

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3649 of 2011

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Ranvir Kumar Singh, Son of Late Ram Lakhan Singh, resident of Village-Farda, Sita Rampur, Post Office- Farda, Police Station- Naya Ramnagar, District-Munger.

.... Petitioner

Versus

1. The State of Bihar through its Secretary, Human Resources Development Department, Government of Bihar, Patna.
2. The Director, Primary Education, Bihar, Patna.
3. The District Magistrate, Munger.
4. The Deputy Development Commissioner, Munger.
5. The District Superintendent of Education, Munger.
6. The Block Development Officer, Jamalpur, District-Munger.
7. Mukhiya, Gram Panchayat Raj Padhum under Jamalpur Block, District-Munger.
8. Secretary, Gram Panchayat Raj Padhum, under Jamalpur Block, District-Munger.
9. The District Teachers' Employment Appellate Authority, Munger through its Chairman.
10. Rajesh Kumar, S/O Ram Balak Kumar, Shiv Rampur, P.O. Farda, P.S. Naya Rampur, District-Munger.

.... Respondents

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Appearance :

For the Petitioner : Mr. Ishwari Singh, Advocate.
For the Respondents : Mr. Kinkar Kumar, S.C. 9 and Mr. Rakesh Kumar Sharma, A.C. to S.C. 9.

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CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
CAV ORDER

8 31.08.2017

In the present writ petition, the petitioner has challenged the order contained in Memo No. 378 dated 03.03.2009 (Annexure-6), passed by the District Superintendent of Education, Munger, and its consequential



order contained in Letter No.03 dated 02.04.2009 (Annexure-7) issued by the Mukhiya of Gram Panchayat- Padham, Jamalpur, District-Munger, by which the appointment of petitioner on the post of Panchayat Teacher has been cancelled, and the further challenge is made to the order dated 07.02.2011 in Appeal No. 13/2009 (Annexure-11) passed by the District Teacher Employment Appellate Authority, Munger, by which the said order of the Mukhiya of the concerned Panchayat regarding cancellation of appointment of the petitioner on the post of Panchayat Teacher, has been affirmed, with a further direction to make recovery of the honorarium paid to the petitioner.

The petitioner was initially appointed on the post of Shiksha Mitra vide Letter No.04 dated 20.02.2003, issued by the Mukhiya of the concerned Gram Panchayat and he also made his joining on the same day in Farda Middle School. Thereafter, the petitioner was granted extension of services twice, after lapse of each contractual period of 11 months. In the meantime, one Rajesh Kumar made a complaint before the District Magistrate, challenging the appointment of the petitioner as Shiksha Mitra, whereby vide Letter No. 3569 dated 25.07.2003, the District Magistrate, Munger, directed the Block Development Officer, Jamalpur, to make an enquiry.



The Block Development Officer, Jamalpur, submitted his enquiry report vide Memo No. 692 dated 28.08.2003, indicating that there being no illegality in selection of Shiksha Mitra and the allegations made against the Mukhiya were unfounded. The petitioner kept continuing and serving the post of Shiksha Mitra, in the meantime, Bihar Panchayat Elementary Teachers (Appointment & Service Condition) Rule, 2006 came into force and the petitioner came to be absorbed on the post of Panchayat Teacher in terms of Rule 20 with effect from 01.07.2006.

Next round of dispute arose about the validity of the appointment of the petitioner, when the said Rajesh Kumar again made a fresh complaint before the District Magistrate, Munger, on 30.11.2007. The Deputy Development Commissioner, Munger, was directed to make an enquiry by the District Magistrate, in turn, the Mukhiya of the concerned Gram Panchayat was asked to enquire into the matter and to submit a report, where upon vide Letter No. 03 dated 02.06.2008, report was submitted by the Mukhiya, indicating therein that the complaint made by said Rajesh Kumar is baseless and seems to be actuated in vengeance, as there being no illegality in the selection of Shiksha Mitra made in the year



2003 and earlier an enquiry report dated 28.08.2003 was already submitted by in B.D.O Jamalpur.

The Deputy Development Commissioner, Munger, submitted his report dated 02.12.2008 to the District Magistrate, Munger. In the said enquiry report it was indicated that the petitioner had twice appeared in Matriculation Examination from different schools, changing his name also. The complainant Rajesh Kumar has secured more marks than the petitioner in Matriculation Examination, thus, the appointment of the petitioner appears to be bad as being made on the basis of forged certificate. The Block Development Officer, Jamalpur was directed by the Deputy Development Commissioner, Munger, to cancel the appointment of the petitioner. Thereafter, in pursuance to the said enquiry report of the Deputy Development Commissioner, Munger, and the directions issued by the District Magistrate, Munger, the District Superintendent of Education, Munger, vide Memo No. 378 dated 03.03.2009, directed the Mukhiya/Panchayat Secretary of Gram Panchayat, Padham, Jamalpur, to cancel the appointment of the petitioner, whereupon vide Letter No. 03 dated 02.04.2009, Mukhiya of the concerned Gram Panchayat made removal of the petitioner from service. The petitioner



made a representation on 02.04.2009 before the District Magistrate, Munger, against the order of the District Superintendent of Education, Munger, relating to cancellation of his appointment, mentioning therein that earlier on 28.02.2003 an enquiry report was already submitted by the Block Development Officer, Jamalpur, holding therein that his appointment was not illegal, rather the complaint made by Rajesh Kumar was baseless.

