

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.15726 of 2011**

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1. Savitri Kumari Wife Of Sri Siya Ram Mochi Resident Of Village- Kumharpur,  
P.S.- Bihariganj, District- Madhepura

.... .... Petitioner/s

Versus

1. The Panchayat Secretary, Gram Panchayat Manjaura, Uda- Kishanganj, Block-  
Police-Station-Uda-Kishanganj, District- Madhepura
2. The State Of Bihar
3. The District Teacher's Employment Appellate Tribunal, Madhepura
4. The District Programme Officer, (Establishment), Madhepura
5. Bharati Kumari, wife of Sri Diwakar Prasad Ram, resident of village and P.O.  
Manjora, Police station – Bihariganj, District – Madhepura
6. Kamlesh Kumar Mehta, son of Sri Jagdish Mehta, resident of village and P.O.  
Manjora, P.S. Bihariganj, District – Madhepura.

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. SANJEEV KUMAR

For the Respondent/s : Mr. Naman Nayak, AC to AAG 10.

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**CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH**

**ORAL JUDGMENT**

**Date: 09-05-2017**

The present writ application has been filed for quashing the enquiry report dated 27.4.2011 submitted by the District Teachers' Employment Appellate Authority, Madhepura (hereinafter referred to as the 'Appellate Authority') in Appeal Case No. 58 of 2009, as contained in Annexure 7, whereby it has been reported that the petitioner's engagement as Shiksha Mitra on reserved seat of Scheduled Castes has been made contrary to the rosters. Consequent to the report of the Appellate Authority, the District Program Officer (Establishment), Madhepura, vide letter no. 102 dated 18.8.2011, as contained in Annexure-8, directed to the Panchayat Secretary, Gram



Panchayat, Manjaura, Udakishunganj to take appropriate action against the petitioner whose engagement has been found to be illegal by the Appellate Authority during enquiry.

Subsequently, through I.A. No. 8035 of 2011 amendment has been sought for additional prayer, firstly for impleading Bharati Kumari and Kamlesh Kumar Mehta as respondent nos. 5 and 6 on whose complaint the Lokayukta directed for enquiry, secondly, for quashing letter no. 102 dated 18.8.2011 as contained in Annexure – 8-A, issued by the District Program Officer (Establishment) Madhepura who directed for termination of the services of the persons whose engagement as Shiksha Mitra has been found to be illegal by the Appellate Authority. This Court vide order dated 25.11.2011 allowed I.A. No. 8035 of 2011 and issued notice to respondent nos. 4 to 6.

It appears from the office note dated 17.9.2013 that the notice was validly served on respondent no. 5 and notice on behalf of respondent no. 6 was received by his brother. An affidavit by way of I.A. No. 7586 of 2013 has been filed to the effect that respondent no. 6 resides separately from his brother. Consequently, fresh notices were issued vide order dated 22.10.2013. Subsequently notice was effected through house service on respondent no. 6, which gets reflected from the office note dated 31.3.2014, but thereafter on



1.4.2014 again notice was issued to respondent no. 6. The office note dated 27.6.2014 reflects that the notice on respondent no. 6 was validly served. In spite of valid service of notice, respondent nos. 5 and 6 neither chose to appear nor filed counter affidavit.

It appears that Mr. Amiya Kunal, Advocate filed Vakalatnama on behalf of petitioner and respondent no. 4 but vide order dated 19.9.2013 Mr. Amiya Kunal, Advocate was permitted to withdraw Vakalatnama on behalf of the petitioner and permitted to represent respondent no.4, hence notices issued to respondent no. 4 is also deemed to be validly served.

The factual matrix would unveil that the petitioner was engaged as Shiksha Mitra in Primary School, Kumarpur in the District of Madhepura and consequently, he joined on 20.5.2005. Subsequently, the contract was renewed from 20.5.2006 to 19.5.2007 vide letter no. 01/06-07 dated 28.4.2006 issued under the joint signature of Panchayat Secretary, Manjaura and Mukhia, Gram Panchayat, Manjaura.

By coming into force of the Bihar Panchayat Elementary Teachers (Employment and Service Conditions) Rules, 2006 (hereinafter referred to as 'Rules, 2006') and operation of Rule 20(iii) the petitioner was absorbed as Panchayat Teacher. Rule 20 reads as :



**“20. निरसन एवं व्यावृत्ति :-**

;पद्ध३३३ण

;पपद्ध३३३ण

(iii) किन्तु पूर्व के परिपत्र, आदेश, अनुदेश के आलोक में

नियोजित एवं कार्यरत पंचायत शिक्षा मित्र इस नियमावली के तहत पंचायत शिक्षक के रूप में नियोजित माने जायेंगे।”

It appears that on the complaint of Bharati Kumari and Kamlesh Kumar (respondent nos. 5 and 6), some enquiry was initiated and consequently the District Superintendent of Education, Madhepura informed the District Appellate Authority vide letter no. 385 dated 3<sup>rd</sup> March, 2011 that some enquiry is going on in pursuance to the order of the Lokayukta, hence requested the Appellate Authority to conduct an enquiry and transmit a report. Pursuance to that, the Appellate Authority conducted enquiry and came to a finding that irregularities were being committed and the petitioner was found to have been engaged on reserved seat of Scheduled Caste in violation of the roster point and hence suggested that if any complaint comes with regard to the employment of Shiksha Mitra and on enquiry it is found to be illegal then the concerned person can be removed and none should be engaged on the said post since there is no provision for engagement of Shiksha Mitra after coming into force of the Rules, 2006.

