

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10097 of 2011

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Md.Ashraf Ansari son of Md. Mumtaz Ansari, resident of Village-Narayanpur ,
P.O.-Magara, P.S.-Dumariya, Distt.-Gaya

.... Petitioner/s

Versus

1. The State Of Bihar Through The Commissioner-Cum-Secretary Department Of
Human Resources Development Bihar, Patna
2. The District Magistrate Gaya
3. The District Superintendent Of Education Gaya
4. The Block Education Extension Officer, Dumaria, Sherghati, Distt.-Gaya
5. The Block Development Officer, Dumaria, Sherghati, Distt.-Gaya
6. Mukhiya Gram Panchayat, Narayanpur Block-Dumaria, Sherghati, Distt.-Gaya
7. Panchayat Secretary, Gram Panchayat Narayanpur, Block Dumaria Distt.-Gaya

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rashid Izhar

For the Respondent/s : AC to GP14

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 17-05-2016

Heard Sri Rashid Izhar, learned counsel for the petitioner
and learned AC to GP No. 14.

The petitioner invoking writ jurisdiction of this court under
Article 226 of the Constitution of India had initially approached this
court due to the reason that the respondent no. 4 /Block Education
Extension Officer, Dumaria, Sherghati, district - Gaya had stopped
the salary of the petitioner since the month of January and also for
direction to the respondents to release the salary.

It is the case of the petitioner that in the year 2003 he was
appointed as Shiksha Mitra on contractual basis for eleven months

and thereafter from time to time his contractual appointment was renewed and finally after the enactment of Bihar Panchayat Primary Teacher (Appointment And Services Conditions) Rules 2006 (hereinafter referred to as the "Rule 2006") in view of the provisions contained in the Rule 2006, since on the cut- off date the petitioner was continuing as Shiksha Mitra, his status was changed as Panchayat Teacher. Thereafter regularly he was discharging his duty as Panchayat Teacher and he was also made In-charge Headmaster of the Chonha Madhya Vidyalaya Chonha (Dumaria). It has been claimed that while the petitioner was discharging his duty as In-charge Headmaster diligently, suddenly without any notice to the petitioner and without any explanation the respondent no. 4 stopped salary of the petitioner and thereafter the petitioner approached this court by filing the present writ petition. In this case by filing an interlocutory application vide I.A. No. 5253 of 2011 the petitioner prayed for an interim order and thereafter by a detailed order i.e. order dated 12.9.2011 a bench of this court passed stay order. It would be appropriate to quote the order dated 12.9.2011 hereinbelow:-

“

I.A. No. 5253 of 2011

The interlocutory application has been filed for addition of relief to the writ petition so as to quash the order, contained in letter No. 186 dated 19.7.2011 passed by

the Block Education Extension Officer, Dumariya, by which the petitioner as in-charge headmaster has been directed to handover charge to another Assistant teacher contrary to the order of the Block Development Officer, as contained in letter No. 832 dated 19.7.2011.

In the facts and circumstances of the case, the prayer for addition of relief is allowed and I.A. No. 5253 of 2011 is, accordingly, disposed of with respect to the said matter.

Learned counsel for the petitioner submits that the petitioner has been working on the post of Shiksha Mitra since the year 2003 and since 1.7.2006, he is working as Panchayat Teacher. It is submitted that all of a sudden, the salary of the petitioner has been stopped from the months of January, 2011 without issuing any show cause and without initiating any enquiry or proceeding against the petitioner.

It is further submitted that the Block Development Officer by his letter dated 19.7.2011 had written to the Block Education Extension Officer, Dumaria that the petitioner's appointment has been found to be valid on perusal of the documents with respect to the same and, accordingly, directed the Block Education Extension Officer to pay him the salary and the operation of the account should be resumed; however, contrary to the said directions the Block Education Extension officer has directed the petitioner to hand over charge as in-charge Headmaster to the Assistant teacher stating that there is no order of the higher authorities regarding the legality of the appointment of the petitioner.

Issue notice to respondent Nos. 6 and 7. Requisites, etc. both under ordinary process and registered cover with a/D must

be filed within one week, failing either of which the writ application shall stand rejected without further reference to a bench.

