

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 8501 of 2011

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Md. Irshad Khan S/o Md. Ahmad Khan, R/o Village - Ratni, P.O. Budhwara, P.S. + Block - Govindpur, Distt. Nawadah, Shiksha Mitra turned Panchayat teacher in Middle School, Budhwara, Block-Govindpur, District – Nawadah.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of Human Resources Development, Govt. of Bihar, Patna
2. The District Magistrate, Nawadah
3. The District Superintendent of Education, Nawadah
4. The Block Development Officer, Govindpur, Distt. Nawadah
5. The Block Education Extension Officer, Govindpur, Distt. Nawadah
6. The Headmaster, Middle School, Budhwara, P.S. Govindpur, Distt. Nawadah
7. The Mukhiya, Gram Panchayat Raj Budhwara, P.S. + Block - Govindpur, Distt. Nawadah
8. The Panchayat Secretary, Gram Panchayat Raj, Budhwara, Block - Govindpur, Distt. Nawadah.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Arun Kumar

For the Respondent/s : Mr. Amiya Kunal, AC to AAG10

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 08-03-2016

Heard Sri Arun Kumar, learned counsel for the petitioner
and Sri Amiya Kunal, learned A.C. to Addl. Advocate General – 10.

The petitioner, invoking writ jurisdiction of this Court under Article 226 of the Constitution of India, has made a prayer for directing the respondents to approve his services as Panchayat Teacher, as petitioner, after being engaged as Shiksha Mitra initially in year 2003 was posted in Middle School, Budhwara for 11 months. Thereafter, he was given extension continuously up-to year 2006 and pursuant to Government notification he was absorbed as Panchayat Teacher, but subsequently on pretext of not acquiring the degree of



Intermediate with oblique motive, he was removed. However, immediately thereafter, the said order was recalled and fresh order has been issued directing the Headmaster to accept his joining and allow him to continue on the post. It has been claimed that despite having worked and fund being made available, his due salary has not been paid as yet.

It is the case of the petitioner that he being matriculate was appointed in the year 2003 as Shiksha Mitra for 11 months by the respondents Mukhiya and Panchayat Secretary in the Middle School, Budhwara, vide **Annexure -1** to the writ petition i.e. Memo No. 4 dated 05-02-2003. Alongwith the petitioner, other persons were also appointed by the said office order. The period of appointment was subsequently extended from time-to-time due to satisfactory job rendered by the petitioner. His last extension was granted, vide Memo No. 4 dated 20-03-2006 (**Annexure – 2** to the writ petition) for further 11 months. In the meanwhile, the government came out with a rule known as Bihar Panchayat Teachers Appointment Rules, 2006 (hereinafter referred to as the '2006 Rules'). In the said Rules, there were so many provisions, which entitled a Shiksha Mitra, who was continuing on the cut-off date i.e. 01-07-2006, to be treated as Panchayat Teacher. According to the petitioner, the petitioner on the cut-off date was, since continuing as Shiksha Mitra, he had attained



the status of Panchayat Teacher and he continued to discharge the duties as Panchayat Teacher. In the meanwhile, the petitioner also tried to acquire the qualification of Intermediate with the permission of the authority concerned. Subsequently, the concerned Headmaster, vide **Annexure – 5** to the writ petition, discharged the petitioner, as Panchayat Teacher, on the ground that he had not produced certificate showing requisite qualification. Subsequently, noticing the fact that the petitioner was an appearing candidate, the Mukhiya, who was the appointing authority, cancelled the order of the Headmaster i.e. **Annexure – 5** to the writ petition, vide his Office order dated 15-05-2007 (**Annexure – 6** to the writ petition). It is the case of the petitioner that despite the fact that order of discharging the petitioner by the Headmaster was already cancelled by the competent authority i.e. Mukhiya, the Headmaster did not allow the petitioner to function as Panchayat Teacher and as such, the petitioner was not allowed. However, the petitioner tried to persuade the authority concerned to allow him to function as Panchayat Teacher. In the meanwhile, in the same district i.e. in the district of Nawada, the appointment of number of teachers on the similar ground of non-requisite qualification i.e. Intermediate qualification, was cancelled, whereupon they approached this Court by filing a writ petition, vide C.W.J.C. No. 16700 of 2009. A Bench of this Court, relying on a judgment of this Court in

C.W.J.C. No. 3700 of 2009 (Indu Devi Vs. The State of Bihar & Ors.), considered that if a Panchayat Teacher had already acquired Intermediate qualification, his appointment may not be interfered with.

Learned counsel for the petitioner, by placing heavy reliance on **Annexure – 7** to the writ petition i.e. order dated 22-01-2010 passed in C.W.J.C. No. 16700 of 2009, submits that since the petitioner had already acquired requisite qualification within the time fixed by the State Government in view of 2006 Rules, the petitioner is entitled to continue as Panchayat Teacher in the said school i.e. Middle School, Budhwara in the district of Nawada, where he was functioning as Panchayat Teacher.

In this case, a counter affidavit has been filed on behalf of respondent no. 3.

Learned State counsel has opposed the prayer of the petitioner. It was submitted that since the petitioner had not acquired requisite qualification within 33 months from the date of his initial appointment as Shiksha Mitra, he was not entitled to be regularized, as Panchayat Teacher.

Besides hearing learned counsel for the parties, I have also perused the materials available on record. Normally, in such a stale matter, the Court was not required to interfere, but in view of the

fact that the petitioner was initially appointed as Shiksha Mitra in the year 2003 itself and from time-to-time his employment was extended and thereafter, in view of implementation of 2006 Rules, the petitioner had acquired the status of Panchayat Teacher and subsequently, with permission he had also acquired the requisite qualification of Intermediate, certainly the petitioner is entitled to be regularized as Panchayat Teacher in the said school.

Accordingly, the writ petition is allowed with a direction to respondents to allow the petitioner to function as Panchayat Teacher in the concerned school, if vacancy is available or accommodate the petitioner in any other school, where vacancy is available. It is made clear that the petitioner shall be entitled to all the benefits only from the date of allowing the petitioner to join the new post. He shall not be entitled to claim any arrear of salary. All the formalities must be completed within a period of three months from the date of receipt/production of a copy of this order.

The writ petition stands allowed.

(Rakesh Kumar, J.)

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