

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1472 of 2016

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Anwareen Sultana, wife of Nasir Ali, resident of Village- Mohiuddinpur, P.S.- Waris Nagar, Anchal- Waris Nagar, District Samastipur.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Govt. of Bihar, Patna.
2. The Director, (Primary Education), Govt. of Bihar, Patna.
3. The Member, District Teachers Employment Appellate Tribunal, Samastipur.
4. The District Magistrate, Samastipur,
5. The District Education Officer, Samastipur,
6. D.P.O (Establishment), Samastipur.
7. The Block Development Officer, Warisnagar, Samastipur.
8. The Block Education Officer, Warisnagar, Samastipur,
9. The Selection Committee of Panchayat Raj, Mohiuddinpur through its Mukhiya,
10. The Panchayat Secretary, Gram Panchayat Raj Mohiuddinpur, P.S- Warisnagar, District- Samastipur.
11. Dharmendra Kumar, son of Ram Mahto, resident of village- Hajpurwa, P.O- Kusaiya, P.S.- Warisnagar, District- Samastipur, At present in Mohiuddinpur Undu Prathimik Vidyalaya (Urdu Maktab), Mohiuddinpur, Warisnagar, Samastipur.
12. Sudha Rani, wife of Sushil Pandey, resident of Village- Hajpurwa, P.S.- Warisnagar, District- Samastipur.

.... Respondents

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Appearance :

For the Petitioner	: Mr. Sarvdeo Singh, Advocate
For the State	: Mr. Anuj Kumar, AC to SC 12
For Respondent No. 10	: None
For the Respondent No.11	: M/s Manish Kumar, M.N.Roy, Advocates
For the Respondent No.12	: Mr. Mritunjay Kumar, Advocate

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 06-03-2017

I have heard learned counsel for the petitioner, the State, the respondent no. 11 and the respondent no. 12. Though notice was issued to the respondent no. 10, i.e., Panchayat Secretary, Gram Panchayat Raj Mohiuddinpur, P.S. Warisnagar, District Samastipur



but no one has appeared on his behalf.

The petitioner claims that she was engaged as Panchayat Shiksha Mitra vide Annexure 1 dated 26.4.2005. Thereafter, she was working as Panchayat Shiksha Mitra and time to time her contract was renewed after expiry of the existing period. On 1.7.2006, on enforcement of the Bihar Panchayat Elementary Teacher (Employment and Service Conditions) Rules, 2006 (hereinafter referred to as “the Rules of 2006”), she was absorbed as Panchayat Teacher. However, in 2009, the respondent no. 11 filed Appeal No. 7/09 before the District Teachers appellate Authority, Samastipur (hereinafter referred to as “the Authority”) stating that, since he was having highest marks, he should have been appointed as Shiksha Mitra on which certain persons including the petitioner were appointed. The Authority directed the employment unit to consider the case of the aforesaid Dharmendra Kumar for appointment. Thereafter, the petitioner’s employment was cancelled by the employment unit and the same was communicated vide Annexure 6 dated 12.3.2010. Petitioner assailed the aforesaid order by filing C.W.J.C. No. 6214/2010 which was disposed of vide Annexure 8 dated 3.7.2013 granting him liberty to prefer appeal before the authority against the order of termination and till a decision is taken by the authority operation of the termination order was stayed.



The appellate authority vide order dated 18.12.2015, as contained in Annexure 9, dismissed the appeal holding that since the Authority has already passed the order on earlier occasion vide Annexure 5, it does not have any power to intervene in the matter or review the same.

Learned counsel for the petitioner submits that the order was passed by the appellate Authority vide Annexure 5, without granting reasonable opportunity to the petitioner as the petitioner was neither made a party nor was served any notice to appear and explain her case. The aforesaid order resulted eventually in the termination of the petitioner vide Annexure 6.

However, a question of law is raised by the petitioner that once the petitioner was absorbed as Panchayat Teacher, her service conditions would be governed by the Rules of 2006. The post of Shiksha Mitra was already abolished and, as such, the appellate authority was not at all empowered to look into the correctness of engagement of the petitioner as Shiksha Mitra in the year 2005 at the belated stage in the year 2009-10 as it lacks such authority. Learned counsel places reliance upon a decision of the Division Bench rendered in **Smt. Renu Kumari Pandey & Ors. Vs. The State of Bihar & Ors. [2011(4) PLJR 297]**. It has been held therein that, after 1st July, 2006, the cadre of Panchayat Shiksha Mitra stood



abolished. Thus, no further appointment can be made to the post of Panchayat Shiksha Mitra. The Panchayat Shiksha Mitras absorbed as Panchayat Teacher by operation of Rule 20(iii) of the Rules of 2006 would be governed by those Rules only. Their service cannot be terminated in any manner or for any reason other than the ones prescribed under the Rules of 2006. It has also been held that the District Magistrate was not an authority competent to entertain and decide the grievances with respect of the Panchayat Shiksha Mitra and appellate authority was also not empowered to go behind and probe the engagement as Panchayat Shiksha Mitra. The issue was again considered by a Full Bench. The Full Bench also in its decision rendered in **Kalpana Rani Vs. the State of Bihar and Ors. [2014(2)PLJR 665]** upheld the aforesaid views of the Division Bench and held that appellate authority did not have power to examine the correctness of engagement made as Panchayat Shiksha Mitra and further that no appointment can be given to anybody as Shiksha Mitra after abolition of such post.

Learned counsel appearing for the respondent no. 11 has submitted that in fact the respondent moved before the concerned Block Education Officer for his engagement as Panchayat Shiksha Mitra in the year 2005 itself. Thereafter, the petitioner also made representation before the District Superintendent of Education in the



year 2008 and then in the year 2009 she moved before the appellate authority.

Be that as it may, since no order was passed by any competent authority with respect to that, it would not be possible now to go behind and probe the matter after absorption of the petitioner as Panchayat Teacher.

In my considered view, since the matter has been set at rest by Full Bench of this Court that the District Appellate Authority does not have any power to examine the correctness of the engagement as Shiksha Mitra as the same is the creature of the Rules of 2006 after abolition of the post of Shiksha Mitra.

In my view, the order passed vide Annexure 5 by the appellate authority was not at all justified as it could not have passed the order of termination and directed for a fresh exercise of appointment after consideration of the respondent no. 11, who was neither the Shiksha Mitra nor was a Panchayat Teacher. Similarly, the employment unit also did not have any authority to go behind and probe the correctness of engagement of petitioner as Panchayat Shiksha Mitra after abolition of the post and her absorption as Panchayat Teacher.

Accordingly, the orders impugned as contained in Annexure 5, 6 and 9 are quashed and set aside. The petitioner would



continue to work as Panchayat Teacher and would be entitled for consequential reliefs which would accrue to her as she has been ousted and such action has been found to be without jurisdiction.

(Dr. Ravi Ranjan, J)

Spd/-

AFR/NAFR	NAFR
CAV DATE	NA
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