

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1611 of 2012

IN

Civil Writ Jurisdiction Case No. 9718 of 2011

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Sabita Kumari, wife of Sanjeet Kumar, Resident of Village- Naili, P.O.- Naili, Police Station- Nimchak Bathani, District- Gaya

.... Appellant

Versus

1. The State of Bihar, through the Principal Secretary, Human Resources Development, having its office at Vikas Bhavan, Police Station- Sachivalaya, District- Patna

2. The District Magistrate, Gaya having his office at Collectorate Compound, District- Gaya

3. The District Superintendent of Education, Gaya

4. The Block Development Officer, Nimchak Bathani having his office at Nimchak Bathani, District- Gaya

5. The Block Education Officer, Nimchak Bathani having his office at Nimchak Bathani, District- Gaya

6. The Principal, Naili Middle School, Naili, Block- Nimchak Bathani

7. The Panchayat Secretary, Naili, Nimchak Bathani, District- Gaya

8. The Mukhiya, Naili Panchayat, Nimchak Bathani, District- Gaya

9. Soni Kumari D/O Rajendra Yadav R/O Village- Nimchak Bathani, P.O.- Naili, Circle- Nimchak Bathani, District- Gaya

10. The District Teacher Employment Appellate Authority, Gaya

.... Respondents

With

Civil Writ Jurisdiction Case No. 8403 of 2011

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Soni Kumari W/O Shailendra Kumar, resident of village-Chhatani, P.O.-Naily, P.S.-Neemchak Bathani, District-Gaya.

.... Petitioner

Versus

1. The State of Bihar through the Commissioner-Cum-Secretary,

Department of Human Resources Development Department,
Government of Bihar, Patna.

2. Commissioner-Cum-Secretary, Department of Human Resources
Development Department, Government of Bihar, Patna.

3. District Magistrate, Gaya.

4. The District Superintendent of Education, Gaya.

5. The Block Development Officer, Neemchak Bathani, District-Gaya.

6. The Block Education Extension Officer, Neemchak Bathani, Gaya.

7. The Sub-Divisional Officer, Neemchak Bathani, Gaya.

8. The Principal, Government Middle School, Naily, Block-Neemchak
Bathani, Distt.-Gaya.

9. Mukhiya, Gram Panchayat-Naily, Block-Neemchak Bathani,
District-Gaya.

10. Up-Mukhiya, Gram Panchayat-Naily, Block-Neemchak Bathani,
District-Gaya.

11. Panchayat Secretary, Gram Panchayat Naily, Block-Neemchak
Bathani, District-Gaya.

12. The District Teacher Appointment Appellate Tribunal, Gaya.

13. Sabita Kumari, W/O Sanjeet Singh, Resident of Village-Naily,
P.O.-Naily, P.S.-Neemchak Bathani, District-Gaya.

.... Respondents

Appearance :

For the Appellant	:	Mr. Rajendra Narain, Sr. Advocate
For the Respondents	:	Mr. Sanjeet Kumar, Advocate
		Mr. Raj Kumar, Advocate
For the State	:	Mr. Prabhat Ranjan, AC to GP-12
For the Respondent	:	Mr. Mukeshwar Dayal, Advocate
		Mr. Vikas Mohan, Advocate

CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

And

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

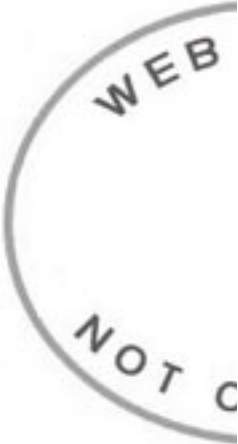
(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 11-02-2016



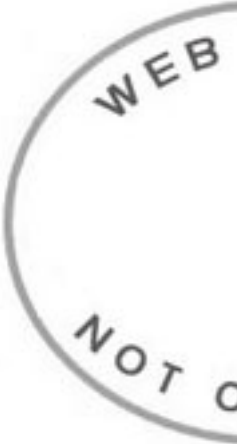
LPA No. 1611/2012 has been filed against the judgment and order of the learned Single Judge dated 13.02.2012, passed in CWJC No. 9718/2011. By the said order, the learned Single Judge has refused to interfere with the order of District Teachers Appellate Authority, Gaya, in Case No. 11/2010 being order dated 15.04.2011. While hearing this appeal, it was pointed out that respondent no. 9, Soni Kumari, to the appeal, who was also respondent no. 9 in the writ petition, had also independently challenged the said order of Tribunal, and her writ petition being CWJC No. 8403/2011 was pending before the learned Single Judge of this Court, in which an order had been passed that the said writ petition would be taken up after disposal of this Letters Patent Appeal. We are of considered opinion as both the parties were adversely affected by the order of the Tribunal, it is better to hear both of them together, and therefore, we ordered for the said writ petition to be listed along with this Letters Patent Appeal, as the same order of Tribunal was challenged in both of them.

The appellant in Letters Patent Appeal is Sabita



Kumari and we have heard learned counsel at length. In respect of Soni Kumari, who is respondent no. 9 in the appeal and the writ petitioner in CWJC No. 8403/2011, we have heard Sri Rajendra Narain, learned Senior Counsel. We have also heard learned counsel for the Gram Panchayat and learned counsel for the State, and with their consent, we are disposing of this appeal at this stage itself.