Put up after service of notices among zero cases in the main list.

As prayed for, four weeks' time is allowed to learned counsel for the State to file counter affidavit in the matter. The counter affidavit must clearly justify as to how the salary of a Panchayat teacher can be stopped without issuing any proper show cause notice and without conducting proper enquiry in relation to the validity of the appointment and without passing any appropriate order in the said proceedings.

In the meantime, the letter dated 19.7.2011 (Annexure – 9) of the Block Education Extension Officer Dumaria shall remain stayed and the respondents are directed to pay the current salary of the petitioner on a month to month basis.”

Subsequently during the pendency of this petition and in compliance with the interim order of this court the respondent no. 4 has come out with instruction contained in memo no. 267 dated 26.9.2011 whereby the petitioner was intimated to assume charge and intimate within three days. It was also indicated that in view of stay order the petitioner was being paid his honorarium. In the order it has also been indicated that since at the time of appointment he was under age his honorarium was stopped. Thereafter petitioner filed an interlocutory application vide I.A. No. 2298 of 2016 and



made a prayer for allowing the petitioner to amend relief as made in paragraph no. 2 of the interlocutory application. By order dated 12.5.2016 interlocutory application was directed to be treated as part of the writ petition and the respondent /state was granted liberty to file its response. Thereafter counter affidavit to the interlocutory application i.e. I.A. No. 2298 of 2016 was filed on 9.5.2016 on behalf of the District Programme Officer (Establishment), Gaya / respondent no. 3. In this case earlier separate counter affidavit on behalf of the respondent no. 3 and respondent no. 4 was filed. Learned state counsel submits that in the year 2003 while the petitioner was appointed as Shiksha Mitra he was under age and to this effect notice was also given to the petitioner on 11.2.2011. By way of referring to the statement made in paragraph no. 7 of counter affidavit of the respondent no. 4 filed on 24th October 2011 learned State counsel submits that petitioner has suppressed the fact that he has received any notice whereas show cause notice was duly received by petitioner on 24.2.2011. It has been argued by the learned State counsel that at the time of first engagement as Shiksha Mitra in the year 2003 he was aged about 17 years 4 months and 25 days. According to learned state counsel since the initial appointment of the petitioner was itself illegal, certainly all the subsequent actions were illegal and as such notice was issued to the

petitioner to explain as to why his appointment may not be cancelled. Learned state counsel submits that in compliance with the earlier order of this court payment has already been made to the petitioner and petitioner has been allowed to function. He further submits that till date no final order has been passed taking away right of the petitioner.

Learned counsel for the petitioner accepts that till date no final order has been passed but he raises only apprehension that there is possibility that his appointment may be cancelled.

Learned state counsel further submits that in identical situation some candidates who at the initial date of appointment were under age had assailed the action of the state authority by filing writ petitions which are pending before this court.

Besides hearing learned counsel for the parties I have also perused the materials available on record. Fact remains that presently there is no order on record to suggest that any action has been taken against the petitioner on the ground that he was under age at the time of initial appointment as Shiksha Mitra. Without going into detail keeping in view the fact that till date no final order has been passed it would not be appropriate for this court to pass any positive order. However, the court is of the opinion that once a person was appointed as Shiksha Mitra on contractual basis which

was only for a period of eleven months subject to re-engagement, thereafter he was re-engaged and at the time of re-engagement if he had attained the age eligible for appointment the earlier defect at subsequent stage has got no relevance. For consideration the relevant date would be the date on which status of Shiksha Mitra was changed as Panchayat Teacher. If on the cut - off date a person was eligible to be appointed or converted as Panchayat Teacher certainly in that event any error committed at the initial stage on contractual basis may not have any relevance. With above observation the writ petition stands disposed of with indication that if any action is taken against the petitioner on the plea that he was under age in the year 2003 at the time of his initial engagement as Shiksha Mitra he would be at liberty to directly approach this court

The writ petition stands disposed of.

(Rakesh Kumar, J)

Praful/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	21-05-2016
Transmission Date	N.A.