

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19124 of 2010

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Binay Kumar S/O Parsuram Singh At Present Working As Panchayat Teacher In
Primary School, Arka, P.O.- Amba, P.S.- Kutumba, Distt.- Aurangabad

.... Petitioner

Versus

1. The State Of Bihar
2. The District Superintendent Of Education, Aurangabad
3. The Panchayat Secretary Gram Panchayat Raaj, Amba, P.O.- Amba, P.S.-
Kutumba, Distt.- Aurangabad
4. The Head Master, Primary School Arka P.O.- Amba, P.S.- Kutumba, Distt.-
Aurangabad
5. The District Teacher Employment Appellate Authority Aurangabad, P.O. + P.S.
+ Distt.- Aurangabad, Through Its Member
6. Neha Raj, wife of Nand Kishore Prajapati, village Arka, P.O. Amba, P.S.
Kutumba, District Aurangabad

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Bipin Bihari Singh, Adv.

For the Respondent/s : Mr. Brajesh Kumar, AC to AAG4

For respondent no.6 : Mr. Rajendra Pd. Singh, Sr.Adv.

Mr. Mukesh Kumar Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 29-11-2016

Heard Mr. Bipin Bihari Singh, learned counsel appearing for
the petitioner, Mr. Brajesh Kumar, AC to AAG IV for the State and
Mr. Rajendra Prasad Singh, learned Senior counsel for the private
respondent.

This writ petition was listed under the heading 'For Orders'
on a motion made by Mr. Bipin Bihari Singh, learned counsel for the
petitioner, inter alia, submitting before this Court that the matter is
covered by the Full Bench judgment of this Court rendered in the case



of **Kalpana Rani v. the State of Bihar**, reported in 2014(2) PLJR 665.

An objection is raised by the learned Senior counsel for the private respondent, Mr. Rajendra Prasad Singh, who contests the submission of the learned petitioner counsel while submitting that the present case is not covered by the judgment in Kalpana Rani (supra). Two issues have been raised by Mr. Singh, learned Senior counsel appearing for the private respondent, to support the impugned order dated 1.7.2010 passed by the District Teachers Employment Appellate Authority, Aurangabad in batch of complaint case including one in which the appointment of the petitioner was put to question and has been set aside. He submits that since the post of Panchayat Shiksha Mitra was reserved for female candidate and that the petitioner was overage at the time of his appointment, this case is distinguishable from the issue settled in the judgment of Kalpana Rani (supra).

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

Whereas there is nothing on record to show that the appointment of the petitioner to the post of Panchayat Shiksha Mitra was made against the post reserved for female candidate, in so far as the issue of overage is concerned, the very appointment order present at Annexure 2 refers to the appointment made pursuant to the letter



dated 17.11.2005 of the Bihar Education Project, meaning thereby appointment process was initiated in the year 2005 as is submitted by Mr. Bipin Bihari Singh, learned counsel for the petitioner. That being the position, the appointment having been initiated in the year 2005, the date of birth is to be assessed as it stood on 1.1.2005. The date of birth of the petitioner is 7.10.1975, meaning thereby the petitioner was less than 30 years on 1.1.2005.

In view of the discussions made above, I find nothing on record to distinguish this case from the legal position settled by the Full Bench of this Court in the case of Kalpana Rani (supra). The very fact that the petitioner was appointed in the year 21.2.2006 as Panchayat Shiksha Mitra and was subsequently absorbed as Panchayat Teacher by virtue of the Bihar Panchayat Elementary Teachers (Appointment and Service Condition) Rules, with effect from 1.7.2006 with objection being raised by the complainant only after a lapse of four years, the judgment of the Full Bench referred to above would squarely apply to the case herein and for the same reasons the order dated 1.7.2010 of the appellate authority passed in Complaint Case No. 12/2010 and analogous cases in so far as it relates to the petitioner cannot be upheld and is accordingly quashed and set aside.

The writ petition is allowed.



The petitioner is restored to his post.

Surendra/-

(Jyoti Saran, J)

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	02.12.2016
Transmission Date	NA

