 297]** has held as follows:

“17. Coming to the second issue, we are of the opinion that the Rules are statutory in nature and have to be implemented in letter and spirit. Under Clause (i) of Rule 20 of the Rules all earlier resolutions, orders, directions issued in respect of employment of Panchayat Shiksha Mitra are repealed. Consequently, the posts of Panchayat Shiksha Mitra stood abolished. Thereafter, no person can be employed as Panchayat



Shiksha Mitra; nor can there be a deemed employment as Panchayat Shiksha Mitra; nor can there be a deemed absorption in the service as Panchayat Shikshak by operation of Rule 20(iii) of the Rules. In our opinion, even in a case where a person has a legitimate grievance in respect of his or her non-selection as Panchayat Shiksha Mitra at the relevant time or non-continuance as Panchayat Shiksha Mitra, such person cannot be deemed to have been appointed as Panchayat Shiksha Mitra; nor can he/she be deemed to have been employed as Panchayat Shiksha Mitra as on 1st July 2006; nor can such person be deemed to have been absorbed in service as Panchayat Shikshak under the Rules.

18. We may also note here that though the State Government framed a complete scheme for employment of Panchayat Shiksha Mitra at Gram Panchayat level in furtherance of its goal of “Education for All”, in none of the aforesaid Resolutions the Government had provided for an adjudicatory machinery. In other words, the State Government did not make any provision for redressal of grievance in respect of selection and employment of Panchayat Shiksha Mitra or their reemployment after the expiry of the contractual period. On perusal of the records of the above writ petitions, we find that in absence of such machinery, the aggrieved persons approached the authority whom such persons considered to be the competent /the convenient authority. In our opinion, in absence of powers expressly conferred upon any such authority the reports or the orders made by such authority are of no



consequence. No relief can be granted on the basis of the finding recorded by such authority. We may also point out that Elementary Teachers Appellate Authority constituted under Rule 18 of the Rules, as amended by Bihar Panchayat Elementary Teacher (Employment and Service Conditions) (Amendment) Rules, 2008 is empowered to entertain, hear and decide the appeals arising out of the employment of elementary teachers under the Rules. The said appellate authority has no jurisdiction to entertain, hear or decide the disputes relating to the employment of Panchayat Shiksha Mitra under the then prevalent Resolutions, Circulars, Orders, Instructions.”

Such issue was again considered by a Full Bench of this Court in **Kalpana Rani vs. The state of Bihar & ors [2014(2) PLJR 665]**. The Full Bench has affirmed the views taken by Division Bench in the aforesaid case and held that, since appellant was never appointed at any time until 1st of July, 2006, she could not set up right to employment as Panchayat Shiksha Mitra or right to be absorbed as Panchayat Teacher. Irrespective of the validity of the appointment of private respondents as Panchayat Shiksha Mitra, the appellant has no right to be appointed as Panchayat Shiksha Mitra or to be absorbed as Panchayat Teacher. It has further been held that services of Shiksha Mitras absorbed as Panchayat Teacher under Rule 20(iii) of the Bihar Panchayat Elementary Teacher



(Employment and Service Conditions) Rules, 2006 cannot be terminated in any manner or for any reason other than ones prescribed under the Rules.

In view of the above, in my considered view, the review application for seeking appointment of petitioner as Shiksham Mitra first and then absorption as Panchayat Teacher considering him a Shiksha Mitra on the appointed date, i.e., 1.7.2006, after passing order of termination of certain Shiksha Mitra who was already absorbed as Panchayat Teacher would not be possible and permissible in view of the aforesaid decisions of the Full Bench affirming the decision of Division Bench in **Smt. Renu Kumari Pandey (supra)**.

Accordingly, this review application, having no merit, is dismissed.

(Dr. Ravi Ranjan, J)

Spd/- Sanjay-II/

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	27.01.2017
Transmission Date	NA

