

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2687 of 2011

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Smt. Sheo Kumari Devi, W/O Sri Jaimal Singh, R/O Village - Chaukhara,
Post Office - Dumari, P.S. - Chenari, District – Rohtas.

.....Petitioner.

-Versus-

1. The State of Bihar.
 2. Principal Secretary, Human Resources Development, Government of Bihar, Patna.
 3. District Magistrate, Rohtas, Sasaram.
 4. Sub Divisional Officer, Sasaram.
 5. District Superintendent of Education, Rohtas, Sasaram.
 6. Block Development Officer, Chenari.
 7. Mukhiya, Dihriya Panchayat under Chenari Block, District - Rohtas
 8. Panchayat Sevak, Dihriya Panchayat under Chenari Block, District – Rohtas.
 9. Smt. Sita Kumari, Wife of Sri Manoj Kumar, resident of village- Piyankala, P.O. Telari, P.S. Chenari, District-Rohtas (Sasaram).
- Respondents

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Appearance :

For the Petitioner : M/S. Ishwari Singh, S.K. Mishra and Smt. Kiran Kumari, Advocates

For the State : Mr. Krishna Kumar Singh, A.C. to G.P. 22.

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CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
CAV ORDER

6 11.09.2017 In the present writ application, the challenge has been made to the order passed by respondent no. 02, Principal Secretary, Human Resource Development Department, Government of Bihar, Patna, issued vide Memo No. 1425 dated 22.11.2010, contained in Annexure–1 to the writ petition by which the appointment of the petitioner made on the post of Panchayat Shiksha Mitra, has been held illegal and the District Superintendent of Education, Rohtas, has been directed to



make removal of the petitioner from service, after granting an opportunity of explanation, and further seeking direction upon the District Superintendent of Education, Rohtas, as to make regular payment of salary to the petitioner.

The petitioner was selected on the post of Panchayat Shiksha Mitra as per direction dated 18.06.2005 of the Selection Committee of Dihria Gram Panchayat and was directed to join upgraded Middle School, Dighat. Thereafter, the petitioner made her joining on 27.06.2005 and was discharging her duties and absorbed on the post of Panchayat Teacher, in terms of Rule 20 (iii) of the Bihar Panchayat Elementary Teachers (Employment and Service Condition) Rule, 2006.

A complaint was made in respect to appointments of Shiksha Mitra of Dihria Panchayat. An enquiry was also made by the Block Development Officer, Chenari, as well as by the Sub Divisional Officer, Sasaram. After enquiry, report was submitted vide Memo No. 517 dated 11.10.2008 to the District Magistrate Rohtas, but no irregularity was pointed out against the appointment of the petitioner. The appointment of Shiksha Mitra of Dihria Panchayat was also challenged by one Smt.



Sita Kumari in C.W.J.C No. 7478 of 2008 before this Hon'ble Court which included the appointment of the petitioner also along with others. By order dated 07.05.2008, the said writ application was disposed of with the following observations and directions :

“In such view of the matter, the Principal Secretary of the Human Resources Development Department is directed to hold an enquiry and if it is found that the appointments of the respondents, namely, Savitri Devi, Mamta Kumari, Punam Kumari, Sunita Kumari, Anita Kumari and Sheo Kumari Devi have been made in an illegal manner and in contravention of the relevant Rule, he will not only take action against the concerned persons, but would also ensure that petitioner is given his due in respect of relief sought by him in this writ application.

In order to enable the Principal Secretary of the Human Resources Development Department to hold such an enquiry and pass an appropriate order, the petitioner is given liberty to file a fresh representation stating all the relevant facts and enclosing all the relevant documents within a period of three weeks from today and in the event of such representation is filed, the Principal Secretary of the Human Resources Development Department will be under obligation to hold an enquiry and pass a reasoned order within six months from filing of such a representation by the petitioner. With the aforementioned observations and directions this writ application is disposed of.”

The petitioner claims that no opportunity of hearing



was given to her by the Principal Secretary, Human Resources Development Department. Hence, the order passed by the said respondent is in conflict to the principle of natural Justice.

