

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 4257 of 2011

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Anita Kumari Daughter of Late Prem Shankar Mishra, Wife of Shri Umashankar Mishra, Resident of Village & P.O. Rajpur, Police Station-Raghunathpur, District-Siwan.

.... **Petitioner**

Versus

1. The State of Bihar
2. The Principal Secretary, Human Resources Development Department, Government of Bihar, Patna
3. The Director, Primary Education, Bihar, Patna
4. The Divisional Commissioner, Saran Division at Chapra
5. The District Magistrate, Siwan
6. The Deputy Development Commissioner-cum-Chairman, District Education Establishment Committee, Siwan
7. The District Superintendent of Education, Siwan
8. The Block Development Officer, Raghunathpur, District Siwan
9. The Block Education Officer, Raghunathpur, District-Siwan
10. Shri Sitaram Yadav, the Ex-Mukhiya of Gram Panchayat Raj Rajpur, Block-Raghunathpur, District-Siwan
11. Shrimati Sunita Devi, the Present Mukhiya of Gram Panchayat Raj Rajpur, Block-Raghunathpur, District-Siwan
12. Shri Awadhesh Prasad Singh, the Ex-Panchayat Secretary of Gram Panchayat Raj Rajpur, Block-Raghunathpur, District-Siwan
13. Shri Surendra Ram, the Present Panchayat Secretary of Gram Panchayat Raj Rajpur, Block-Raghunathpur, District-Siwan
14. The Member, District Teacher's Employment Appellate Authority, Siwan

.....**Respondents**

15. Sarita Kumari Wife of Shri Pramod Kumar Chaubey Resident of Village & P.O. Rajpur, Police Station-Raghunathpur, District-Siwan, at present posted and working as Panchayat Teacher in newly created primary school Lachhipur Tola, Anchal Raghunathpur, District Siwan.

.... **Private Respondent**

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Appearance :

For the Petitioner : Mr. Umesh Kumar Mishra, Adv.
For the State : A.C. to Govt. Pleader – 22
For the Resp. no. 15 : Mr. Tej Bahadur Singh, Sr.Adv.
Mr. Ranjan Kumar Dubey, Adv.

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL JUDGMENT
Date: 20-10-2016

Heard Sri Umesh Kumar Mishra, learned counsel for the

petitioner, learned A.C. to Govt. Pleader – 22 and Sri Tej Bahadur Singh, learned senior counsel assisted by Sri Ranjan Kumar Dubey, learned counsel for private respondent i.e. respondent no. 15.

2. The petitioner has invoked writ jurisdiction of this Court under Article 226 of the Constitution of India, with a prayer to quash an order, contained in Memo No. 833 dated 10-08-2010 (**Annexure – 4** to the writ petition), whereby Case No. 40 of 2010 filed by respondent no. 15 was allowed by the Member, District Teachers Employment Appellate Authority, Siwan (hereinafter referred to as the 'District Appellate Authority'). The petitioner has also prayed for quashing of an order, contained in Memo No. 1180 dated 24-12-2010 (**Annexure – 5** to the writ petition). By the said order, the Member, District Teachers Employment Appellate Authority, Siwan has rejected the case of the petitioner i.e. Case No. 142 of 2010. The petitioner has further prayed for directing the concerned respondent(s) to appoint her after cancelling the appointment of respondent no. 15.

3. Short fact of the case is that in the year 2005, applications for appointment for the post of 'Shiksha-Mitra' in Gram Panchayat Raj- Rajpur, Block – Raghunathpur, District – Siwan were entertained and finally, a list of six persons was prepared. Out of six, five persons joined. Thereafter, respondent no. 15 approached the authority concerned for being appointed as Shiksha Mitra and finally, she approached this Court by filing a writ petition, vide C.W.J.C. No.



1001 of 2007, which stood dismissed on 28-08-2007. Thereafter, the respondent no. 15 approached the District Appellate Authority and her case was numbered as Case No. 40 of 2010. On the basis of report of Panchayat Secretary dated 28-07-2010, the District Appellate Authority noticed that one of the candidate from General category namely Pratibha Kumari had not given her joining and that post remained vacant and thereafter, direction was issued to appoint the respondent no. 15 against the said vacant post, vide **Annexure - 4** to the writ petition. Subsequently, the petitioner approached the authority concerned and finally, approached the District Appellate Authority and her case was registered as Case No. 142 of 2010. The petitioner claimed that she was having higher marks than the respondent no. 15 of the present case and as such, a prayer was made to direct the respondent(s) to appoint her in place of respondent no. 15. The appeal preferred by the petitioner was primarily rejected on the ground that it was time-barred. Thereafter, the petitioner has approached this Court by filing the present writ petition.

4. Sri Umesh Kumar Mishra, learned counsel for the petitioner, at the very outset, has argued that petitioner was having higher marks than the private respondent and once vacancy had occurred, then against the said vacancy, being candidate of higher marks than the private respondent no. 15, she was entitled to be appointed. According to learned counsel for the petitioner, the District

Appellate Authority, while allowing the case of respondent no. 15, had not taken pain to issue notice to concerned person including the petitioner and in her absence, the case was decided in favour of respondent no. 15.

