IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.2096 of 2015
IN
Civil Writ Jurisdiction Case No. 22798 of 2011

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1. Vidyanand Singh, son of Sri Musafir Singh, resident of Village- Shekh Bigha, Gram Panchayat- Bihta, Block Khijarsarai, PS- Khijarsarai, District- Gaya.
2. Ramanuj Prasad, son of Late Chandeshwar Prasad, resident of Village Gordandi, Gram Panchayat- Bihta, Block- Khijarsarai, PS- Khijarsarai, District Gaya.

.... Petitioners .... Appellant/s

Versus

1. The State of Bihar, through the Chief Secretary, Govt. of Bihar, Patna.
2. The Secretary, Primary and Adult Education Department, Govt. of Bihar, Patna.
3. The Commissioner, Magadh Commissionary, Gaya.
4. The Teachers' Employment Appellate Authority, Gaya.
5. District Magistrate, Gaya.
6. Block Development Officer, Khijarsarai Block, Gaya.

.... Respondents .... Respondent/s

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Appearance :
For the Appellant/s : Mr. R.K. Rajan, Advocate
Ms. Manisha Prakash, Adv.
For the Respondent/s : Mr. Md. N. H. Khan, SC-1
Ms. Babita Kumari, AC to SC-1

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date: 03-04-2018

Two appellants in the present intra Court appeal under Clause 10 of the Letters Patent of this Court are aggrieved by the judgment and order of this Court dated 26.4.2012 passed in CWJC No.22798 of 2011 by a learned Single Judge of this Court. By the impugned order, the writ application filed on behalf of the appellants assailing the order dated 29.04.2010 passed by the District Teachers Appointment Appellate Authority, Gaya (hereinafter referred to as the 'Appellate Authority') in Case No.798 of 2009 has been

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dismissed, in the light of a Division Bench decision of this Court in the case of **Smt. Renu Kumari Pandey and others vs. State of Bihar and others** reported in **2011(4) PLJR 297**.

2. Before we consider the sustainability of the appellants' claim in the present appeal we need to recount certain facts which are not at all in dispute. The appellants were engaged as *Shiksha Mitras* in February 2006 for a term of 11 months. Before their term could terminate upon completion of the said period of 11 months, the Bihar Panchayat Elementary Teachers (Employment and Service Conditions) Rules, 2006 (hereinafter referred to as 'the Rules') came to be framed and implemented with effect from 01.07.2006, by the State Government making provision, *inter alia*, for absorption of *Shiksha Mitra* appointed or employed under the then prevalent Rules/Resolution/Circulars/Orders and Instructions, as Panchayat Teachers under 'the Rules'.

3. It appears that subsequently the Block Development Officer, Khijarsarai came out with a communication addressed to the Mukhiya of the concerned Gram Panchayat, Bihta holding the appointment of the appellants as *Shiksha Mitra* to be illegal. Aggrieved by the action of the respondents in declaring their appointments illegal the appellants had approached this Court by filing a writ application giving rise to CWJC No.9339 of 2007. Noticing the provisions of appeal under the said Rules, this Court by

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an order dated 9.11.2009 passed in CWJC No.9339 of 2007 relegated the appellants to the Appellate Authority under 'the Rules' for redressal of their grievance. Pursuant to the said order of this Court dated 09.11.2009, the appellants approached the 'Appellate Authority'. 'The Appellate Authority' by order dated 29.4.2010 dismissed the appeal of the appellants mainly on the ground that since the post of *Shiksha Mitra* came to be abolished with effect from 1.7.2006, there was no question of reemployment of the appellants. It was this order which came to be questioned by the appellants by filing another writ application before this Court in which the order impugned has been passed by the learned Single Judge, dismissing their writ application.

4. We have heard Mr. R.K. Rajan, learned counsel appearing for the appellants and Mr. Md. N.H. Khan, learned Standing Counsel No.1 for the State.

5. Learned counsel appearing on behalf of the appellants has submitted that the Division Bench decision of this Court in the case of **Smt. Renu Kumari Pandey** (supra) has been incorrectly applied by the learned Single Judge for dismissing the claim of the appellants. It is submitted that by operation of rule 20(iii) of 'the Rules' the appellants acquired status of Panchayat Teacher since they were admittedly working as *Shiksha Mitra* on 1.7.2006 when 'the Rules' came to be implemented. He has submitted that once the

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appellants acquired the status of Panchayat Teacher 'under the Rules' they could be removed only by following the procedure prescribed under 'the Rules' since their status as *Shiksha Mitra* stood converted into that of the *Panchayat Teacher* as per the said 'Rules'.

