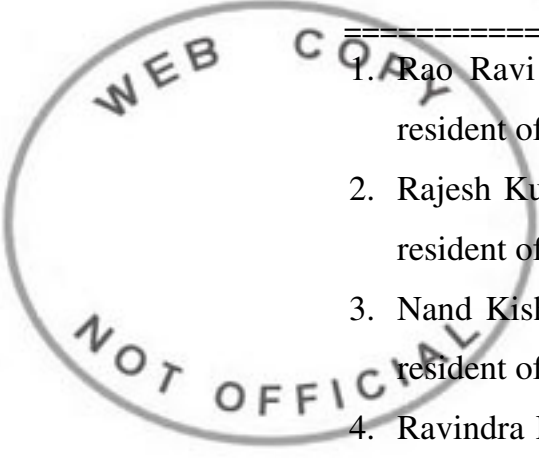


IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.20394 of 2013

- 
1. Rao Ravi Shankar Singh, aged about 28 years, son of Prikha Singh, resident of village Karai, Post Manjhiyama, Block Konch, District Gaya.
 2. Rajesh Kumar Suman, aged about 37 years, son of Late Vishnu Yadav, resident of village Karai, Post Manjhiyama, Block Konch, District Gaya.
 3. Nand Kishore Arasad, aged about 33 years, son of Brij Mohan Prasad, resident of village Karai, Post Manjhiyama, Block Konch, District Gaya.
 4. Ravindra Kumar, aged about 38 years, son of Rajdeo Prasad, resident of village Bijhari, Post Manjhiyama, Block Konch, District Gaya.
 5. Sangeeta Kumari, aged about 39 years, wife of Mithilesh Kumar, resident of village + Post Manjhiyama, Block Konch, District Gaya

.... **Petitioners**

Versus

1. The State of Bihar through its Principal Secretary, Human Resource Development Department, Govt. of Bihar, Patna.
2. The District Magistrate, Gaya.
3. The District Education Officer, Gaya.
4. The District Programme Officer (Establishment), Gaya.
5. The Block Development Officer, Konch, District Gaya.
6. The Block Education Extension Officer, Konch, District Gaya.
7. The Panchayat Secretary, Gram Panchayat Raj, Manjhiyama, Konch, Gaya.
8. The Mukhiya, Gram Panchayat Raj Manchiyama, Konch, District Gaya.
9. Shri Om Prakash Sharma, son of Baneshwar Sharma, resident of village + post Bhimpur Manjhiyama, P.S. Konch, District Gaya.

.... **Respondents**

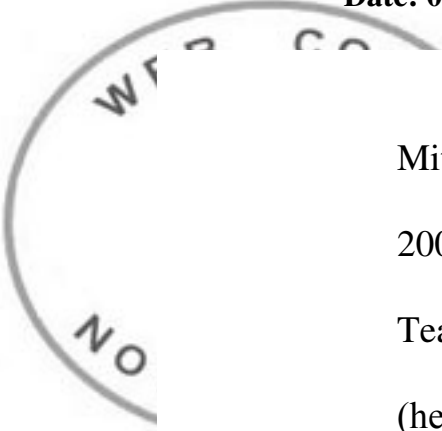
Appearance :

For the Petitioners : Mr. Rajendra Pd. Singh, Sr. Advocate.
Mr. Mukesh Kumar Singh, Advoate
For the Respondents : Mr. Ashok Kumar Choudhary, AAG-13
Mr. Shailendra Kumar Jha, AC to AAG-13

CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

C.A.V. JUDGMENT

Date: 08-04-2016



1. The petitioners, who were all engaged as Shiksha Mitra and subsequently, absorbed as Panchayat Teachers on 1st July, 2006, by operation of Rule 20(iii) of Bihar Panchayat Elementary Teachers (Employment and Service Conditions) Rules, 2006, (hereinafter referred to as “the 2006 Rules”), seek primarily the following reliefs:-

(i) For setting aside the order, dated 06.02.2010, passed by District Magistrate, Gaya, whereby and whereunder direction was issued to Selection Committee, Gram Panchayat Raj, Manchiyama, Konch to take appropriate decision in accordance with law and to cancel the appointments of the petitioners as per Rule.

