

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7062 of 2013

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Srikant Sharma, son of Sri Lakshmi Narayan Sharma, R/o Village -Telhari, Post -
Hazrat Sain P.S. Dhanarua, Block - Dhanarua, District - Patna

.... Petitioner

Versus

1. The State of Bihar.
2. The Director, Department of Education, Bihar, Patna
3. The District Magistrate, Patna
4. The District Education Officer, Patna
5. The District Program Officer (Estb.), Patna
6. The Block Development Officer, Dhanarua, Patna
7. The Block Education Officer, Dhanarua, Patna
8. The Principal, Up - Graded Middle School, Lawaich, Dhanarua
9. The Mukhiya, Gram Panchayat Raj, Satpasa, Lawaich, Dhanarua, Patna
10. The Panchayat Secretary, Gram Panchayat Raj, Satpasa, Lawaich, Dhanarua,
Patna

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Pawan Kumar, Adv.
For the State : A.C. to S.C. 25
For the Panchayat Secretary : Mr. Sanjay Kumar, Verma, adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 28-09-2016

Heard learned counsel for the petitioner, learned counsel
for the State and learned counsel for the Panchayat Secretary.

2. In this case, the petitioner is challenging the order dated
01.01.2013 passed by the District Teachers Appointment Appellate

Authority, Panta, by which the claim of the petitioner for payment of arrears of salary as Panchayat Teacher from July, 2007 and Block Teacher from February, 2008 has been rejected.

3. The petitioner was appointed as Shiksha Mitra on contract basis in the year 2003 and accordingly, he joined in the Primary School, Lawaich and that School was upgraded as Middle School and came in the jurisdiction of the Block from the Panchayat. From time to time, the services of the petitioner was renewed and after the enforcement of Bihar Panchayat Elementary Teachers Recruitment and Conditions of Service Rules, 2006, the petitioner became the Panchayat Teacher in view of Rule-20(iii) of the aforesaid Rules, 2006 and upto 2007 the petitioner received the salary. On receipt of the complaint, the salary of the petitioner has been stopped.

4. It appears from the counter affidavit of Panchayat Secretary, respondent No.10 that an inquiry was conducted and it was found that the Mukhiya has prepared two types of lists i.e. Annexure-1 (series), in which there is a cutting and overwriting in the names of the two persons and in another list names of 8 persons have been mentioned, but in both the lists the name of the petitioner is existing and there is no cutting and overwriting in his name. It also



appears that an inquiry was conducted by the District Panchayati Raj Officer, Patna, and has found that there were 8 vacancies for the appointment of Shiksha Mitra, out of which 4 vacancies meant for unreserved candidates, one vacancy meant for the Schedule Caste candidates, two vacancies meant for Most Backward Class candidates and one vacancy for the Backward Class candidates and for that 9 applications were received by the Sukh Subidha Committee and accordingly, 8 persons were sent for training, where the name of the petitioner is also existing at serial No.4, but the District Panchayati Raj Officer, Patna, has recorded that Satendra Kumar Nirala, Surbala Yadav, Sanjay Kumar, Niwas Kumar, Premshila Devi and Mukeschandra Kumar could have been appointed, but he has not given any reason why the name of the petitioner could not exist in the category of selected candidates. Accordingly, he has declared the appointment of four persons to be illegal namely, Kumari Ranubala, Mukesh Chandra Singh, Sunil Kumar and Sri Kant Sharma-present petitioner. Admittedly, the District Panchayati Raj Officer, Patna, has neither given any notice to the petitioner and others nor given any opportunity of hearing to them, but has given notice to the then Mukhiya, which cannot be said to be a valid and proper notice to the present petitioner and other similarly situated persons. This letter also does not very much express the reason for



declaring the appointment of the petitioner and others to be illegal when the four vacancies of Shiksha Mitra were available and when they were appointed on the basis of the marks obtained by them, but there is no discussion at all. At the same time, after the enforcement of Bihar Panchayat Elementary Teachers Recruitment and Conditions of Service Rule, 2006, no post of Shiksha Mitra is in existence, all the persons who were working as Shiksha Mitra have been converted to the post of Panchayat Teacher and the appointment of Shiksha Mitra was on contract basis for a particular period and subsequent period of appointment was separate and distinct, having no nexus with the earlier appointment.

5. It appears from the records of the case that ultimately, the payment of salary of the petitioner has been stopped. Against the action of the respondents, the petitioner approached this Court in C.W.J.C. No. 11592 of 2009 and this Court vide order dated 15.02.2012 dismissed the said writ application with a direction to the petitioner to approach the Tribunal. Accordingly, the petitioner approached the Tribunal and the Tribunal vide order dated 01.01.2013 rejected the claim of the petitioner.

6. Learned counsel for the respondent No.10 submits that service of the petitioner has not been terminated at all. When the



services of the petitioner have not been terminated, it does not stand to the reason why a person has been deprived of the salary when he was already discharging his duty. If the authority intends to dispense with the services of the petitioner, then they are required to follow the natural justice, any action *de hors* to the interest of justice is completely a nullity and it cannot stand any platform. The Tribunal in clause-iv of paragraph No.8 has accepted the finding of the District Panchayati Raj Officer, Patna, where he has recorded that the appointment of the petitioner was illegal, without going deep into the matter and without examining the fact that whether the District Panchayati Raj Officer has given notice to the petitioner and heard his plea before recording the aforesaid finding.

7. As this Court has already held that the finding of the District Panchayati Raj Officer, Patna, is completely illegal as he, without going into the merit of the matter and without assigning any reason and that too without given any notice to him, recorded that the appointment of the petitioner is illegal, placing reliance on said finding the order of the Tribunal leads to illegality and as such not sustainable in law.

8. In such view of the matter, the order dated 01.01.2013 passed by the District Teachers Appointment Appellate Authority,

Patna, is hereby quashed and set aside. The respondent authorities are directed to allow the petitioner to perform the duty and make payment of arrears of salary in accordance with law within a period of two months from the date of receipt of a copy of this order.

9. With the aforesaid observations and directions, this writ application is allowed

(Shivaji Pandey, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	05/10/2016
Transmission Date	