

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No 433 of 2014
IN
Civil Writ Jurisdiction Case No 5521 of 2010

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Madhuri Mamta Wife Of Sri Sanjay Kumar, Resident Of Village- Jharna, P.S.-
Pilua (Jharna), P.S.- Baunshi, District- Banka

.... Appellant/s

Versus

1. The State Of Bihar
2. The Commissioner cum Secretary, Human Resources Development Department,
Government of Bihar, Patna
3. The Director, Primary Education, Human Resources Development Department,
Government of Bihar, Patna
4. The District Magistrate, Banka
5. The District Superintendent of Education, Banka
6. The Block Development Officer, Baunshi, Banka
7. The Block Education Extension Officer, Baunshi, District- Banka
8. The Panchayat Secretary, Gram Panchayat Angaroo Zabarah, Baunshi, District-
Banka
9. The Mukhiya Gram Panchayat Angaroo Zabarah, Baunshi, District- Banka
10. Rajeev Kumar Ranjan, Son Of Rupnarayan Yadav, Resident Of Village- Jharna,
P.S.- Pilua (Jharna), P.S.- Baunshi, District- Banka

.... Respondent/s

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Appearance :

For the Appellant/s : Mr Tej Bahadur Singh, Sr Advocate with
Ms Shashi Priya Pathak, Advocate

For the S t a t e : Mr Sunil Kr Mandal, SC 24 with
M/s Arjun Pd & Bipin Kr, ACs to SC 24

For Respondents 9 & 10 M/s Rajesh Kr, Rana Pratap Singh &
Ranvijay Narain Singh, Advocates

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CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH
&
HON'BLE JUSTICE SMT NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE NAVANITI PRASAD SINGH)

Date: 05-02-2016

The appellant is the unsuccessful writ petitioner. She

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is aggrieved by the judgment and order dated 26.04.2013 passed by the learned Single Judge in CWJC No 5521 of 2010. She had filed the writ petition challenging the order of the District Teachers Appointment Appellate Tribunal (for brevity, *the Tribunal*), Banka and consequential termination order issued pursuant thereto terminating her service as a Panchayat Teacher of Gram Panchayat – Angaroo Zabarah in Baunsi Block of District- Banka. Respondent No 10 in the writ petition and in this appeal is one Rajeev Kumar Ranjan who has since appeared and is represented by Shri Rajesh Kumar, Advocate.

2. We have heard the parties and, with their consent, instead of dealing with stay application separately, we are disposing of this appeal on merit itself.

3. It appears that respondent No 10 Rajiv Kumar Ranjan had applied and was appointed as Shiksha Mitra for the said Gram Panchayat in the year 2003 for a period of 11 months which was extended in the year 2004. It appears that the State Government in the year 2005 took a decision that all Shiksha Mitras, who had been recruited on basis of Matriculation certificates, are required to enhance their educational qualification to Intermediate within 33 months from the date the post of Shiksha Mitra came into being. It is not in dispute that respondent No 10 could not manage to attain the

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educational level of Intermediate and, accordingly, his contract was not renewed. In the vacancy, that was caused after due advertisement and process being followed, writ petitioner/appellant Madhuri Mamta was selected and appointed as Shiksha Mitra in the year 2005. While she was continuing to work as Shiksha Mitra, Bihar Panchayat Teachers (Recruitment and Conditions of Service) Rules 2006 came into being and by virtue of provisions of the said rules, all Shiksha Mitras, who were working on the post as on 01.07.2006, were automatically absorbed as Panchayat Teacher. Consequently, the writ petitioner/appellant Madhuri Mamta was absorbed as Panchayat Teacher and continued to work as such. It appears that certain Shiksha Mitras had challenged the Circular of the State Government issued earlier giving 33 months time to attain educational qualification of Intermediate and a learned Single Judge of this Court, in the case of *Kishori Prasad –Versus- State of Bihar* since reported in 2008 (2) *PLJR* 458, held that the 33 months period would be prospective in application from the date of the Circular and, accordingly, dismissing Shiksha Mitras for not attaining the educational level of Intermediate without granting them time of 33 months after the Circular would not be proper. Thereafter, the State Government, in the year 2008, came up with a Circular in conformity with the judgment of this Court in the case of *Kishori Prasad (supra)* but it went one step further. It not

