

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.418 of 2011

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1. Anuranjan Kumar 'Anupam' S/O Shri Laxmi Narayan Mehta R/O Vill Rampur,
P.O.-Sanskrit Nirmali, P.S. Balua Bazar, Distt- Supaul

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Education Government of Bihar, Patna
2. The Director, Primary Education Government of Bihar, Patna
3. The Regional Deputy Director of Education Koshi Commissioner, Saharsa
4. The District Superintendent of Education, Supaul
5. The District Teachers Appellate Authority, Supaul through its Member Secretary
6. The Member, District Teachers Appointment Authority, Supaul through its Member
7. The Block Education Extension Officer Basantpur, Distt- Supaul
8. The Block Education Extension Officer, Basantpur, Distt-Supaul
9. The Elected Mukhiya of Gram Panchayat Nirmali Anchal-Basantpur, Distt-Supaul
10. The Chairman, Panchayat Teachers Selection Committee Nirmali Anchal-Basantpur, Distt-Supaul
11. The Secretary of Gram Panchayat Nirmali Anchal-Basantpur, Distt-Supaul
12. Dev Narayan Mehta S/O Premlal Mehta R/O Vill Rampur, Gram Panchayat - Nirmali, Anchal Basantpur, P.S. Balua Bazar, Distt-Supaul

.... Respondent/s

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Appearance :

For the Petitioner/s :	Mr. Amrit Abhijat, Adv.
For the Respondent-State :	Mr. Rajiv Roy, G.P.1
	Mr. Suresh Kumar, A.C. to GP1
For the respondent No.9 :	Mr. Durgesh Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 30-08-2016

Heard Mr. Amrit Abhijat learned counsel for the petitioner, Mr. Suresh Kumar, A.C. to G.P.1 for the State and Mr. Durgesh Kumar for the respondent No.9.

With the consent of the parties, this matter has been heard with

a view to its final disposal.

The petitioner is aggrieved by the order dated 30.10.2010 passed by the District Teachers' Appellate Authority, Supaul in Case No. 743 of 2009 whereby the appointment of the petitioner on the post of Shiksha Mitra, Gram Panchayat, Nirmali in the district of Supaul has been set aside and an order has been issued to the Panchayat Teachers Selection Committee to reconsider the appointment. Following the order although the respondent No.12 was appointed but it is stated at the Bar by Mr. Amrit Abhijat learned counsel for the petitioner that it was not given effect to for by a subsequent order, the appointment order issued by the Appointment Committee was kept in abeyance.

Facts of the case briefly stated is that the petitioner, the respondent No.12 and some others participated in a selection process for appointment to the post of Shiksha Mitra, Gram Panchayat, Nirmali in the district of Supaul in the year 2003. The petitioner succeeded and was appointed to the post along with two others on 23.2.2003. Although the appointment was for a period of 11 months but was renewed from time to time and by virtue of the amendments incorporated in the Bihar Panchayat Elementary Teachers (Appointment and Service Conditions) Rules, 2006 (hereinafter referred to as 'the Rules') in the year 2008 more particularly, Rule



20(iii), the petitioner appointed as a Shiksha Mitra was absorbed as a Panchayat Teacher with effect from 1.7.2006. Until such time there was no challenge to his appointment. It is after the absorption of the petitioner as a Panchayat teacher that a writ petition was filed giving rise to C.W.J.C.No.8192 of 2007 and since it was brought to the notice of the Bench that the appellate authority has since become functional, the writ petition was disposed of allowing the respondent No.12 to exhaust the alternative remedy vide order passed on 12.8.2009. It is thereafter that the complaint case in question was filed by the private respondent giving rise to Case No. 743 of 2009 and which has resulted in the order impugned. The petitioner feeling aggrieved is before this Court.

Before I proceed further I deem it necessary to place on record that while the present writ petition was filed by the petitioner questioning in the order passed by the appellate authority whereby his appointment as Panchayat teacher was cancelled, on the other hand, the respondent No.12 also filed a writ petition giving rise to C.W.J.C.No.6900 of 2011 questioning the decision of the Block Development Officer whereby his appointment made pursuant to the order of the appellate authority had been put in abeyance. This writ petition along with the writ petition filed by the respondent No. 12 was heard on 27.7.2011 and when notices were issued to the Selection



Committee, Mukhiya and the Secretary of the Gram Panchayat as also the Headmaster of the concerned school. The order passed was peremptory in nature. Now while the writ petitioner ensured compliance of the order and filed the requisites, the respondent No.12 did not take any steps for filing the requisites so directed in the order passed on 27.7.2011 and as a consequence, the writ petition filed by the respondent No.12 bearing C.W.J.C. No. 6900 of 2011 was dismissed for non compliance of the peremptory order. Since this writ petition was being heard along with writ petition filed by the respondent No.12 hence the concerned Bench in its order passed on 27.7.2011 did not think it necessary to issue notice to the respondent No.12. By virtue of the laxity on the part of the respondent No.12 to pursue his matter, not only his writ petition stands dismissed and there is no effort on his part for its revival, even when the respondent No.12 was aware of the present writ petition, he has taken no steps for contesting the present writ petition for there is representation on his behalf.

