

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1297 of 2010

IN

Civil Writ Jurisdiction Case No. 2466 of 2010

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1. Archana Kumari D/O Sri Anjani Kumar Srivastava R/O Vill.- Deokulia, Panchayat- Mankarwa, P.S.- Fenhara, Distt.- East Champaran
 2. Israt Praveen W/O Md. Amjad Hussain R/O Vill.- Deokulia, Panchayat- Mankarwa, P.S.- Fenhara, Distt.- East Champaran

.... Appellant/s

Versus

1. The State Of Bihar
2. The Panchayat Secretary Gram Panchayat Raj, Mankarwa, P.S.- Fenhara, Distt.- East Champaran
3. The District Magistrate, East Champaran At Motihari
4. The Block Development Officer, Fenhara, East Champaran
5. The District Teacher Employment Appellate Tribunal, East Champaran
6. Rajiv Kumar S/O Subhash Prasad Village- Deokulia, Block- Fenhara, P.S.- Fenhara, Distt.- East Champaran

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Chitranjan Sinha, Sr. Advocate
Mr. Krishna Kant Singh, Advocate

For the State : Mrs. Shilpa Singh, G.A. 12
Mr. Sunil Kumar, AC to G.A.12

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 12-09-2017

Seeking exception to an order passed on 20th of July, 2010 by the Writ Court in Civil Writ Jurisdiction Case No. 2466 of 2010, this appeal has been filed under Clause-10 of the Letters Patent.

The appellants herein were appointed as Shiksha Mitra in the year 2005. After a period of four years, respondent Rajiv



Kumar challenged their appointments by filing an appeal before the District Teachers Employment Appellate Tribunal, East Champaran in Case No. 564 of 2009 and on 23.01.2010 the District Teachers Employment Appellate Tribunal set aside the appointment of the appellant made in the year 2005 and challenging this order, the writ petition in question was filed. A stay was granted and as a consequence of the stay the appellants continued to work on the post and even today they are working on the post. In the meanwhile, the Bihar Primary Panchayat Teachers(Service Condition and Appointment), Rules, 2006 came into force which was enforced with a cut off date 1st of July, 2006 and by virtue of Rule 20(iii) of the aforesaid rule, the petitioners, appellants herein became Panchayat Teachers/Panchayat Shikshak and continued to hold the post as Panchayat Teacher. By virtue of Rule 20(iii) with effect from the cut off date i.e. 1st of July, 2006, they were no more Shiksha Mitra but had become Panchayat Teachers and when the order was passed by the Appellate Tribunal on 22.01.2010, the Tribunal held their initial appointment as Shiksha Mitra to be unsustainable. Thereafter, when the Writ Court directed for re-advertising and filling up the vacancy, the Writ Court also lost sight of the fact that by virtue of Rule, 20 the petitioners were no more Shiksha Mitra but had attained the status of Panchayat Teacher. A division Bench of this Court in the case of



Renu Kumari Pandey versus State of Bihar reported in 2011(4)

PLJR 297 has held that all Shiksha Mitras who were working as on 1st of July, 2006, by virtue of Rule 20(iii) are deemed to have been appointed as Panchayat Teacher/Panchayat Shikshak and no appointment of Shiksha Mitra after the cut off date i.e. 1st of July, 2006 is permissible. By virtue of this amendment and judgment, the fact in the present case is that the appellants herein who were appointed as Shiksha Mitra in the year 2005 became Panchayat Teacher by virtue of Rule 20. Their appointments as Panchayat Teachers by virtue of operation of law was not looked into. On the contrary, after five years, in the year 2010, the District Appellate Tribunal went into the question of their appointments as Shiksha Mitra without taking note of the fact that they have attained the status of Panchayat Teacher.

Be that as it may be, the facts remain that now for appointment of Shiksha Mitra, no process of recruitment can be conducted. The appellants have continued on the post ever since they were appointed more than 12 years back in the year 2005 and by virtue of their attaining the status of Panchayat Teachers, certain rights had accrued to them on the post in question. That being so, the consideration to be made by us now in this petition is as to whether the direction issued for re-advertising the post and filling up of the



post afresh needs to be approved or the appellants who have been working should be permitted to work. For the said purpose, we examined the reasons that weighed with the learned Appellate Tribunal on 22.01.2010 for holding the appointment of Shiksha Mitras in the year 2005 to be unsustainable, and, on going through the same, we find that the learned Writ Court and the learned Tribunal has only interfered into the matter because against four posts which were required to be appointed, two in the category of women and two in the category of men, all four posts were filled up by women candidates. It is found that women candidates have been appointed beyond the quota fixed and there is nothing apart from the aforesaid to show that any illegality has been committed in the selection process. Learned Appellate Tribunal has found that against all the four vacant posts, appointment of women candidates were not proper without considering the candidature of certain men candidates and hence directed for filling up the post afresh.

That being the position, in the changed circumstances, we see no reason to disturb the appointments of the petitioners merely because they were women candidates and they were appointed beyond the quota as Shiksha Mitra. In the peculiar facts and circumstances of the case, the appellants merely being appointed in the year 2005 beyond the quota fixed for women



candidates need not be disturbed now after they have worked for more than 12 years and when the entire system of appointment and the rules for appointment has changed. We have gone into the issue in question and we are of the considered view that now the appellants should not be disturbed by directing for fresh recruitment to the post in question. It is not a fit case where such exercise should be ordered.

Accordingly, we allow this appeal, quash the order passed by the learned Writ Court and permit the petitioners to work on the post in question.

We have decided the issue in question in view of the peculiar facts and circumstances of the present case as are indicated hereinabove and the aforesaid judgment shall not be a precedent in the other matter.

With the aforesaid, the appeal stands allowed.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

Shageer/-

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