

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.38990 of 2011

Arising Out of PS.Case No. -0 Year- null Thana -null District- NALANDA (BIHARSHARIFF)

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1. Anirudh Prasad S/O Late Yadunandan Garai Resident Of Village- Banpur, Police Station- Hilsa, District- Nalanda
 2. Chitranjan Prasad @ Chitranjan Kumar, S/O Late Gurusahay Mahato Resident Of Village- Nepura, Police Station- Asthawan, District- Nalanda

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. S.K.Lal, Advocate.
Mr. P.K.Lal, Advocate.

For the Opposite Party/s : Mr. Parmeshwar Mehta, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 12-09-2017

Petitioners were Mukhiya and Panchayat Sachiv, at the relevant point of time, of Asarhi Panchayat and they are accused in Hilsa P.S Case No. 425 of 2007 registered under sections 420, 467, 468 of the Indian Penal Code and they have preferred this application under Section 482 of the Cr.P.C., 1973 for setting aside order dated 26.09.2011 passed by Mr. Satish Kumar Jha, Judicial Magistrate, 1st Class, Hilsa in G.R. No. 1295 of 2007 (Tr. No. 2333 of 2008) whereby he has rejected the discharge petition filed by the accused persons.

2. The short facts giving rise to this case is that the petitioners, being the Mukhiya and the Panchayat Secretary of Asarhi Panchayat, selected 08 Shiksha Mitra not following guidelines issued by the Department rather on the basis of competitive examination.



3. Learned counsel for the petitioners contends that only allegation against the petitioners is that petitioners did not follow the guidelines for appointment of Shiksha Mitra issued by the concerned department, as per guidelines, appointment was to be made on the basis of marks obtained in matriculation examination but for fairness and to select meritorious candidates conducted written competitive examination and 08 candidates from the merit list were appointed as Shiksha Mitra. The same procedure was followed in the adjacent Panchayat also the appointment of such Shiksha Mitra was made on the basis of competitive examination. Subsequently, services of those Shiksha Mitras were cancelled by the State Government because they were not appointed as per procedure and guidelines issued by the department. Some candidates namely Uday Prakash Mishra and others challenged the cancellation order before this Hon'ble Court in CWJC No. 3867 of 2007 which was allowed by order dated 22.01.2008 and setting aside the order of cancellation directed to reinstate them as Panchayat Shikshak and also made observation that selection based on the competitive examination is the norm of the day and there is no reference or allegation of any impropriety in such competitive examination held by Mukhiya. He further submits that one of the candidates appointed by the petitioners, namely, Randhir Kumar also filed L.P.A. No. 273 of 2011 as his writ application was dismissed by a single bench but the Division



Bench of this Court reinstated the services of the petitioner setting aside the cancellation order of the Government however, the Division Bench has also observed that “we are of the opinion that appointment of the appellant cannot be treated to be cancelled on the basis of conducting the written examination in the absence of any fraud, misrepresentation or mala fide. We do not find any error in the said procedure and there is no material placed before us by any of the parties which are contrary to the procedure.” Further learned counsel submits that there is no evidence in the case diary to show any ingredient of cheating, any fraud or making of a forged document by the petitioners except that they did not follow the guidelines of the Government in the matter of appointment of Shiksha Mitra.

4. Learned counsel appearing on behalf of the State supports the impugned order but concedes that except that petitioners appointment as Shiksha Mitra not as per the guidelines of the Government rather by competitive written examination, there is no other material in the case diary.

5. Having considered the rival submissions and on perusal of record, the Court finds that there is no *prima facie* material on record to show that any allegation of cheating or making of forged documents was alleged or any fraud was done except of conducting competitive written examination for appointment of Shiksha Mitra in violation of



guidelines of the Department; which was to be on the basis of marks obtained in matriculation certificate. The appointment of Shiksha Mitra was also under the scrutiny of the Division Bench of this Court in L.P.A. No. 273 of 2011 and the appointments were held to be valid. By order dated 05.04.2011, the Division Bench has observed that “under the above circumstances, we are of the opinion that action taken by the respondent upholding the competitive examination conducted by the then Mukhiya cannot be treated as illegal.” Accordingly, order of termination of services of the appellants is set aside and the respondents are directed to reinstate the appellant herein as expeditiously as possible.

6. So, in view of material available on record, as *prima facie* no ingredients of cheating and committing forgery or any fraud is made out, so continuation of the criminal proceeding in the matter would be an abuse of the process of the court. Therefore, the entire criminal proceeding including the impugned order 26.09.2011 passed in G.R. No. 1295 of 2007 (Tr. No. 2333 of 2008) is set aside.

7. The application stands allowed.

(Arun Kumar, J)

Sujit/-

AFR/NAFR	NAFR
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