

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No 1633 of 2012
IN
Civil Writ Jurisdiction Case No 614 of 2011

- =====
1. Bhriugu Kumar Ranjan Son Of Ramesh Chandra Singh Resident Of Village- Rampur P.S.- Dhanarua, District- Patna
 2. Sunil Kumar Singh Son Of Saryug Prasad Resident Of Village- Jhamman Chak, P.S.- Dharanrue, District- Patna
 3. Shailesh Kumar Son Of Braj Kishore Singh Resident Of Village- Kewada, P.S.- Dhanarua, District- Patna
 4. Swarnlata Kumari Wife Of Sudama Kumar Singh Resident Of Village- Kosut (Sun-Der Chak), P.S.- Dhanarua, District- Patna

.... Appellant/s

Versus

1. The State Of Bihar Through The Principal Secretary, Human Resources Development Department, Government Of Bihar, Patna
2. The District Magistrate, Patna
3. The District Superintendent of Education, Patna
4. The Block Education Extension Officer, Dhanarua Block, Patna
5. The Mukhiya Gram Panchayat Raj, Kosut, Dhanarua Block, Patna
6. The Panchayat Secretary, Gram Panchayat Raj, Kosut, Dhanarua Block, Patna

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr Rajendra Prasad Singh, Sr Advocate with
Mr Santosh Kumar Singh, Advocate

For the S t a t e : Mr Devendra Kr Sinha AAG 2 with
Mr Pramod Kumar Sinha, AC to AAG 2

=====

CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH
&
HON'BLE JUSTICE SMT NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE NAVANITI PRASAD SINGH)

Date: 17-03-2016

Heard Shri Rajendra Prasad Singh, learned Senior Counsel in support of the appeal as well as AAG 2 assisted by Mr Pramod Kumar Sinha, AC to AAG 2 for the State and its instrumentalities and, with their consent, this appeal is being disposed

of at this stage itself.

2 The appeal is directed against the judgment and order dated 27.08.2012 passed in CWJC No 614 of 2011 by which the writ petition, filed by the appellants, was summarily dismissed by the learned Single Judge of this Court.

3 The writ petitioners had filed the writ petition claiming that they had been appointed as Shiksha Mitras in the year, 2003. They had the educational qualification of Intermediate. In the year 2006, they were duly absorbed as Panchayat Teachers. They continued to work as such and were being regularly paid their salaries but suddenly, in respect of petitioners No 3 and 4, with effect from May 2010, and in respect of petitioners No 1 and 2, with effect from October 2010, though they continued to work, their salaries were stopped. This is what brought them to the Court immediately.

4 A counter affidavit was filed in the writ application on behalf of the Gram Panchayat, stating that it is in fact pursuant to an order passed by the District Teachers Appointment Appellant Authority (for brevity, *the Authority*), their services were to be terminated. Accordingly, payment of salary was stopped. This fact, having been brought on record, the writ petitioners immediately filed an interlocutory application seeking relief to challenge the said order of the Authority specifically stating that they were never parties before the Authority, they were never noticed, they were never heard

and notwithstanding the said, their initial appointment as Shiksha Mitras in the year 2003 was cancelled. The learned Single Judge took upfront to this interlocutory application. He proceeded that surely these facts were known to the writ petitioners and they had deliberately suppressed the same. Thus, they were guilty of suppressio veri suggestio falsi. The learned Single Judge, thus, dismissed the interlocutory application as well as the writ petition without adjudication.

5 We regret we are unable to agree. The reason is simple. Firstly, there were no materials on record to suggest that the writ petitioners were ever aware of the proceedings as before the Authority, or for that matter, of any order passed by the Authority. It has never been the case of the respondents in the writ proceedings that the writ petitioners were made aware as to why their salary was being stopped. Thus, the finding of the learned Single Judge was based merely on conjecture and not on record.

6 Secondly, the order of the Authority was placed before the learned Single Judge by way of counter affidavit. A bare reference to the same would show two things. Firstly, the writ petitioners were never made parties in those proceedings and secondly, what was in challenge before the Authority, was the appointment process of Shiksha Mitras, which was undertaken in the year, 2003. Both these facts were self-speaking material facts for

adjudication for the Writ Court. The reason again is simple. It is well settled principle of natural justice that no order, adverse to interest of any party having the civil consequences, would be passed without granting that party an opportunity of hearing. Here, the Authority was passing an order for cancellation of appointment of the writ petitioners. We are sure no one can doubt that it has great civil consequences. Yet the Authority chose to ignore the fact, that affected parties must be heard. Such an order passed in violation of principles of natural justice is void ab initio. It would not bind the parties who were not heard. It is of no effect.

7 Secondly, the challenge before the Authority was in relation to the selection process of Shiksha Mitras. Shiksha Mitras were selected in the year, 2003. The post was then abolished in the year, 2006 and all Shiksha Mitras working were absorbed as Primary Teachers. The dispute with regard to any procedural irregularity in selection and appointment of Shiksha Mitras were to be administratively dealt by the Collector of the district. In 2006, once the new Rules came into being creating the post of Panchayat Teachers and absorbing all Shiksha Mitras working, Rule 18 thereof clearly provided that any dispute with regard to appointment, selection, recruitment of Panchayat Teachers, the Authority would be the Block Development Officer (for brevity, *the BDO*) concerned. This forum was available in respect of fresh appointments of

Panchayat Teachers and not with regard to Shiksha Mitras which post had already stood abolished. This, as we have already held in earlier cases, was in relation to first phase of recruitment of Panchayat Teachers. In 2008, the second phase of appointment of Panchayat Teachers began. This time, the Rules were amended and Rule 18 now provided that instead of BDO, the dispute redressal would be done by the Authority, the Authority especially created replacing the BDO. All disputes, that were hitherto pending before the BDO, were transferred to the Authority. From this sequence, it would be seen that so far as the Authority is concerned, it had jurisdiction only in respect of two matters. Firstly, disputes in relation to appointment of Panchayat Teachers in Phase 2 and secondly, those disputes, that were pending before the BDO for decision when Rule 18 was amended. Thus, the Authority had no jurisdiction to entertain any dispute in relation to appointment of Shiksha Mitras. It is well settled principle of law that where an Authority lacks the jurisdiction, no Authority or Court, much less by consent, can confer jurisdiction. Thus, the jurisdiction exercised by the Authority, in the present case, was wholly incompetent. The Authority was Coram non judice. If the learned Single Judge had patiently gone through these facts, he would have found that the writ petitioners had a legitimate grievance. They were being deprived of their salary and work without authority of law. Justice demanded interference.

8 We are fortified with the view of the Full Bench decision of this Court in the case of *Kalpana Rani –Versus- State of Bihar & Others, 2014 (2) PLJR 665*. We may also refer to two Division Bench judgments of this Court in the case of *Puja –Versus- State of Bihar & Others (LPA No 1366 of 2014)* decided on 11.01.2016 and in the case of *Manohar Prasad –Versus- State of Bihar & Others (LPA No 984 of 2014)* decided on 06.01.2016.

9 Thus, on the facts aforesaid, we cannot sustain the judgment and order of the learned Single Judge. The same is set aside. The interlocutory application has already been allowed by us. Consequently, the writ petition stands allowed. The order of the Authority, as brought on record by the respondents, is set aside as being wholly without jurisdiction. Accordingly, mandamus is issued to the respondents to pay the salary of the writ petitioners and grant full continuity of service to them. They would not interfere with the services of the writ petitioners except by authority of law in accordance with procedure established by law.

(Navaniti Prasad Singh, J)

(Nilu Agrawal, J)

M.E.H./-AFR

U			
---	--	--	--