It appears that in the year 2003, State took a decision to appoint Siksha Mitra, Panchayat level teachers, on contract basis, with fixed remuneration, valid for a period of 11 months. At that time, eligibility of educational qualification was Matriculation. Soni Kumari, who is respondent no. 9 in the appeal and the writ petitioner in connected writ petition, was selected and appointed. Her contract was, accordingly, renewed in the year 2004 as well as in 2005. The State Government provided that Siksha Mitra who had earlier been recruited with educational qualification of Matriculation must enhance their educational qualification to Intermediate level. It may be noted that in several judgments and orders of this Court, it has now been settled that a period of 33 months was to be granted to the non-intermediate teachers to enhance their

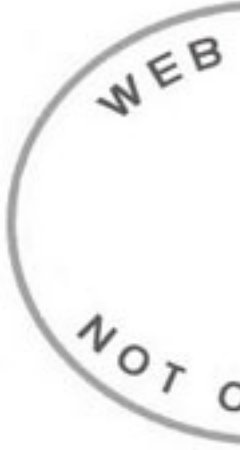


educational qualification. It is also not in dispute that when Soni Kumari was recruited, the Mukhiya of the Gram Panchayat was in judicial custody. The recruitment process was undertaken by the Up-Mukhiya. In 2005, Mukhiya, on being released from judicial custody, took a decision not to renew the contract of Soni Kumari, on the ground, wrongly, that her recruitment in the year 2003 by the Up-Mukhiya was wrong, as she was a non-intermediate. Allegedly, he then started a fresh recruitment process in which the appellant Sabita Kumari is said to have been selected and allegedly appointed as Siksha Mitra in place of Soni Kumari. In September, 2005, controversy immediately arose and a team was constituted by the District Programme Officer to enquire into the matter. The team was headed by the Block Development Officer. Upon enquiry and examination of records he gave his report on 02.12.2006. In his report he has clearly mentioned that on 02.12.2006, he found that Soni Kumari had been working as Panchayat Teacher. On examination of records, he found that the Mukhiya had malafidely taken a decision not to renew the contract of Soni Kumari, which was invalid. He had malafidely without following procedures selected and

appointed Sabita Kumari as Siksha Mitra. According to him, the appointment of Sabita Kumari was wrong and continuance of Soni Kumari was correct.

In our view, things could have ended there, but they did not. In 2009, Sabita Kumari wrote to the Block Development Officer, that, except for the first 8 months of her appointment as Siksha Mitra, till date, she has not been paid a single Paisa, though claimed to be working now as a Panchayat Teacher. The Block Development Officer forwarded her application to the Tribunal and it is on the basis of that, the case was registered before the Tribunal. The Tribunal rightly noticed both the parties because the rights of one depended upon the other. Both the parties have challenged the order of the Tribunal.

It may be noted here that w.e.f. 01.07.2006, State Government came up with the Panchayat Teachers (Appointment and Service Condition) Rules, 2006. It, *inter alia*, provided that all the Siksha Mitras, who were working on the said date i.e. 01.07.2006, would automatically be absorbed as Panchayat Teacher. Under these Rules, Block Development Officer has Statutory Authority to deal with the disputes.



A piquant situation now developed, Soni Kumari having been duly selected, continued to work and being there in the position on 01.01.2006, continued to work as Panchayat Teacher. What is more important, is without break she was paid her remuneration, right up to 2011. This fact, in our view, is of some importance, because this not only establishes that Soni Kumari continued to work as Siksha Mitra, she continued as Panchayat Teacher as well. The position with regard to Sabita Kumari is different. On her own saying, upon her arbitrary selection, she received payment only for 8 months i.e. during September, 2005 to May 2006, which means that on 01.07.2006, when new Rules came in, she was not being paid as Siksha Mitra, whereas Soni Kumari was being paid as Siksha Mitra. This resolves an important factual position that, on the date when the Rules came into being, it was Soni Kumari, who was actually and factually working, and thus legitimately continued as Panchayat Teacher. Upon these facts, though the Tribunal took a hyper technical view of the matter in holding that rightly or wrongly the contract of Soni Kumari have not been renewed, Soni Kumari cannot be deemed to be continued, notwithstanding the fact



that her presence in the school and payment to her right up to 2011 could not be disputed. The Tribunal, on this ground of alleged non-renewal, held that Soni Kumari had no right to continue. For the reasons noted above, we cannot accept the said finding. In so far as the Tribunal held that the very selection and appointment of Sabita Kumari was bad, illegal and malafide, we fully agree with the findings of the Tribunal.

For the reasons as stated above, there being no legitimate vacancy, the selection cannot be approved, everyone knew of it and that is why Sabita Kumari was never paid anything.

In view of the aforesaid, we have no option but to dismiss the Letters Patent Appeal and allow the writ petition. Consequently, the order of the Tribunal, in so far as it is adverse to Soni Kumari, is set aside, and so far as it is adverse to the interest of Sabita Kumari, is affirmed.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

Rajeev/A.F.R.

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