

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4543 of 2013

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Randhir Kumar Son of Sri Brahmdeo Rabidas Resident of Village - Korawan, P.S.
Hilsa, District - Nalanda

.... Petitioner/s

Versus

1. The State Of Bihar, through Principal Secretary, Human Resources Development Department, Government Of Bihar, Patna
2. The District Magistrate, Nalanda
3. The District Education Officer, Nalanda
4. The Block Development Officer, Hilsa, Nalanda
5. The Block Education Officer, Hilsa Nalanda
6. The Member, District Teacher'S Appointment Appellate Authority, Nalanda (Biharsharif)
7. The Mukhia Gram Panchayat Raj Korawan Block, Hilsa, District - Nalanda
8. The Panchayat Secretary, Gram Panchayat Raj, Korawan, Block - Hilsa, P.S. - Hilsa, District - Nalanda
9. Reena Rani Wife Of Purushottam Kumar Resident Of Vill - Barhi Bigha, P.O. Barhi Bigha, P.S. Hilsa, Dist - Nalanda

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Arun Kumar
: Mr. Vivuti Ranjan Sonvadra

For the Respondent-State : Mr. Prabhat Kumar Verma, A.A.G.-V
: Mr. Mankeshwar Tiwari

For the Respondent No.9 : Mr. Rajendra Prasad, Sr. advocate
: Mr. Ritesh Kumar
: Mr. Pramod Kumar

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 29-03-2016

1. Heard learned counsel for the petitioner and learned counsel for the respondent.
2. In this case the petitioner is challenging the order dated

11.04.2012 passed by the District Teachers Appointment Appellate Authority, Nalanda, whereby and whereunder the appointment of the petitioner has been cancelled.

3. The short facts of this case are that the petitioner was appointed as Shiksha Mitra on 05.09.2003 by the Sukh Subidha Committee. The petitioner gave his joining on 24.10.2003 in the primary school, Damodarpur, under Gram Panchayat Raj Korawan, After completion of his tenure, the same was extended second time from 24.10.2004 to 24.10.2005. On account of enforcement of Resolution dated 1458 dated 11.8.2004, whereby the Government of Bihar has amended the guidelines for the appointment of Shiksha Mitra, thereby fixed the qualification intermediate with 45% of marks.

4. As per the claim of the petitioner on account of enforcement of that Resolution or enhancement of the qualification, he was not given the third extension and in his place the private respondent No.9- Reena Rani was inducted as Shiksha Mitra within two days. When the petitioner acquired the qualification of intermediate on 31.5.2006 having 432 marks out of 900, thereby percentage of marks is 43%. on the basis of acquisition of this qualification, as per the claim of the petitioner, he was again appointed as Shiksha Mitra vide letter dated 04.07.2008, accordingly, he joined on the post of Shiksha Mitra on 7.12.2008 in the gram Panchayat Raj Damodarpur.

5. In the meantime, the respondent No.9 approached this Court in C.W.J.C. No.14643 of 2010 and this Court vide order dated 2.2.2012 disposed of the said writ petition and given liberty to approach the Appellate Tribunal in accordance with law.

6. At the same time, the petitioner also approached this Court in C.W.J.C. No.321 of 2007, which was disposed of, there the Court has suggested the petitioner to approach the Appellate Tribunal, but one fact is very much clear that the petitioner did not approach the Tribunal, whereas the appeal filed by the respondent No.9 was registered as appeal No.11 of 2010 and the Tribunal found that Reena Rani, respondent No.9, is entitled to the salary and declared the appointment of the petitioner to be bad.

7. Learned counsel for the petitioner has submitted that in view of the Resolution dated 04.03.2008 (Annexure-2 to the writ application) from where it emerges whosoever acquired qualification of intermediate with 45% of marks within 33 months will be brought back to the post of Shiksha Mitra. As the petitioner has acquired that qualification much before 33 months he was brought back to the post of Shiksha Mitra in the year 2008 and he was allowed to discharge his duty. It does not stand to the reason as in the year 2008 there was no post of Shiksha Mitra as all the posts were converted to the post of Panchayat Teacher, so the claim of the petitioner that he was brought

back to the post of Shiksha Mitra stands falsified.

8. The petitioner has brought a letter of the In-charge Headmaster, indicating that he was allowed to work as Shiksha Mitra. When the post of Shiksha Mitra was not in existence, the question of bringing back and the petitioner was working to the post of Shiksha Mitra does not arise and so much so that it is very clear that the petitioner has completed two terms without any hindrance and he was allowed to complete the second turn of his employment even after qualification for appointment of Shiksha Mitra was enhanced.

9. So far the applicability of 2008 Circular is concerned, from a perusal of clause-4 of resolution, which itself shows that if the service of a person has illegally been extended, having no qualification of intermediate with 45% marks, they were given liberty to acquire the said qualification within 33 months, but this circular does not come in the rescue of the petitioner as his tenure was over on 24.10.2005, merely because he was not given a third tenure cannot be a basis for invoking the provisions of 2008 Resolution. Each tenure is an independent and fresh tenure having no nexus with earlier tenure and all the time appointment was for the period of 11 months and after efflux of time it gets terminated automatically.

10. In such view of the matter, this court does not find any

merit in the present case and so much so that learned counsel for the petitioner has challenged the appointment of respondent No.9, one thing is required to be taken into consideration that this Court has granted liberty to the petitioner to approach the appellate Tribunal, but he remained sitting and sleeping but never challenged the appointment of respondent No.9. Unless a person challenges the appointment, the Court cannot decide the same and gives it own finding as the claim has been made by the petitioner that respondent no.9 was appointed without following the minimum procedure which is known to the service law. The petitioner cannot challenge the appointment of respondent No.9 in collateral proceeding.

11. In such view of the matter, this Court does not find any merit in the present case. Accordingly, this writ petition is dismissed.

(Shivaji Pandey, J)

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