

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1659 of 2012

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Amit Raj, son of Sri Ganouri Prasad, Resident of Village- Khakhra, P.O.-Jianbigha,
P.S. + District-Sheikhpura,

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Department Education, Bihar, Patna.
3. District Magistrate-cum-Collector, Sheikhpura.
4. District Education Superintendent, Sheikhpura.
5. District Education Officer, Sheikhpura.
6. Block Education Officer, Sheikhpura.
7. Block Development Officer, Sheikhpura.
8. Panchayat Secretary, Gram Panchayat, Kosra, Block + District-Sheikhpura.
9. Sri Chandeshwar Pd. Yadav, Son of Sri Raghunandan Yadav, resident of
Village- Dani Bigha, Gram Panchayat-Kosra, District-Sheikhpura.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Birendra Kumar, Advocate

For the Respondent/s : Mr. Kinkar Kumar, SC-9

Mr. Zaki Haider, AC to SC-9

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 04-10-2016

Heard Mr. Birendra Kumar, learned counsel appearing
for the petitioner and Mr. Kinkar Kumar, learned Standing Counsel
No.9 for the State.

The petitioner is aggrieved by the order dated 16.11.2011
of the District Teachers Employment Appellate Authority,
Sheikhpura (hereinafter referred to as the 'Appellate Authority')
passed in Appeal No.02 of 2010, whereby the appointment of the
petitioner has been set aside on grounds that he had obtained
qualification of Sahitya Bhushan from Hindi Vidyapeeth, Deoghar

which is not recognised to be equivalent to Intermediate qualification by the State Government and hence his appointment as a Panchayat Shiksha Mitra has been cancelled.

While learned counsel for the petitioner has questioned the order under challenge on merits as well as on jurisdiction of the 'Appellate Authority' to enter into the appointment of petitioner even though it was not put to challenge, Mr. Kinkar Kumar, learned Standing Counsel No.9 proceeds to support the order on grounds that the petitioner did not have the basic qualification to hold the post of Panchayat Shiksha Mitra.

Learned State Counsel relies upon the Bench decision of this Court since reported in **2012(3) PLJR 353 (Reeta Srivastava vs. The State of Bihar)** and **2004(1) PLJR 387 Ganesh Prasad Srivastav vs. Punjab National Bank)** to support his contention that where the petitioner did not possess the basic qualification, his appointment as Shiksha Mitra as well as his absorption as Panchayat Teacher was illegal and has rightly been set aside. According to learned counsel the degrees given by Hindi Vidyapeeth, Deoghar have been held not to be equivalent to degrees granted by a recognised University.

Although Mr. Kinkar Kumar has opposed the prayer of the petitioner but considering the stipulations present in the



Circular of 1991 present at Annexure-4 which was in force at the relevant time when the petitioner was appointed in the year 2005 as Panchayat Shiksha Mitra and which occupied the field until issuance of the circular dated 25.8.2008 present at Annexure 3/1 derecognizing the qualification given by Hindi Vidyapeeth, Deoghar, the argument advanced by Mr. Kinkar Kumar would run counter to the own circular of the State Government. Even the judgment(s) relied upon by Mr. Kinkar Kumar since rendered in the case of **Reeta Srivastava** (supra) and in the case of **Ganesh Prasad Srivastav** (supra), are in a different context for in the said cases, the basic qualification required for appointment, was Matriculation/Graduation or its equivalent from a recognised University and which is not the stipulation present in the rules in question which merely recognizes a qualification approved by the State Government. In my opinion in view of the stipulation present in the 1991 circular present at Annexure-4 which got recalled only in the year 2008, no infirmity can be found in the appointment of the petitioner made in the year 2005. The judgments thus relied upon by Mr. Kinkar Kumar would not apply to the facts of the case in hand since the qualification required for appointment to the posts which were under consideration of the Court in the cases of **Reeta Srivastava** and **Ganesh Prasad Srivastav** (supra) and the

qualification required in the present case, is distinct.

In my opinion the order passed by the 'Appellate Authority' in so far as the petitioner is concerned, cannot be upheld on three grounds, namely:

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- (a) In view of the Division Bench judgment of this Court since reported in **2016(1) PLJR 836 (Puja Vs. The State of Bihar)** the 'Appellate Authority' could not have travelled beyond inter-party dispute which was primarily in between the applicant Chandeshwar Prasad and his rival Arvind Kumar for no grievance has been raised by applicant Chandeshwar Prasad in so far as the petitioner is concerned. The 'Appellate Authority' thus had no jurisdiction to travel beyond the inter-party dispute.
- (b) The petitioner was appointed as a Panchayat Shiksha Mitra in 2005 and in view of the provision underlying Rule 20(iii) of the Panchayat Elementary Teachers (Employment and Service Conditions) Rules, 2006, he became a Panchayat Teacher with effect from 1.7.2006 and whereafter the 'Appellate Authority' could not have been enquired into the initial appointment of the petitioner as a Panchayat Shiksha Mitra as held in the

Full Bench judgment of this Court since reported in **2014(2) PLJR 665 (Kalpana Rani vs. The State of Bihar).**

- (c) The qualification required for appointment as Panchayat Shiksha Mitra at the relevant time in 2005, was a degree approved by the State Government and in view of the 1991 circular present at Annexure-4 the degree granted by Hindi Vidyapeeth, Deoghar was approved by the State Government only to be recalled vide circular dated 25.8.2008 present at Annexure-3/1.

For the reasons aforementioned the order impugned bearing Memo No.847 dated 16.11.2011 passed in Appeal No.02 of 2010 in so far as it concerns the petitioner cannot be upheld and is accordingly quashed and set aside. The petitioner stands restored to his post.

The writ petition is allowed.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	AFR
CAV DATE	NA
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Transmission Date	NA