6. Mr. Md. N.H. Khan, learned Standing Counsel No.1 appearing on behalf of the State of Bihar contesting the appeal, has submitted that there is no illegality in the impugned order of the learned Single Judge which is in accordance with the law laid down by the Division Bench of this Court in the case of **Smt. Renu Kumari Pandey** (supra).

7. We find force in the submission advanced on behalf of the appellants that since the appellants were admittedly working as *Shiksha Mitra* on the date when 'the Rules' came into force on 1.7.2006, there could be no question of cancellation of their appointment as Siksha Mitra. By operation of rule 20(iii) of 'the Rules' they acquired the status of Panchayat Teacher under 'the Rules'.

8. In the case of ***Renu Kumari Pandey*** (supra) the Division Bench of this Court extensively dealt with the consequences of the abolition of the posts of *Shiksha Mitra* with the coming into force of the Rules with effect from 01.07.2006, and held in paragraph 18 as follows:-

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"18. 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

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employment of Panchayat Shiksha Mitra under the then Prevalent Resolutions, Circulars, Orders, Instructions."

9. The Division Bench conclusively held that the Appellate Authority constituted under the Rules did not have any jurisdiction to entertain, hear or decide the disputes relating to the employment of *Panchayat Shiksha Mitra* under the then prevalent Resolutions, Circulars, Orders, and Instructions.

10. It is noteworthy that the decision in case of ***Smt. Renu Kumari Pandey*** (supra) has been affirmed by a full Bench decision of this Court in case of ***Kalpana Rani Vs. State of Bihar*** reported in ***2014(2) PLJR 665***.

11. As noticed above, in the absence of any material on record to show that before the appellants acquired the status of *Panchayat Teacher* under 'the Rules' there engagement as '*Shiksha Mitra'* was in any manner interfered with, the cancellation of their engagement as *Shiksha Mitra* after coming into force of 'the Rules' could not have been approved by the 'Appellate Authority'.

12. In our opinion, therefore, the impugned order of the Appellate Authority dated 29.4.2010 was not legally made in view of the abolition of the post of *Shiksha Mitra,* since the appellants could not be treated to be holding the post of *Shiksha Mitra* as on the

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date of the cancellation of their engagement as *Shiksha Mitra* or on the date of the passing of the impugned order by the 'Appellate Authority'.

13. For the same reason the order dated 12.12.2006 issued through Memo No.398 dated 16.12.2006 (Annexure 5 of the writ application) also could not be sustained. The said orders deserve to be interfered with. We accordingly do so. The order dated 29.4.2010 passed in Case No.798 of 2009 by the 'Appellate Authority' and the order bearing Memo No.398 dated 16.12.2006 in so far as these appellants are concerned are quashed and set aside. The order passed by the learned Single Judge dated 26.4.2012 in CWJC No.22798 of 2011 is also set aside. As a consequence of setting aside of the impugned orders the respondents are directed to reinstate the appellants against the vacant post of *Panchayat Teacher*.

14. Learned counsel appearing on behalf of appellants has also submitted that altogether the engagement of 11 persons as *Shiksha Mitra* was cancelled by the impugned action of the respondents and barring these two appellants others have been reinstated under the orders of this Court dated 25.9.2014 passed in CWJC No.11019 of 2010 (Amod Prakash Kumar & others vs. The State of Bihar and others) and the order dated 11.4.2016 passed in CWJC No.3580 of 2011 (Barhan Ravidas vs. The State of Bihar and others) and analogous cases.

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15. Accordingly, consequent upon quashing of the impugned order, it is directed that the appellants shall also be entitled for the same benefits as granted to them. They will, however, not be entitled to any backwages in the absence of any specific pleading that they were not gainfully employed during the period in question.

16. This Letters Patent Appeal is allowed with the aforesaid observation and direction. C.W.J.C. No.22798 of 2011 stands allowed accordingly, to the extent indicated above.

17. There shall be no order as to costs.

(Jyoti Saran, J)

(Chakradhari Sharan Singh, J)

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AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	28 -05.2018
Transmission Date	N/A

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