The petitioner had earlier challenged the order of the District Superintendent of Education, Munger, contained in Memo No. 378 dated 03.03.2009 and Letter No. 03 dated 02.04.2009, issued by the Mukhiya of concerned Gram Panchayat, in CWJC No. 8301 of 2009 before this Court, which came to be disposed of vide order dated 20.07.2009, granting liberty to the petitioner to raise his grievances before the Statutory Authority in terms of Rule 18 of Bihar Panchayat Primary Teacher (Appointment & Service Condition) Rules, 2008. The petitioner filed an appeal bearing no. 13/09 before the District Teachers Employment Appellate Authority, Munger, which has been dismissed vide order dated 07.02.2011, challenged hereunder.

The learned counsel of the petitioner relied upon an



unreported judgment of this court dated 08.02.2009 rendered in CWJC No. 6695 of 2007 (Awadhesh Prasad –Vs- State of Bihar & Ors.) and submits that in terms of said Rule 2006, the Deputy Development Commissioner, the District Superintendent of Education and even the District Magistrate were not competent to receive/entertain/enquire any such objection regarding the initial appointment of the petitioner as a Shiksha Mitra, as he has been absorbed under Rule 20 (iii) of 2006 Rules, and pass such order of removal of the petitioner from the post of Panchayat Teacher.

A counter affidavit has been filed on behalf of the respondent no.5, contending therein that a complaint was made to the District Magistrate, Munger, in the year 2007 to the effect that the petitioner being appointed on the post of Shiksha Mitra on the basis of such matriculation certificate, which was procured illegally by changing his name and re-appearing in the same examination in the 1993, whereas he had already passed matriculation examination way back in the year 1984. In the first examination held in the year 1984, the name of the petitioner was enrolled as Gautam Mandal. It has been also contended that in pursuance to said enquiry, the Deputy Development Commissioner, submitted his report to the



District Magistrate, Munger, whereupon, as per the direction of the District Magistrate, Munger, the District Superintendent of Education, Munger, directed the Mukhiya/Panchayat Secretary to terminate the services of the petitioner.

The learned counsel for the State submitted that against the Annexure-6 and Annexure-7, the petitioner had already approached this Court by filing CWJC No. 8310 of 2009 but this Court considering the scope of statutory alternative remedy, directed the petitioner to approach before the Appellate Authority in terms of Rule 18 of Bihar Panchayat Primary Teachers (Appointment & Service Condition) Rules, 2008. Consequently the petitioner filed an appeal before the District Teachers Employment Appellate Authority, Munger, who vide order dated 07.02.2011, while dismissing the appeal of the petitioner, further directed to make recovery of payments made towards emoluments, from the petitioner.

Considering the rival submissions of the parties and the documents available on records, I find that the petitioner has challenged the various orders as contained in Annexure-6, Annexure-7 and Annexure-11 to the writ petition firstly on the ground of 'want of jurisdiction' and secondly on the premise that once the petitioner who was initially appointed as Shiksha



Mitra in the year 2003, and after getting two successive extension of contractual period of 11 months, is absorbed on the post of Panchayat Teacher, in terms of Rule 20 (iii) of Bihar Panchayat Primary Teachers (Appointment & Service Condition) Rules, 2006 with effect from 01.07.2006, in that case, the challenge made to his initial appointment is not permissible.

Coming to the first issue that whether the petitioner could have any substantive grievances in respect to the order contained in Annexures-6 and 7, even after passing of the order contained in Annexure-11 dated 07.02.2011, by the District Teachers Employment Appellate Authority, Munger. In my view, since the petitioner had initially challenged the said orders of the District Superintendent of Education, Munger, and its consequential order passed by the Mukhiya of concerned Gram Panchayat, before this Court, and in pursuance to the order dated 20.07.2009 passed by this Court in CWJC No. 8310 of 2009, the petitioner submitted himself to the jurisdiction of the District Teachers Employment Appellate Authority, Munger, against his grievances, thereupon the said Appellate Authority giving proper consideration to the facts and issues involved therein, has passed the order under



challenge, therefore, the said orders contained in Annexures-6 and 7 are insignificant, having no consequences. While passing the order contained in Annexure-11, the said Appellate Authority has given a specific finding that the petitioner and Gautam Mandal are the same person, who had appeared in the year 1984 in matriculation examination by name Gautam Mandal and again changing his name and parentage, second time appeared in the same matriculation examination in the year 1993 by name Ranvir Kumar Singh, which is not permissible under the law and further it has also been held that the petitioner while serving the post of Shiksha Mitra has persuaded Intermediate Course and passed out, in the year 2005, even without permission of the employer, which is another kind of illegality on the part of the petitioner.

So far the judgment dated 28.02.2009 rendered in CWJC No. 6695 of 2007, relied by the counsel for the petitioner is concerned, as the facts and issues involved in the present case are quite different and distinct, therefore, the said judgment would not govern the issues involved herein.

The petitioner has not brought any such document on record, which may dislodge the finding as indicated above, of the District Teachers Employment Appellate Authority,



Munger, recorded in Annexure-11 to the writ petition that the petitioner is the same person, who twice appeared in the matriculation examination, changing his name and further the petitioner while serving the post of Panchayat Teacher had persuaded his Intermediate course even without the permission of the employer.

Therefore, the order of the said Appellate Authority contained in Annexure-11 to the writ petition, so far it relates to the petitioner, does not require any interference, except for the direction of recovery of amount paid towards emoluments to the petitioner.

It is made clear that recovery of the amount, paid towards emoluments, to the petitioner shall not be made, in terms of the said order of the appellate authority contained in Annexure-11 to the writ petition.

So far the observations and directions made relating to others than the petitioner, in the order of the appellate authority dated 07.02.2011 (Annexure-11) are concerned, they shall be dealt with separately in appropriate case. Thus, the order under challenge contained in Annexure-11 is partly affirmed, as indicated above.

The writ petition is, accordingly, dismissed, in terms



of the directions and observations made above.

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(Sudhir Singh, J)