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only informed the authority the judgment of this Court and its implication but further held that all the Shiksha Mitras, who had been dismissed for not having attained Intermediate qualification, would be immediately reinstated. It may be noted that in the year 2008, there were no Shiksha Mitras left as all the Shiksha Mitras, who were working on 01.07.2006, had already been absorbed as Panchayat Teacher and the post of Shiksha Mitra stood impliedly abolished. This 2008 Circular having come, respondent No 10 Rajeev Kumar Ranjan, being one of such Shiksha Mitras, whose services had been dispensed with by non-renewal of his agreement for not having attained Intermediate qualification, then moved the Tribunal, Banka claiming his reinstatement and consequently removal of the writ petitioner/appellant. The Tribunal agreed with the application of the said Rajeev Kumar Ranjan and issued directions to the Panchayat to remove the writ petitioner/appellant Madhuri Mamta and, in place, reinstate Rajeev Kumar Ranjan, respondent No 10. Being aggrieved by this decision of the Tribunal, Madhuri Mamta, who had been working since 2005, first as a Shiksha Mitra and then absorbed as Panchayat Teacher, filed the present writ petition being CWJC No 5521 of 2010 which was not entertained by the learned Single Judge and stood dismissed by order dated 26.04.2013. In the order under appeal, there was clear direction that Rajeev Kumar Ranjan would be

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immediately reinstated in place of writ petitioner/appellant. In view of the Circular aforesaid, which was held to be rightly interpreted and enforced by the Tribunal, the writ petitioner/appellant, being aggrieved by the judgment of the learned Single Judge and the Tribunal, has filed this intra-Court appeal under the aforesaid facts and circumstances.

4. On behalf of the appellant and in support of the appeal, Shri Tej Bahadur Singh, learned Senior Counsel submits that the learned Single Judge was in error in applying the 2008 Circular and upholding the order of the Tribunal. We do not think the submission is correct for when the learned Single Judge took that decision on 26.04.2013, that was the law but things materially changed thereafter. A Full Bench of this Court, in the case of *Kalpana Rani –Versus- State of Bihar* since reported in 2014 (2) PLJR 665, noticed and held that the Circular of the year 2008, issued by the State Government, was clearly ultra vires Rule 20 of the 2006 Rules. As noticed above, it is the Circular that was the foundation for the claim of respondent No 10. The judgment of Kishori Prasad (supra) was also held to be per in curium and was expressly overruled. Thus, the very foundation of the case of respondent No 10 stood demolished. There was yet another difficulty. These decisions in law have been noticed in recent Division Bench judgment of this Court in

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the case of **Mahesh Thakur @ Mahesh Kumar Thakur- Versus- State of Bihar & Others** since reported in **2014 (4) PLJR 339**. This Court, in large number of judgments, have already held that once the post of Shiksha Mitra stood demolished, no writ and/or direction could have been issued for either reinstating a person or taking the clock back to pre-abolition date and then deeming reinstatement and deeming absorption as Panchayat Teacher. If we see this in reference to the present case, once again what was done by the learned Single Judge was in the year 2013 ordering reinstatement of respondent No 10 Rajeev Kumar Ranjan to the post of Shiksha Mitra which stood abolished in the year 2006 itself and consequently deemed him to be absorbed as Panchayat Teacher. This could not have been done. Thus, on both these grounds, the order of the Tribunal as well as order of the learned Single Judge cannot be sustained.

5. Considering the facts and circumstances, as noted above and the judgments as noted above, we have no option but to allow this appeal, set aside the judgment and order of the learned Single Judge dated 26.04.2013 passed in CWJC No 5521 of 2010 as also of the Tribunal in this regard. The order of termination of the writ petitioner/appellant's service as Panchayat Teacher is also quashed with consequential direction for immediate reinstatement of the writ petitioner/appellant Madhuri Mamta. She would, however, not be

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entitled to any wages for the period she has remained out of service with full continuity of service.

6. However, before parting, we may notice a situation in equity. So far as respondent No 10 Rajeev Kumar Ranjan is concerned, Rajeev Kumar Ranjan had attained the qualification of Intermediate though after he had been terminated. He attained the qualification in terms of the executive Circulars that were issued prior to 2006. Pursuant to the order of the Tribunal, he had joined after the appellant had been removed. He has since been working. Having worked for over 6 years, it would not be proper to get rid of him because he was removed not because of his fault but because of subsequent conditions put by the State Government.

7. We, therefore, in the special facts of the aforesaid case, direct the concerned Panchayat to retain the services of Rajeev Kumar Ranjan if any post of Panchayat Teacher in respect of the said Panchayat is vacant.

(Navaniti Prasad Singh, J)

(Nilu Agrawal, J)

Rajiv/MEH/

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