It is submitted by learned counsel for the petitioner that under Rule 18 of Rules, 2006 does not envisage that the District



Appellate Authority can conduct any enquiry with regard to the illegality committed in the engagement of Shiksha Mitra. The Appellate Authority has been given an adjudicatory power and contrary to that, on the request of the District Superintendent of Education, enquiry has been conducted by the Appellate Authority. More over, this court, in the case of Renu Kumari Pandey and Ors. Vs. State of Bihar and Ors. 2011(4) PLJR 297 has categorically held that the Appellate Authority has no jurisdiction to entertain, hear or decide the disputes relating to the employment of Panchayat Shiksha Mitra. More over, the consequential order issued by the District Program Officer, contained in Annexure 8 is a mechanical order. However, the petitioner is still working. It is further submitted that the enquiry report of the Appellate Authority as contained in Annexure 7 and consequential order of the District Program Officer (Establishment), contained in Annexure 8 have been stayed by this court vide order dated 25.11.2011.

Learned counsel for the State submits that the enquiry report was submitted by the Appellate Authority and during enquiry it was found that the petitioner's employment as Shiksha Mitra on reserved post was illegal. A supplementary counter affidavit has been filed to the effect that the aforesaid enquiry report of the District Appellate Authority, Madhubani was also challenged in CWJC No.



18071 of 2011 wherein the order of the Appellate Authority was quashed and relying on the same, subsequently, co-ordinate bench of this court in the case of Suman Kumar Singh Vs. State of Bihar and ors (CWJC No. 17964 of 2011) quashed such order of the Appellate Authority dated 22.4.2011 and the matter was remanded back to the District Employment Appellate Authority. Similar view has been taken by Division Bench of this Court in LPA No. 706 of 2012 arising out of CWJC No. 17362 of 2011.

Considering the rival submission of the parties, this Court is of the view that the District Appellate Authority under Rule 18 of Bihar Panchayat Elementary Teachers (Employment and Service Conditions) (Amendment) Rules, 2008 has to adjudicate and not to conduct and submit enquiry report. The English version of Rule 18 of Rules, 2008 reads as follows:

“ 18. Appeal-

Under this rule, power to hear Appeal relating to employment and service conditions shall be vested with the Authority comprising of one or more than one member, constituted by the government at district level. The establishment and service conditions of the Authority shall be determined by the Human Resources Department. The Appellate Authority shall be constituted from amongst the officers retired from Bihar Judicial Service, Indian Administrative Service, Bihar Administrative Service, Bihar Education Service and



also from Educationist as per requirement.” ]

More over, in view of the ratio laid down in the case of Renu Kumari Pandey and Ors. (supra), the Appellate Authority has no jurisdiction to entertain, hear or decide the disputes relating to the employment of Panchayat Shiksha Mitra. Paragraph 18 of the judgment reads as follows:

“We may also note here that though the State Government framed a complete scheme for employment of Panchayat Shiksha Mitra at Gram Panchayat level in furtherance of its goal of “Education for All”, in none of the aforesaid Resolutions the Government had provided for an adjudicatory machinery. In other words, the State Government did not make any provision for redressal of grievance in respect of selection and employment of Panchayat Shiksha Mitra or their re-employment after the expiry of the contractual period. On perusal of the records of the above writ petitions, we find that in absence of such machinery, the aggrieved persons approached the authority whom such persons considered to be the competent/the convenient authority. In our opinion, in absence of powers expressly conferred upon any such authority the reports or the orders made by such authority are of no consequence. No relief can be granted on the basis of the finding recorded by such authority. We may also



point out that Elementary Teachers Appellate Authority constituted under Rule 18 of the Rules, as amended by Bihar Panchayat Elementary Teacher (Employment and Service Conditions) (Amendment) Rules, 2008 is empowered to entertain, hear and decide the appeals arising out of the employment of elementary teachers under the Rules. The said appellate authority has no jurisdiction to entertain, hear or decide the disputes relating to the employment of Panchayat Shiksha Mitra under the then prevalent Resolutions, Circulars, Orders, Instructions.”

The judgment in the case of Smt. Renu Kumari Pandey has been affirmed by Hon’ble Supreme Court in Special Leave to Appeal (Civil) No. 33303 of 2011. The ratio laid down in Renu Kumari Pandey (supra) has further been upheld by a full Bench of this Court in the case of Kalpana Rani Vs. State of Bihar and ors. 2014(2) PLJR 665. Hence, the enquiry report of the Appellate Authority dated 27.4.2011 in Appeal Case No. 58 of 2009 as contained in Annexure 7 and its consequential order issued vide letter no. 162 dated 18.08.2011 by the District Program Officer (Establishment), Madhepura (Annexure 8) whereby Panchayat Secretary, Majaura Panchayat was directed to take steps to terminate the services of teachers whose appointment has been found illegal on the basis of enquiry report, are hereby quashed.



Accordingly, the writ application stands allowed.

**(Dinesh Kumar Singh, J)**

Anil/-

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