(ii) For setting aside memo no. 4153, dated 09.07.2013 issued by District Programme Officer (Est.), Gaya (Respondent No. 4), whereby the Panchayat Secretary was directed to cancel the appointments of the petitioners and to recover the entire amount paid to them as salary.

(iii) For quashing of memos no. 9, 10, 11, 12, 13, all dated 28.05.2013, whereby and whereunder the appointments of the petitioners as Panchayat/ Prakhanda Teacher have been cancelled.

2. Before I consider the grounds on which the petitioners have assailed the impugned orders and the counter submissions of the respondents justifying the impugned actions, it would be necessary to notice the facts of the case in brief.

3. (i) An advertisement was published in the year 2005, for appointments to the post of Shiksha Mitra in the Gram Panchayat Raj, Manjhiayama Konch. Altogether 15 seats were advertised for appointments. The petitioners along with others applied against the posts reserved for their respective categories. The Selection Committee, Gram Panchayat Raj, Manjhiyama, Konch, in terms of the provisions of relevant scheme, appointed the petitioners as Shiksha Mitra. In the year 2006, the Panchayat Teachers Appointment Rules came into force w.e.f. 01.07.2006. As per operation of Rule 20(iii), all working as Panchayat Shiksha Mitra were absorbed as Panchayat Teachers w.e.f. 01.07.2006. The petitioner nos. 1 and 2 became Panchayat Teachers. The schools where the petitioner nos. 3 and 4 were working were upgraded and as such they acquired the status of Prakhanda Teachers. The petitioner no. 5 was working in a school situated in the village Manjhiyama, Block Konch and she too acquired the status of Prakhanda Teacher w.e.f. 01.07.2006.

(ii) Earlier on 07.06.2005, the District Magistrate (Respondent no. 2) had set up a Block Enquiry



Committee in every Block of Gaya District to inquire into validity of appointment of Shiksha Mitra under the Chairmanship of Block Development Officer, in which the Block Education Extension Officer was appointed as Member Secretary and Block Agriculture Officer/ Block Welfare Officer and senior most Headmaster of the concerned block, were appointed as Members.

(iii) After inquiry, the Block Inquiry Committee, Konch, submitted its report before the Block Development Officer, Konch on 14.07.2006. On scrutiny of the report, the Block Development Officer found the appointment of petitioner no. 1 along with others to be valid. The Block Development Officer vide memo no. 563, dated 18.08.2006, cancelled the inquiry report of Block Enquiry Committee. On 06.02.2007, the Block Development Officer, Konch, issued a list of such teachers, whose appointments were found valid, which included the names of the petitioners as well. Consequent thereof, the petitioners were allowed to get their salaries regularly.

(iv) In the meantime, one, Om Prakash Sharma (respondent no. 9), along with others, filed a writ petition, bearing C.W.J.C. No. 11448 of 2006, which was heard analogues along with other writ applications, challenging the selection and appointment of Shiksha Mitras. The writ application was disposed on 25.05.2007, with a direction to file representation before the



District Magistrate. In the light of the order of this Court, dated 25.05.2007, a case bearing Case No. 12 of 2008, was registered before the Respondent no. 2, who, after hearing the parties, dismissed the claim of the complainant i.e. respondent no. 9. The District Magistrate (Respondent No. 2), nonetheless, directed the Selection Committee to verify the records with respect to the appointments of Panchayat Teachers and if, on verification, their appointments as Panchayat Teachers are found not as per law, the Committee would recommend the names of such candidates to Respondent no. 5 (the Block Development Officer, Konch) for cancellation of their appointments as Panchayat/ Prakhhand Teachers. A copy of the order of the District Magistrate, dated 06.02.2010 is contained in Annexure-1 and is also impugned in this writ application.

(v) In view of the enquiry ordered by the District Magistrate, the salaries of the petitioners were stopped again, though they continued to work. The Selection Committee, after due verification of the records, in its meeting, dated 11.04.2012, recorded its satisfaction with respect to the appointments of the petitioners and some others. The respondent no. 9 on the same day, too made an application before the Selection Committee, for withdrawal of his complaint against the petitioners. The District Programme Officer vide letter no. 5071, dated

31.07.2012, summoned the records of all the appointed teachers of 2005 in the Gram Panchayat Raj, Manjhiyama and after necessary verifications, directed for payment of salaries to the petitioners.