I have heard learned counsel for the parties and I have perused the records and in view of the law settled by this Court in the Full Bench judgment reported in **2014(2)PLJR 665 (Kalpana Rani Vs. State of Bihar)** I do not deem it necessary to delve deep into the matter. The fact remains undisputed that the appointment of the



petitioner to the post of Shiksha Mitra in the year 2013 was never questioned by the respondent No.12 rather the challenge came only after the petitioner was absorbed on the post of Panchayat teacher by virtue of the amendment incorporated in Rule 20(iii) of 'the Rules'. It stands settled in the judgment of the Full Bench that if there was no challenge to the appointment of an appointee against the post of Shiksha Mitra, his said appointment cannot be questioned after his absorption as Panchayat teacher. The Full Bench has concluded that no person who was earlier an aspirant for the post of Panchayat Shiksha Mitra can be appointed only because his/her name figured in the panel of the Shiksha Mitra and that the said post having been abolished with effect from 1.7.2006, no one can be appointed on the post of Panchayat teacher merely on empanelment as Panchayat Shiksha Mitra.

Mr. Abhijat has also drawn the attention of this Court to a Division Bench judgment since reported in **2016 (2) PLJR 540 (Bhrigu Kumar Ranjan & Ors. vs. The State of Bihar)** to submit with reference to the conclusion present at paragraphs 7 and 8 of the judgment that the order of the appellate authority to comment on the appointment of the petitioner as Panchayat Shiksha Mitra suffers from the vice of *coram non judice* as the appellate authority so constituted, did not possess jurisdiction to enquire into the appointment to the said

post which jurisdiction vested in the Collector of the district at the relevant time.

The legal position being such, the issue posed by Mr. Abhijat is sought to be contested by Mr. Suresh Kumar learned State counsel, who submits that since the appointment of the petitioner itself was founded on a fraud, even a delayed challenge would not be an obstruction to question the appointment nor any issue of jurisdiction would arise. Learned counsel has referred to the finding of the appellate authority to submit that it is on examination of the materials on record that the appellate authority has concluded that this petitioner had earlier appeared in the matriculation examination in the year 1982 in the name of Jagdish Mehta with a date of birth recorded as 15.7.1965. He submits that having already appeared in the matriculation examination in 1982 the writ petitioner made a second attempt in a changed name and this time, the date of birth was recorded as 15.7.1975. He submits that it is taking note of this misconduct on the part of the petitioner and taking note of the undisputed fact that the private respondent had higher marks, the appointment of the petitioner was interfered with.

The arguments of Mr. Suresh Kumar is responded by Mr. Abhijat who with reference to the position explained at paragraphs 11 and 12 of the writ petition and Annexures-5 and 5/1 submits that the



person by the name of Jagdish Mehta though has a father by the same name as that of the petitioner's father but the name of the grand father of the petitioner and the said Jagdish Mehta, is different and merely on account of the fact that the name of the father of the Jagdish Mehta and that of the present petitioner is the same as Laxmi Narain Mehta that the appellate authority has charged the petitioner of such misconduct which is based on mere suspicion.

I have heard learned counsel for the parties and I have perused the records.

The appointment of the petitioner to the post of Shiksha Mitra was made on 23.2.2003. It is not in dispute that the respondent No.12 at the relevant time did not choose to question the appointment on any of the grounds as sought to be raised before the appellate authority in the case resulting in the impugned order. He allowed the petitioner to function as the Shiksha Mitra until his absorption on 1.7.2006 and it is by virtue of the status gained by the writ petitioner which prompted the respondent No.12 to raise the challenge before this Court in C.W.J.C.No.8912 of 2007. In view of the law settled by this Court in the Full Bench judgment of **Kalpana Rani** (supra) as followed by the Division bench in the case of **Bhrigu Kumar Ranjan** (supra), the challenge should have been nipped in the bud and did not require any persuasion. The change of status of the petitioner from Panchayat



Shiksha Mitra to Panchayat Shikshak after his absorption, his initial appointment could not have been questioned on his entry to the post except if it rested on a fraud. Although it vehemently argued by Mr. Suresh Kumar and also concluded by the appellate authority that the petitioner and Jagdish Mehta are one and the same person but in view of the position explained by the petitioner in paragraphs 11 and 12 of the writ petition read along side Annexures.5 and 5/1, in my opinion, it is a case of suspicion and rests on no evidence.

In my opinion until such time the factual position explained by the writ petitioner in paragraphs 11 and 12 with reference to the family geneology present at Annexure-5 series, is contested with conclusive piece of evidence to support the charge of misconduct alleged against the petitioner, his appointment cannot be interfered with. It is rather surprising that merely because of the similarity in the name of the father and even in absence of any conclusive piece of evidence to support the charge yet the appellate authority has ventured into the dispute to conclude otherwise. The conclusion rests on no evidence, is based on mere suspicion and is conjectural. In my opinion, the appellate authority is not even appropriately clothed with powers to investigate into an issue of fraud.

For the reasons so discussed, the order dated 30.10.2010 passed by District Teachers Appellate Authority, Supaul in Case No. 743 of

2009 impugned at Annexure-2 cannot be upheld and is accordingly quashed and set aside. The writ petition is allowed. The petitioner stands restored to his post of Panchayat Shikshak.

(Jyoti Saran, J)

Bibhash/-

AFR	
CAV DATE	
Uploading Date	17.9.16
Transmission Date	