

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22033 of 2012

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Ganesh Kumar, son of Sri Suraj Mal Prasad, resident of Village- Saguni, Post Office and Gram Panchayat- Rewan, Police Station and Block- Masoudhi, District- Patna

.... Petitioner.

Versus

1. The State of Bihar
2. The Principal Secretary, Department of Human Resources, Government of Bihar, Patna
3. The Director, Primary Education, Department of Human Resources, Government of Bihar, Patna
4. The District Magistrate, Patna
5. The District Superintendent of Education, Patna
6. The Block Education Extension Officer, Masoudhi, District- Patna
7. The Panchayat Secretary, Gram Panchayat- Rewan, Block- Masoudhi, District- Patna

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Jitendra Kumar Roy, Advocate

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

ORAL JUDGMENT

Date: 01-07-2016

Heard learned counsel for the petitioner and the respondents.

2. The petitioner seeks quashing of the Memo no. 591, dated 28.06.2011, passed by the Member, District Teachers Appointment Appellate Authority, Patna, whereby he has held his initial appointment as “Panchayat Shiksha Mitra” to be illegal. While coming to the aforesaid conclusion, the Appellate Authority observed that without recommendation of *Sukh Subidha Samtiti*, the petitioner was appointed by Mukhiya, which is in teeth of the provisions for

appointment of “Panchayat Shiksha Mitra”.

3. The facts of the case in short is as follows:

One Subhash Chandra Bose was initially appointed as “Panchayat Shiksha Mitra”, Gram Panchayat, Rewa, Masaurhi, Patna. However, as he did not have requisite 45% marks in Intermediate, his appointment was dispensed with. The petitioner thereafter was appointed as “Panchayat Shiksha Mitra” on 23.02.2006.

4. It is the case of the petitioner that his appointment was made on the recommendation of *Sukh Subidha Samiti*. In the year, 2006, the Bihar Panchayat Primary Teachers Appointment Rules (hereinafter referred to as ‘the Rules, 2006’) came into being and in view of Rule 20 of the Rules, 2006, a person serving as “Panchayat Shiksha Mitra” was absorbed as Panchayat Teacher. Two years later, the Government relaxed the eligibility criteria for appointment of “Panchayat Shiksha Mitra” observing that such “Panchayat Shiksha Mitra”, whose services have been dispensed with for not having requisite 45% marks in Intermediate, would be again reinstated. On the basis of the aforesaid circular, Subhash Chandra Bose staked his claim and moved this Court in C.W.J.C. No. 383 of 2010. The writ application was disposed of on 10.05.2010 with a liberty to file appeal before the District Teachers Appointment Appellate Authority (hereinafter referred to as ‘the Appellate Authority’). Subsequently,

Subhash Chandra Bose approached the Appellate Authority. The Appellate Authority vide order dated 14.06.2010 rejected his claim and at the same time held the petitioner's appointment to be bad.

5. Being aggrieved, the writ petitioner moved this Court making a grievance that the impugned order, dated 14.06.2010, was passed by the Appellate Authority without giving him an opportunity of hearing and the matter, as such, was remanded to the Appellate Authority vide order, dated 03.05.2011, passed in C.W.J.C. No. 5603 of 2010. Thereafter, the Appellate authority considered the case of the petitioner and dismissed his claim by order, dated 28.06.2011. The Appellate authority observed that the petitioner was appointed without the recommendation of *Sukh Subidha Samiti* and as such his appointment as Panchayat Shiksha Mitra was in teeth of the guidelines prescribed for the appointment of Panchayat Shiksha Mitra.

6. The petitioner, however, refutes the claim.

7. There cannot be any dispute that the petitioner was appointed de-hors the recommendation of *Sukh Subidha Samiti*, and his appointment cannot be said to be valid. However, this Court would have considered directing a further enquiry whether the petitioner was appointed on the recommendation of the *Sukh Subidha Samiti* or not. However, this Court would not adopt the aforesaid course in view of the decision of **Renu Kumari Pandey and others Vs. The State of**

Bihar & Others, reported in 2011 (4) PLJR 297 and in case of **Kalpana Rani Vs. The State of Bihar & Others**, reported in **2014 (2) PLJR 665 (FB)**, in which it has been observed that the validity of appointment of a Panchayat Shiksha Mitra cannot be opened, after 01.07.2006, if not already raised before the Appellate Authority. Interference could be made only in cases, where the appointment is vitiated with fraud or misrepresentation, as observed by this Court in case of **Rao Ravi Shankar Singh & Ors. Vs. The State of Bihar & Ors.** (C.W.J.C. No. 20394 of 2013) disposed of on 08.04.2016.

8. As there is no allegation of fraud or misrepresentation at the level of the petitioner, the impugned order of the Appellate Authority is set aside.

9. However, in the facts and circumstances of the case, the petitioner would not be entitled to any remuneration for the period he has been out of service and has not worked.

10. With the aforesaid observation, this application stands allowed.

(Samarendra Pratap Singh, J.)

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