(vi) But soon thereafter, on 05.04.2013, the Jan Sikayat Koshang, the District Collector, Gaya, vide letter, dated 05.04.2013, directed the District Education Officer, Gaya, to take necessary action in the light of order passed by District Magistrate. The letter, dated 05.04.2013, of Jan Sikayat Koshang is annexed as Annexure-11. In the light of the aforesaid letter, the District Programmer Officer, after asking show-cause from the Panchayat Secretary, Gram Panchayat Raj, Manjhiyama, directed both to cancel the appointments of petitioners and to recover the amount of salaries paid with interest. Consequently, the Panchayat Secretary vide memos no. 9, 10, 11, 12 and 13, all dated 25.08.2013, cancelled the appointments of the petitioners.

4. The petitioners have assailed the impugned orders on the following grounds:-

(I) The scheme for appointment of Shiksha Mitra did not make any provision for redressal of grievances in respect of selection and appointment of Panchayat Shiksha Mitra or the re-employment after expiry of the contractual period. In absence of specific powers, the reliefs or orders made by any such Authority are of no consequence and no relief can be

granted.

(II) Once a Shiksha Mitra is absorbed as a Panchayat Teacher by the operation of Rule 20(iii) of the 2006 Rules, the validity of their appointments cannot be inquired into, as all the circulars, executive instructions with respect to appointment of Panchayat Shiksha Mitra stood repealed under rule 20(i) of 2006 Rules.

(III) The elementary teachers Appellate Authority constituted under Rule 18 of the 2006 Rules, as amended by Bihar Panchayat Elementary Teachers (Employment & Service Conditions) (Amendment) Rules, 2008, is empowered to entertain, hear and decide the appeals arising out of employment of elementary teachers under the Rules, 2006. As such, the Appellate Authority has no jurisdiction to entertain, hear or decide the disputes relating to employment of Panchayat Shiksha Mitra under the then prevalent resolutions, circulars, orders or instructions.

(IV) In support of their submissions, the petitioners have relied upon the decision rendered in case of Renu Kumari Pandey and others Vrs. the State of Bihar and others, reported in 2011(4)PLJR 297; and Full Bench decision in case of Kalpana Rani Vrs. State of Bihar & others, reported in 2014(2)PLJR 665.

5. On the other hand, Mr. Ashok Kumar



Choudhary, learned AAG-13 for the State, submits that if the appointments of Panchayat Shiksha Mitra, itself is illegal, the subsequent absorption of such Shiksha Mitra under the operation of Rule 20(iii) can be scrutinized. In case, on scrutiny, the appointments are found bad and tainted with fraud, then subsequent appointments as Panchayat Shiksha Mitra can always be annulled. In support of his submission, he has primarily relied upon a decision of learned Single Judge in case of Md. Javed Akhtar Vrs. State of Bihar and others, which was disposed of on 04.04.2014, vide C.W.J.C. No. 22151 of 2012, and L.P.A. No. 329 of 2008. He next submits that the petitioners have alternative remedy of appeal before the Appellate Tribunal and as such, the writ application itself is not maintainable. Reference has been made to a judgment reported in 1969 SC 556 para 3.

6. I have heard counsel for the parties. Before I consider the rival submissions of the parties, it would be relevant to notice the SCHEME providing for contractual engagement of Panchayat Shiksha Mitra as well as Bihar Panchayat Elementary Teachers (Employment & Service Condition) Rules, 2006.