5. At the time of hearing, on being asked, Sri Mishra, learned counsel for the petitioner admits that after the enactment of Bihar Panchayat Elementary Teacher (Employment and Service Conditions) Rules, 2006 (hereinafter referred to as '2006 Rules') and subsequent abolition of post of Shiksha-Mitra, vide Government Notification dated 10-11-2006, the District Appellate Authority was not at all authorized to issue any direction for appointing anyone, as Shiksha-Mitra. By way of referring to Rule 20 of 2006 Rules, he submits that from the date of enactment i.e. 01-07-2006, the post of Shiksha-Mitra was already abolished. Meaning thereby that after the enactment of 2006 Rules, there was no point to entertain the claim raised by respondent no. 15 to be appointed as Shiksha-Mitra. He submits that the issue, regarding entertaining any petition for appointment as Shiksha-Mitra after the cut-off-date, has already been set at rest by a Full Bench judgment of this Court reported in **2014 (2) P.L.J.R. 665 (Kalpana Rani Vs. The State of Bihar & Ors.)**. He has also relied on a Single Bench judgment of this Court reported in **2016 (4) P.L.J.R. 173 (Hari Shankar Sah & Ors. Vs. The State of Bihar & Ors.)**. While relying on Hari Shankar Sah's judgment (*supra*), learned counsel for



the petitioner submits that this Court has already held that the District Appellate Authority is not at all competent to entertain any application/appeal in relation to dispute of Shiksha-Mitra. In sum and substance, it has been argued that once the post of Shiksha-Mitra was already abolished, in the year 2010, the District Appellate Authority has committed serious error in allowing the appeal preferred by the respondent no. 15 and he has prayed for quashing of **Annexure - 4** as well as for cancelling the appointment of respondent no. 15, in view of order contained in Annexure - 4. Since the learned counsel for the petitioner himself has admitted that after cut-off-date, there was no point for entertaining a petition by the District Appellate Authority for appointment against the post of Shiksha-Mitra, he has left his claim for being appointed as Shiksha-Mitra, but still he submits that appointment of respondent no. 15 is liable to be set aside.

6. Sri Tej Bahadur Singh, learned senior counsel appearing on behalf of respondent no. 15, at the very outset, has raised preliminary objection on the point of maintainability of the writ petition. He submits that unless a person satisfies the Court regarding infringement of any right, he/she is not entitled to maintain a writ petition. On this ground, he has referred to a judgment of Hon'ble Apex Court reported in **AIR 1973 SUPREME COURT 1045 (State of Tamil Nadu v. M/s Burmah Shell Oil Storage & Distributing Co. of India Ltd. & Anr.)**. He further submits that it is true that the Full Bench of



this Court in Kalpana Rani's case (*supra*) has already held that after the cut-off-date i.e. 01-07-2006, there cannot be any direction for appointment as Shiksha-Mitra, but recently, a Divisional Bench of this Court, in a case reported in **2015 (3) B.B.C.J. V-216 (Shashi Kant Vs. The State of Bihar & Ors.)**, has considered the case of Shiksha-Mitra and allowed the same. However, he has not disputed the proposition laid down by the Full Bench in Kalpana Rani's case (*supra*) nor he has disputed the statutory provision contained in Rule 18 and 20 of the 2006 Rules.

7. Besides hearing, I have also perused the materials available on record. Since the point relating to claim of Shiksha-Mitra, after abolition of the post i.e. cut-off date is 01-07-2006, has already been set at rest by the Full Bench of this Court, there is no reason to deviate from the proposition laid down by the Full Bench. So far as Shashi Kant's case (*supra*) is concerned, the respondent no. 15 may not get any benefit from the said judgment. In the said case, initially in 2003, the person was appointed as Shiksha-Mitra and on some technicality, appointment was cancelled and subsequently, after acquiring requisite qualifications, the relief was entertained by this Court, whereas, the facts are different in the present case. In the present case, respondent no. 15 was never appointed as Shiksha-Mitra prior to cut-off date. Her appointment was made only pursuant to order of the District Appellate Authority, which was passed in the year

2010. So far as submission of learned senior counsel for respondent no. 15 regarding maintainability of the writ petition is concerned, the Court is in agreement with the submission of learned senior counsel, but at the same time, the Court is of the opinion that once an illegality is brought to the notice of this Court, certainly, this Court, while exercising its writ jurisdiction, can interfere and cure the illegality. In the present writ petition, certainly the petitioner may not get any relief, but since the petitioner has brought a gross illegality committed by the District Appellate Authority to the notice of this Court, this Court is inclined to interfere with the impugned order i.e. Annexure – 4.

8. Accordingly, the Annexure – 4 i.e. order, contained in Memo No. 833 dated 10-08-2010, passed in Case No. 40 of 2010 by the Member, District Teachers Employment Appellate Authority, Siwan is hereby set aside and consequently, appointment of respondent no. 15, pursuant to Annexure – 4, is also hereby set aside.

9. The writ petition stands partly allowed.

(Rakesh Kumar, J.)

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CAV DATE	
Uploading Date	22.10.2016
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