

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2768 of 2013

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Manju Kumari Daughter of Sri Surendra Prasad, Wife of Sri Bharat Prasad
Resident of Village- Zigna Jagarnath, Tola Talapura, P.O. & Police Station-
Mirganj, District- Gopalganj.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The District Magistrate, Gopalganj
3. The District Education Officer, Gopalganj
4. The District Superintendent Of Education, Gopalganj
5. The Block Development Officer, Hathua, Gopalganj
6. The Block Extension Officer, Hathua Block, Gopalganj
7. The District Teachers Appointment Appellate Authority, Gopalganj
8. Abhilasha Kumari Wife of Manager Prasad, Resident of Village- Zigna
Jagarnath, P.O. & P.S.- Mirganj, District- Gopalganj.

.... Respondent/s

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Appearance :

For the Petitioner/s : M/s Prashant Sinha and Irshad Ahmad Khan

For the State M/s Sharad Kr. Sinha and Amit Kr. Anand

For the Respondent no. 8 : Mr. Sanat Kumar Mishra

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 14-01-2016

Heard learned counsel for the petitioner, learned counsel
for the State and the private respondent.

In the present case, it is an admitted fact that the
petitioner cannot be appointed as a Shiksha Mitra, as after the
enforcement of Bihar Panchayat Elementary Teachers (Employment
and Service Conditions) Rules, 2006, (herein after referred to as
“Rule”), the post of Shiksha Mitra has been abolished and those who
were working on the post of Shiksha Mitra, were absorbed as
Panchayat Teacher in terms of Rule 20 sub-rule (iii).



As per the case of the petitioner though she cannot enter into the service, but can certainly challenge the appointment of the private respondent on the ground that she had not applied for the post of Shiksha Mitra in pursuance of Advertisement which is apparently clear from the select list dated 6th May 2005 and has claimed that she has illegally been accommodated and appointed on the basis of Proceeding dated 27th May 2005.

Counsel for the private respondent has taken a plea that it is a fact that she had not applied for the post of Shiksha Mitra for the first time against the Advertisement, but when the aforesaid post could not be filled up, on the direction of the District Magistrate another Advertisement i.e. a fresh communiqué was issued providing the details about the filing of the application, scrutiny of the record and testimony, date on which the Sukh Subidha Committee would hold meeting, date of appointment and the date of joining.

As per claim the private respondent applied for the post of Shiksha Mitra in pursuance of the fresh communiqué along with one person and was selected on the said post. Further stated that the petitioner had never applied in pursuance of the fresh communiqué issued in pursuance of direction of the District Magistrate so she does not have any cause for challenging the appointment of the private respondent.



The counsel for the petitioner submits that the communiqué was not meant for the purposes of appointment on the post of Shiksha Mitra with respect to Panchayat Zigna Jagarnath, as the name of this Panchayat has not been mentioned in the said communiqué. This communiqué is only confined to those panchayats whose names have been mentioned but the counsel for the respondent submits that it is a communiqué in two parts, one part relates to all the panchayats and panchayats named in note of Notification meant for those whose appointment have been held illegal, is for specific reason where the name of Zigna Jagarnath is not there.

The counsel for the State has also supported the case of the private respondent and submits that as the communiqué was made for all the panchayats, in pursuance thereof the private respondent has been appointed and there is nothing wrong in the process of selection of the private respondent.

Having considered the rival contentions of the parties, entry of the petitioner as Shiksha Mitra is completely closed, as the post of Shiksha Mitra is not available. It is a fact that on the date of enforcement of the Panchayat Rules 2006, the petitioner was not on the post of Shiksha Mitra and as such, she cannot be brought as a Panchayat Teacher. The question for the present purpose is whether the service of the private respondent may be dispensed with or not.

From the record it appears that though the private respondent had not applied in the first transaction but it appears that when the selection/appointment could not be completed with regard to all the Panchayats, second time, a fresh communiqué was issued on the direction of District Magistrate, Gopalganj providing the details, in what manner, the selection/appointment was to be made.

In pursuance there of, the private respondent applied for the aforesaid post and she was appointed as Shiksha Mitra and later on, she has been made a Panchayat Teacher.

This Court finds that there is no error in the process of selection/appointment of the private respondent. The petitioner does not have any case. Accordingly, this petition is dismissed.

(Shivaji Pandey, J)

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