7. In order to provide education for all under its constitutional obligation, the State of Bihar vide resolution, dated 21.06.2002, framed scheme for contractual employment of Panchayat Shiksha Mitra under respective Gram Panchayats for



primary education in the State of Bihar. Under its resolution, dated 21.06.2002, the Government of Bihar framed a scheme for selection and employment of Panchayat Shiksha Mitra. The criteria for selection and the service condition were also mentioned in detail in the said resolution. The said scheme was later on modified vide government resolution, dated 11.08.2004 and 07.04.2005 wherein the eligibility criteria for selection of Panchayat Shiksha Mitra was enhanced. In the year 2006, the government framed Bihar Panchayat Elementary Teachers (Employment and Service Conditions) Rules, 2006. Sub-rule 1 of Rule 20 of the 2006 Rules, repealed the earlier resolutions, orders or directions with respect to Panchayat Shiksha Mitra and abolished the post of Shiksha Mitra. Thereafter, by enforcement of Rule 20(iii), all the Shiksha Mitra working on 01.07.2006 were deemed to have been absorbed as Panchayat Teachers.

8. Sub-Rule 1 of Rule 20 of the 2006 Rules, which repealed the post of Panchayat Shiksha Mitra as well as the earlier resolutions, orders or instructions and Rule 20 (iii), by operation of which, all the Shiksha Mitras, working on 01.07.2006, were absorbed as Panchayat Teachers, gave rise to a number of litigations as services became permanent, with much improved service conditions. Some of the candidates, who were not appointed as Panchayat Shiksha Mitra, challenged such appointments and their

subsequent absorption as Panchayat Teachers before different authorities starting from B.D.O. to Appellate Tribunal, constituted under Rule 18 of the 2006 Rules. The disputes albeit gave rise to the following issues:-

(I) *Whether 2002 scheme provided for adjudicatory machinery for redressal of grievances in respect of selection and employment of Shiksha Mitra or their re-employment after expiry of contractual period?*

(II) *Whether the disputes with respect to initial employment of Panchayat Teachers as Panchayat Shiksha Mitra can be challenged after coming into force, the 2006 Rules?*

(III) *Whether the person, who has been wrongly deprived from becoming Panchayat Shiksha Mitra, can be directed to be absorbed in the said post after coming into force the 2006 Rules?*

(IV) *Whether the Appellate Authority, under Rule 18 of the 2006 Rules, as amended in the year 2008, is empowered to entertain, hear or decide the disputes relating to employment of Panchayat Shiksha Mitra under the scheme or the then resolutions, circulars, orders or instructions?*



9. One such dispute, involving aforesaid issues, traveled to a division Bench of this Court in the case of Renu Kumari Pandey (supra). The Division Bench in its judgment observed that after abolition of the post of Panchayat Shiksha Mitra under Rule 20(1), which came into effect on 01.07.2006, no person illegally deprived of the post, can be directed to be appointed in the place of person who has been wrongly appointed as Shiksha Mitra. It was further observed that once the post of Shiksha Mitra is abolished, no person can be appointed as Panchayat Shiksha Mitra, nor can they be deemed as Panchayat Shiksha Mitra, by operation of rule 20(iii). Para 17 of the judgment of division bench in the case of Renu Kumari Pandey (supra) is quoted herein below for easy reference:-

*“17. Coming to the second issue, we are of the opinion that the Rules are statutory in nature and have to be implemented in letter and spirit. Under Clause (i) of Rule 20 of the Rules all earlier resolutions, orders, directions issued in respect of employment of Panchayat Shiksha Mitra are repealed. Consequently, the posts of Panchayat Shiksha Mitra stood abolished. **Thereafter, no person can be employed as Panchayat Shiksha Mitra; nor can there be a deemed employment as Panchayat Shiksha Mitra; nor can there be a deemed absorption in the service as Panchayat Shikshak by operation of Rule 20(iii) of the Rules. In our opinion, even in a case where a person has a legitimate grievance in respect of his or her non-selection as Panchayat Shiksha Mitra at the relevant time or non-***

continuance as Panchayat Shiksha Mitra, such person cannot be deemed to have been appointed as Panchayat Shiksha Mitra; nor can he/she be deemed to have been employed as Panchayat Shiksha Mitra as on 1st July 2006; nor can such person be deemed to have been absorbed in service as Panchayat Shikshak under the Rules.”