The learned counsel for the State submitted that in pursuance to the order dated 22.11.2010 (Annexure-1) passed by the Principal Secretary, Human Resource Development Department, Government of Bihar, Patna, a show cause notice was issued to the petitioner by the District Superintendent of Education, Rohtas, vide Letter dated 04.01.2011. The petitioner, in response whereof, submitted his explanation on 10.01.2011 and further a supplementary explanation also, on 14.01.2011 to the District Superintendent of Education, Rohtas, therefore, the plea of the petitioner that no opportunity of hearing was granted to him, is unfounded.

From perusal of the order under challenge dated 22.11.2010, contained in Annexure-1 to the writ petition, it doesn't appear that the petitioner was ever given any opportunity of hearing, prior to holding her appointment to be illegal and passing direction for her removal from the post of Panchayat Shikshak, thus I find no force in the submission made on behalf of the State that opportunity of hearing was



granted to the petitioner before passing the order impugned dated 22.11.2010.

One of the fundamental principle of natural Justice in *audi alteram partem*, i.e. no man should be condemned unheard, or both the sides must be heard before passing any order. It is the first requirement of natural justice that before any action is taken, the affected party must be given a notice to show cause against the proposed action and seek his explanation. Any order passed without giving notice is against the principle of natural justice and is void ab initio.

In case of Northern Rly. Coop. Society Vs. Industrial Tribunal AIR 1967 SC 1182 the Hon'ble Supreme Court held thus :

“Even if there is no provision in the statute about giving of notice, if the order in question adversely affects the rights of an individuals the notice must be given. The notice must be clear, specific and unambiguous and the charges should not be vague and uncertain.”

It is the second requirement of *audi alteram partem* that the person concerned must be given an opportunity of being heard before any adverse action is taken.



Since there being a direction for removal of the petitioner in the order impugned dated 22.11.2010, which having severe civil consequences, therefore, the petitioner must have been given a notice and an opportunity of being heard before passing such adverse order.

Coming to the next issue, which is indicated in the impugned order itself that the complainant (writ petitioner of C.W.J.C No. 7478 of 2008) named Smt. Sita Devi had not enclosed residential certificate with her application, therefore, 'Panchayat Sukh Suvidha Samiti' rejected her candidature and thus she could not be appointed, on the post reserved for Backward Category. It has been further indicated in the said order that one Punam Kumari having fourteen (14) 'Medha Ank', belongs to Extremely Backward Category, ought to have been appointed under General Category, whereas the petitioner having 10 'Medha Ank' came to be selected and appointed under the General Category which was illegal.

After going through the documents available on record, I find that the vacancy in question was unreserved and it had arisen on account of non-joining of one Sunita Kumari, wife of Satyadeo Singh, who was selected under Unreserved



Female Category along with Savitri Kumari and Mamata Kumari. The petitioner came to be selected and appointed against the said vacancies on 18.06.2005. By that time, the said Poonam Kumari having 14 'Medha Ank', was already selected and appointed under Extremely Backward Category and she had already joined the post on 01.06.2005, whereas the petitioner came to be selected on 18.06.2005 and joined the post on 27.06.2005. Therefore, in any event she could not be considered against the post fallen vacant due to none joining of said Sunita Kumari. There is nothing in the enquiry report as well as on the records of this case as to show that the petitioner having lesser marks than other illegible candidates, who had made their application for appointment for the post of Panchayat Shiksha Mitra. Holding the appointment of the petitioner to be bad on the ground that Poonam Kumari ought to have been appointed against the post fallen vacant due to non-joining of earlier selected candidate named Sunita Kumari, appears to be wholly misconceived and unfounded for the simple reason that she was already appointed and serving the post of Shiksha Mitra on the date of selection of the petitioner. So, there can't be inter se appointment dispute between the petitioner and Poonam Kumari.



In view of the discussions and observations made above, I am of the opinion that the order dated 22.11.2010, passed by the Principal Secretary, Human Resource Development Department, Government of Bihar, Patna, contained in Annexure-1, requires interference, therefore, it is hereby quashed.

The respondents are directed to reinstate the petitioner on the post of Panchayat Teacher in the upgraded Middle School, Dighat, since the date of her removal.

It is made clear that the petitioner shall not be entitled for payments of emoluments/salary of the intervening period under which she didn't work but the said period shall not be treated as 'break in service' and same shall be counted for fixation of pay scale and other purposes.

This writ application is therefore, accordingly, allowed.

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(Sudhir Singh, J)

