

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8297 of 2010

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1. Md. Murtaza S/O Md. Saukat Ali R/O Vill.- Islampur, P.S.- Nanpur, Distt.- Sitamarhi

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Member, District Teachers Appointment Appellate Authority Sitamarhi
3. The District Superintendent Of Education Sitamarhi
4. Mukhiya, Gram Panchayat Raj Mohani Block Nanpur, P.S.- Nanpur, Distt.- Sitamarhi
5. Panchayat Secretary, Gram Panchayat Raj Mohani Block Nanpur, P.S.- Nanpur, Distt.- Sitamarhi
6. Mahboob Alam S/O Md. Azizul Haque R/O Vill.- Islampur, P.S.- Nanpur, Distt.- Sitamarhi

.... Respondent/s

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Appearance :

For the Petitioner/s :	Mr. Shardanand Mishra, Adv. I
	Mr. Ranjeet Kumar 2
For the Respondent/s :	Mr. Sanghmitra Ghosh, A.C. to G.P.15
For the respondent No.6:	Mr. Vidya Sagar, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 20-12-2016

Heard Mr. Shardanand Mishra learned counsel for the petitioner, Ms. Sanghmitra Ghosh, A.C. to G.P.15 for the State and Mr. Vidya Sagar for the respondent No.6, the appellant before the Bihar District Teachers Appointment Appellate Authority, Sitamarhi.

With the consent of the parties, the writ petition has been heard with the view to final disposal at the stage of admission itself.

The petitioner prays for quashing of the order dated 13.2.2010 bearing letter No. 20 dated 15.2.2010 passed by the District Teachers Appointment Appellate Authority, Sitamarhi (hereinafter referred to



as 'the appellate authority'), whereby the appointment of the petitioner as Panchayat Teacher has been cancelled on grounds that the petitioner had obtained his appointment on forged documents. The respondent No.6 was the appellant before the appellate authority.

Rather peculiar set of facts as regarding the educational qualification possessed by this petitioner accompanies the present case. It is in consideration of the peculiarity that it is under the orders of this Court, a third supplementary affidavit has been filed by the petitioner to enclose the documents which were the foundation for the appointments.

Briefly enumerating the facts, the petitioner obtained matriculation qualification from the Bihar School Examination Board in the Annual Secondary School Examination held in March, 1993 and obtained a 2nd Division. A copy of certificate of passing is present at Annexure-7 series at running page 64. The petitioner thereafter passed the Intermediate examination in the year 1995 but which certificate is not on record. The petitioner also appeared in the graduation examination held in 1998 which again is not on record. The petitioner with the view to improve on his marks, again appeared in the Intermediate examination held by the Bihar Intermediate Education Council and secured a 1st Division in the Annual Intermediate Examination held in the year 2000 which is confirmed



from the certificate present at running page 66. The petitioner again appeared in the graduation examination for Arts as student of the Dr. Ram Manohar Vishwa Vidyalaya, Faizabad and secured 1st Division in the Graduation examination held in the year 2003, a copy of which certificate is present at running page 68. Noticeably all these happened on or before the year 2003.

An appointment process was initiated in the year 2004 for filling up of the post of Shiksha Mitra and in which the petitioner, the private respondent and some others were applicant. In the selection process, the petitioner was appointed vide order bearing Memo No. 5 dated 17.5.2005, a copy of which is placed at Annexure-1. The petitioner continued uninterruptedly on his post only to be disturbed by the private respondent who after leisurely waiting for a period of four years, filed an appeal before the appellate authority questioning the appointment of the petitioner on the post of Panchayat Shiksha Mitra giving rise to Case No. 27 of 2009. It is the allegation of the private respondent that the petitioner had secured the appointment on forged certificates inasmuch as, whereas he has passed his intermediate examination in the year 2000, the graduation certificate relates to the year 1998 which is an impossibility because the petitioner could not have passed his graduation without passing his intermediate examination.



The order of the appellate authority which is impugned in the writ petition reflects that notice was issued to the petitioner who did not respond and thus the appellate authority proceeding on the allegation and the evidence on record has cancelled the appointment of the petitioner vide order passed on 13.2.2010 impugned at Annexure-4 and the petitioner feeling aggrieved is before this Court.