10. The Division Bench further observed that the service condition of Panchayat Shiksha Mitra was governed under the 2002 and 2004 schemes and the relevant circulars, orders or instructions issued from time to time under the schemes, which now stand repealed. However, as the scheme did not provide any adjudicatory machinery for redressal of grievance in respect of selection and employment of Panchayat Shiksha Mitra or their re-employment after expiry of contractual period, any order made by any Authority on complaint or otherwise, in absence of power necessarily conferred upon such Authority, would be of no use. The relevant extract of para 18 of the judgment in case of Renu Kumari Pandey (supra) is quoted herein below for easy reference:-

“18. We may also note here that though the State Government framed a complete scheme for employment of Panchayat Shiksha Mitra at Gram Panchayat level in furtherance of its goal of “Education for All”, in none of the aforesaid Resolutions the Government had provided for an adjudicatory machinery. In other words, the State Government did not make any provision for redressal of grievance in respect of selection and employment of



Panchayat Shiksha Mitra or their reemployment after the expiry of the contractual period. On perusal of the records of the above writ petitions, we find that in absence of such machinery, the aggrieved persons approached the authority whom such persons considered to be the competent /the convenient authority. In our opinion, in absence of powers expressly conferred upon any such authority the reports or the orders made by such authority are of no consequence. No relief can be granted on the basis of the finding recorded by such authority.”

(Note:- The underlining is mine for emphasis.)

11. Now, coming to the other issue whether the validity of appointment of Panchayat Shiksha Mitra, who has been absorbed as Panchayat Teachers, can be raised before an Appellate Tribunal constituted under Rule 18 of 2006, Rules, the Division Bench observed that the Appellate Authority is only empowered to entertain, hear or decide the appeal arising out of employment of Elementary Teachers under the Rules and has no jurisdiction to entertain, hear or decide the disputes relating to employment of Panchayat Shiksha Mitra under the then prevalent resolutions, orders or instructions. The relevant extracts of para 18 of the judgment in case of Renu Kumari Pandey (supra) is again quoted herein below:-

“18. We may also point out that Elementary Teachers Appellate Authority constituted under Rule 18 of



the Rules, as amended by Bihar Panchayat Elementary Teacher (Employment and Service Conditions) (Amendment) Rules, 2008 is empowered to entertain, hear and decide the appeals arising out of the employment of elementary teachers under the Rules. The said appellate authority has no jurisdiction to entertain, hear or decide the disputes relating to the employment of Panchayat Shiksha Mitra under the then prevalent Resolutions, Circulars, Orders, Instructions.”

12. Even inspite of determination of the issues concerning all aspects of service conditions of Panchayat Shiksha Mitra, particularly those emerging in light of the new Rules, namely, the Bihar Panchayat Elementary Teachers (Employment and Service Conditions) Rules, 2006, a large number of cases still continued to flood the Courts on the same issues. A Division Bench, in seisin of one such matter, considering the large number of cases, again arising on the same issues, referred the matter to Full Bench in the case of Kalpana Rani Vrs. State of Bihar (supra).

13. The Full Bench, after noticing the relevant provisions regulating the employment of Panchayat Shiksha Mitra as well as their absorption under Panchayat Rules, 2006, particularly, Rule 20, affirmed the views taken by the Division Bench in the case of Renu Kumari Pandey (supra) and approvingly quoted para 17 and 18 of the said decision, in para 22 and 21 of its

judgment, which need not be reproduced again, as the same has been elaborately quoted in para 9 and 10 above.

The Full Bench further observed that once Shiksha Mitra working on 01.07.2006 is absorbed under Rule 20(iii), the validity of the appointment cannot be challenged and no one would have right to be appointed in his or her place. Para 26 of the judgment of Full Bench in case of Kalpana Rani Vrs. State of Bihar (supra) is quoted herein below for easy reference:-

“26. In the matter before us also the appellant Kalpana Rani was never appointed as Panchayat Shiksha Mitra either in 2003 or at any time until 1st July, 2006. After 1st July, 2006, the appellant could not set up right to employment as Panchayat Shiksha Mitra or right to be absorbed as Panchayat Teacher. The belated challenge to the appointment of the respondent nos. 9 and 10 and the claim for absorption as Panchayat Teacher raised by appellant after 1st July, 2006, was clearly an afterthought. Such a claim cannot be entertained. Irrespective of the validity of the appointment of respondent nos. 9 and 10 as Panchayat Shiksha Mitra, the appellant has no right to be appointed as Panchayat Shiksha Mitra or to be absorbed as Panchayat Teacher.”

14. From the conjoint reading of the judgment of Renu Kumar Pandey affirmed by the Full Bench in case of Kalpana Rani Vrs. State of Bihar, the following position of law emerges:-



(I) Neither the 2002 scheme, with respect to appointment of Panchayat Shiksha Mitra, nor the government circulars, orders or instructions, under the then scheme, provided for adjudicatory machinery for redressal of grievance in respect of selection and employment of Panchayat Shiksha Mitra. In absence of conferment of such power or any such machinery, the reliefs or orders, made by such Authority are of no consequence.

(II) The Elementary Teachers Appellate Authority constituted under Rule 18 of 2006 Rules as amended by Bihar Panchayat Elementary Teachers (Employment and Service Condition) (Amendment) Rules, 2008, lacks jurisdiction to hear or decide the disputes relating to employment of Panchayat Shiksha Mitra under the then prevalent resolutions, circulars, orders or instructions. The Appellate Authority is empowered only to hear, entertain or decide the appeals arising out of employment of elementary teachers under the Rules.

(III) Even in case a person has legitimate right in respect of his non-selection as Panchayat Shiksha



Mitra at the relevant time, such person cannot be directed to be appointed as Panchayat Shiksha Mitra after 01.07.2006, nor can he be deemed to have been absorbed as Panchayat Shiksha Mitra. The service of the Panchayat Shiksha Mitra, who has been appointed as Panchayat Teacher, cannot be terminated in any manner or for any reason other than the reasons prescribed under the 2006 Rules.

(IV) Once a Panchayat Shiksha Mitra is absorbed as Panchayat Teacher under Rule 20(iii) of 2006, Rules, no claim of any kind can be entertained against them irrespective of the validity of the appointment of Panchayat Shiksha Mitra and no one would have right to be appointed in his/her place.

15. Learned counsel for the State submits that the judgment would not bar scrutiny of appointment of Panchayat Shiksha Mitra which has been obtained in tainted manner or by act of forgery, as in neither of the aforesaid judgments, any issue was raised with respect to tampering of records and appointments obtained surreptitiously, in tainted manner. In support of his submission, learned counsel has placed reliance upon a Division



Bench judgment in case of the State of Bihar & others Vrs. Amar Kumar and another, passed in L.P.A. No. 329 of 2008 and in case of Md. Jawed Akhtar Vrs. the State of Bihar and others in C.W.J.C. No. 22151 of 2012, heard analogous with other cases, disposed of on 04.04.2014, by a learned Single Judge. Para 13 of the decision passed in Md. Jawed Akhtar's case is quoted herein below for easy reference:-

“13. In this view of the matter, this Court is of the view that if the appointment has been obtained in tainted manner, by act of forgery, the courts are not devoid of power to examine the correctness of the appointment and declare the same illegal. The original record which has been produced before this Court shows manipulation in selection register of Shiksha Mitra is in huge way, the proceeding has been tampered, at one place the document which has been brought by the petitioner shows that the name has been shown in the selected candidates whereas the document contained in Annexures- B and C of C.W.J.C. No.22530 of 2012 which has been brought by the private respondent shows that petitioners were not selected.”

(Note:- The underlining is mine for emphasis.)

16. I have heard counsel for the parties. The issues involved in this case are:-

(i) Whether a person, who had legitimate right to be appointed as Panchayat Shiksha Mitra prior to 01.07.2006, can be

directed to be appointed as Panchayat Shiksha Mitra after 01.07.2006 or deemed to be appointed as Shiksha Mitra?

(ii) Whether the validity of appointment of a Shiksha Mitra, who has been absorbed as Panchayat Teacher under deeming provision of Rule 20(iii) of Bihar Panchayat Rules, 2006, by dint of having continued so on 01.07.2006, can be subsequently entertained against him in a court of law?