While Mr. Mishra learned counsel appearing for the petitioner relies upon the documents present at Annexure-2 series and Annexure-7 series to the third supplementary affidavit in defence of the qualification of the petitioner, Mr. Sagar learned counsel for the private respondent has referred to the counter affidavit filed on behalf of respondent No.6 to submit that the information supplied by the Secretary which also contains the application filed by the petitioner for appointment to the post of Panchayat Shiksha Mitra by itself creates a cloud on the appointment inasmuch as whereas the intermediate marks relate to the examination held in the year 2000, the graduation marks relate to the examination held in the year 1998 which is not possible. Mr. Sagar while accepting to the limited jurisdiction vested in the appellate authority to enquire into the matter relating to Panchayat Shiksha Mitra, submits that if the appointment of the petitioner was resting on forged documents, a delay would not condone the same.



I have heard learned counsel for the parties and I have perused the records and in view of the Full Bench opinion of this Court recorded in the case of **Kalpna Rani Vs. State of Bihar** since reported in **2014(2)PLJR 665**, undisputably, the appellate authority could not have entered into the issue relating to the appointment of Panchayat Shiksha Mitra. The issue stands settled by the Full Bench judgment but then if an appointment is resting on a fraud then the petitioner cannot be permitted to hide behind the judgment because fraud vitiates all rights and a mere delay would not be sufficient to condone the lapse nor the judgment of the Full Bench would come in the way of the authority concerned, to examine the same. Law is well settled and while fraud vitiates everything, an appointment resting on a fraud is a nullity.

The issue is whether at all the appointment of the petitioner is resting on a fraud. While Mr. Sagar has relied upon the information present at Annexure-8 to state that it is the petitioner himself who while mentioning his intermediate marks obtained in the examination held in the year 2000, has referred to his graduation examination held in 1998, this information at Annexure-A is being contested by Mr. Mishra who produces the application filed by the petitioner on 5.10.2004 in respect of the post in question and which clearly mentions the marks obtained in the second round exercise done by the



petitioner to improve his marks. According to Mr. Mishra, the application at Annexure-A is not worthy of reliance and does not reflect a correct picture rather it is the information present at Annexure-6 to the supplementary affidavit which is giving the correct picture and clearly mentions the marks obtained by the petitioner in the Intermediate examination held in the year 2000 and the Graduation examination held in the year 2003.

I am in agreement with the submission made by Mr. Mishra for it is absurd to believe that the petitioner having improved his marks in the graduation examination held in the year 2003 to obtain a 1st Division, he would yet mention the lower marks obtained in 1998 while filing his application thus creating a cloud for himself. Had it been a case where the marks obtained by the petitioner in the graduation examination held in the year 1998 were better than the marks obtained by him in the graduation examination in the year 2003, perhaps, there could be a case of misrepresentation but that is not the case here because while the petitioner secured a 2nd Division in the graduation examination held in the year 1998, he improved on his marks in the graduation examination taken in the year 2003 to obtain a 1st Division. The graduation examination having been held in the year 2003, it is again an absurdity to accept that while filing his application in the year 2004, the petitioner would be committing a



blunder to invite a problem for himself. It is more than apparent that the documents enclosed with the counter affidavit of the respondent No.6 are clouded with suspicion and apparently have been manufactured to create a cloud for the petitioner.

Having considered the documents on record, in my opinion, the information present at Annexure-6 reflects the correct position and in which view of the matter the opinion of the appellate authority that the petitioner's appointment was resting on forged document, is an error on record for the qualifications present at Annexure-2 series and 7 series certainly are not based on forged documents. Whether or not the petitioner was lawfully entitled to repeat his intermediate and graduation examination is a separate issue all together but until such time that the qualifications obtained by the petitioner in the intermediate examination held in the year 2000 and the graduation examination held in the year 2003 are not set aside by the authority competent to do so, the appointment of the petitioner could not have been interfered with terming those qualifications as forged.

In the circumstances discussed above, neither the petitioner's appointment could have been interfered with on merits nor the issue could have been entered upon by the appellate authority after lapse of time in view of the law settled by the Full Bench in the case of **Kalpna Rani** (supra).



For the reasons aforementioned, the order dated 13.2.2010 bearing letter No. 20 dated 15.2.2010 passed by the District Teachers Appointment Appellate Authority, Sitamarhi is quashed and set aside. The writ petition is allowed. The petitioner is restored to his post.

(Jyoti Saran, J)

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CAV DATE	
Uploading Date	24.12.16
Transmission Date	