17. Both the issues have been considered in case of Renu Kumari Pandey (supra), which has been affirmed by Full Bench in case of Kalpana Rani (supra). So far as first issue is concerned, the Full Bench in Kalpana Rani's case observed that Clause 21 repeals all earlier resolutions, orders, directions, issued in respect of employment of Panchayat Shiksha Mitra and as such, all posts of Panchayat Shikhsa Mitra stood abolished. Thereafter, no person can be employed as Panchayat Shiksha Mitra; nor can there be a deemed employment as Panchayat Shiksha Mitra; nor can there be a deemed absorption in the service as Panchayat Shikshak by operation of Rule 20(iii) of the Rules. In view of the authoritative pronouncement of the Full Bench, in case of Kalpana Rani (supra), affirming the ratio laid down by the Division Bench in Renu Kumari Pandey's case (supra), there is no hesitation in observing that a person has legitimate grievance in respect of his/her non-selection as Panchayat Shiksha Mitra at the relevant time, he or she

cannot be directed to be appointed or deemed to have been appointed as Panchayat Shiksha Mitra after 01.07.2006.

18. Now coming to issue no. 2, the Full Bench observed that once a Shiksha Mitra has been absorbed as Panchayat Teacher under Rule 20(iii) of 2006, Rules, no claim of any kind can be entertained irrespective of the validity of the appointment of Panchayat Shiksha Mitra. It is worthwhile noticing that in the case of Kalpana Rani (supra), no issue of obtaining appointment by tampering the records was raised, nor was it considering allegation of fraud in the matter of appointment.

19. The observation of Full Bench, in para-26 of the judgment, that no application can be entertained irrespective of the validity of the appointment of Panchayat Shiksha Mitra, subsequently absorbed as Panchayat Teacher by operation of Rule 20(iii) of 2006, Rules, would not include the cases where employment to the post of Panchayat Shiksha Mitra has been obtained by playing fraud or appointment has been obtained surreptitiously and in tainted manner, as fraud vitiates all actions.

Laying down the aforesaid principle, the Hon'ble Apex Court in case of Devendra Kumar Vrs. State of Uttaranchal & others, reported in (2013) 9 SCC 363, observed as follows:-

“13. It is settled proposition of law that where an applicant gets an office by misrepresenting the facts or by playing fraud upon the competent authority, such an

order cannot be sustained in the eye of the law. "Fraud avoids all judicial acts, ecclesiastical or temporal." (Vide S.P. Chengalvaray Naidu v. Jagannath, (1994) 1 SCC 1.) In Lazarus Estate Ltd. V. Beasley, (1956) 1 QB 702, the court observed without equivocation that: (QB p. 712)

"..... No judgment of a court, no order of a Minister can be allowed to stand if it has been obtained by fraud, for fraud unravels everything"

14. *In A.P. State Finance Corpn. V. GAR Re-Rolling Mill, (1994) 2 SCC 647, and State of Maharashtra v. Prabhu, (1994) 2 SCC 481, this Court has observed that a writ court, while exercising its equitable jurisdiction, should not act to prevent perpetration of a legal fraud as courts are obliged to do justice by promotion of good faith. "Equity is, also, known to prevent the law from the crafty evasions and subtleties invented to evade law."*

15. *In Shrist Dhawan v. Shaw Bross (1992) 1 SCC 534, it has been held as under: (SCC p. 553, para 20)*

"20. Fraud and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. It is a concept descriptive of human conduct."

16. *In United India Insurance Co. Ltd. v. Rajendra Singh, (2000) 3 SCC 581, this Court observed that "fraud and justice never dwell together" (fraus et jus nunquam cohabitant) and it is a pristine maxim which has not lost temper over all these centuries. A similar view has been reiterated by this court in M.P. Mittal v. State of Haryana, (1984) 4 SCC 371."*

(vi) Thus, in my considered view and with all humanity provided at my command, the ratio laid down by the Full Bench that no challenge can be put to initial appointment of Panchayat Shiksha



Mitra, if subsequently, absorbed on 01.07.2016 in view of operation of Rule 20(iii) would not cover the cases, where appointment is fraudulent or has been obtained by fraud. A learned Single Judge in case of Jawed Akhtar observed, that in case of Renu Kumari Pandey before the Division Bench, there was no allegation of playing fraud in the matter of appointment. Distinguishing the judgment of the Division Bench, the learned Single Judge in para 12 in the case Md. Jawed Akhtar (supra), observed as follows:-

"12. The Court has held that appointment of Shiksha Mitra cannot be the subject matter of adjudication before the Appellate Authority. In that case no issue was raised about tempering of records appointment obtained surreptitiously in tainted manner. There was no allegation of playing fraud in the matter of appointment of Shiksha Mitra. In the case of The State of Bihar & others Vs. Amar Kumar and another (L.P.A. No.329 of 2008 where the question was raised where a person having been appointed on the strength of forgery cannot be allowed to continue the post of Shiksha Mitra. The Court has held that any appointment made illegally will be subject matter of judicial scrutiny if it is brought to the notice of the court. If the argument of the petitioner is accepted that the Appellate Authority was devoid of the power will lead to serious result as it will be a premium to person who obtained appointment by playing fraud which can not be intention of rule of law. It will be apt to quote paragraph 2 and 3 of the aforesaid judgment:

"2. If the argument of the counsel for the state is accepted, it would amount to putting premium to a forgery committed by



Navin Kumar. The State counsel does not dispute that the selection of Navin Kumar on 6.10.2005 was bad in law as he had produced forged certificate. If that be so, merely because when the Panchayat Teachers Appointment Rule came into effect on 1.7.2006 and Navin Kumar was continuing in service because of his illegal appointment, he could not have been absorbed. Rather, the present respondent no.1 (original writ petitioner) who had secured higher marks in selection process and who was already appointed earlier, ought to have been continued and would be deemed to have continued from the date he was initially appointed.

3. The Single Judge considered the matter thus:

I find that the stand taken by the respondents in the counter affidavit is arbitrary and erroneous. The petitioner was selected and his joining was accepted. He was relieved for training. In the meantime on the basis of forged certificate some one opposed his selection and without any enquiry petitioner's selection was cancelled. In petitioner's place one Navin Kumar was selected. Subsequently on verification it was found that the marks obtained by him was forged. This was found much before the coming of the new Panchayat Teachers Appointment Rule. Selection of Navin Kumar was cancelled on 6.10.2005. On such cancellation the petitioner could have been asked to re-join on the post of Panchayat Shiksha Mitra but the respondents kept the matter pending for eight months. The Panchayat Teachers Appointment Rule came on 1.7.2006. The stand which has been taken by the respondents cannot be accepted as genuine valid and applicable in the case of the petitioner.

Considering the facts and

circumstances of the case the petitioner should be deemed to be continuing on the post of Panchayat Shiksha Mitra right from 13.7.2005 i.e. the date of his joining, till the date Navin Kumar was allowed to join on the post.”

20. In view of the position of law emerging on the issue, I would now examine the validity of the order cancelling the appointment of the petitioner.

21. I find that the petitioners were appointed by the Competent Authorities as the Panchayat Shiksha Mitra. On more than one occasion, on inquiry, the appointments of the petitioners were found valid by the Block Development Officer as well as the District Programme Officer. There is no allegation that the petitioners have obtained appointment by act of fraud.

22. As such, the ratio laid down by the Full Bench, that once the Panchayat Shiksha Mitra is absorbed as Panchayat Teacher, no application, questioning their appointment/employment, can be entertained, much less by the Appellate Tribunal constituted under Rule 18 of the Panchayat Rules, 2006, which is empowered to entertain, hear or decide the Appeal arising out of employment of elementary teachers under the Rules and cannot hear or decide the disputes relating to employment of Panchayat Shiksha Mitra under the then resolution, circulars, orders or instructions, now repealed under Rule 20(iii) of 2006, Rules,

would apply with full force. The appeal was thus not maintainable before the Tribunal and as such, the order of Tribunal cancelling the appointment of Panchayat Teachers is without jurisdiction.

23. For the aforesaid reasons, the writ petitioners succeed and the impugned orders cancelling the appointments of the writ petitioners are hereby set aside.

24. The writ application is accordingly allowed.

(Samarendra Pratap Singh, J)

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