

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2477 of 2010

=====

Jitendra Mandal S/O Nitya Nand Mandal R/O Vill Manganj (WEST) P.S-
Jadia Distt- Supaul, At Present Posted As Panchayat Teacher Madhya
Vidyalaya Datua, P.S Jadia, Distt- Supaul

... .. Petitioner/s

Versus

1. The State Of Bihar Through The Chief Secretary Govt. Of Bihar, Old Secretariat, Building, Patna, Bihar
2. The Principal Secretary, Govt. Of Bihar, Human Resources Department, New Secretariat, Patna, Bihar
3. The District Superintendent Of Education Cum District Programme (KARYAKRAM) Coordinator, Null Bihar Shiksha Project, District Supaul, Bihar
4. The Block Education Extension Officer Cum Block Resources Centre Coordinator, Block-Triveniganj, Distt- Supaul, Bihar
5. The Panchayat Secretary, Panchayat Managing (WEST), Block- Triveniganj, Distt- Supaul, Bihar
6. The Head Master, Madhya Vidyalaya Datua (GOVT. Of Bihar), Block Triveniganj, Distt- Supaul, Patna

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Bijay Kr.Singh
For the Respondent/s : Mr. (Gp4)

=====

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT

Date : 07-08-2018

Heard learned counsel for the petitioner and the
counsel appearing on behalf of the State.

2. Petitioner has filed the present writ application,
challenging the order of termination contained in Annexure-4.
Petitioner has also prayed for quashing of the order passed by
the District Teacher Employment Appellate Authority dated
18.9.2009 contained in Annexure-7.

3. The petitioner was appointed as Shiksha Mitra. The



post of Shiksha Mitra ceased to exist after coming into force 2006 Bihar Panchayat Shikshak Recruitment Rules. All the Shiksha Mitra working 31.07.2006 became Panchayat Shikshak by operation of Rule 20 of the said Rule. Once the petitioner became Panchayat shikshak his status has undergone a change. Adjudication as to the validity of the appointment of the petitioner as Shiksha Mitra is not open in view of the judgment of the Full Bench in the case of **Kalpana Rani vs. State of Bihar & Ors. reported in 2014(2) PLJR 665** it was held out that the Shiksha Mitra is now a close chapter it is not open to scrutiny as Shiksha Mitra after 1.7.2006.

4. In the present case, it is seen that the petitioner was terminated vide Annexure-4 by the Headmaster of the upgraded middle school, Datua.

5. On behalf of the respondents a stand has been taken in the counter affidavit that large number of complaints have been made against this petitioner. Complaints is no ground to justify illegal and without jurisdiction order of termination passed by the Headmaster as contained in Annexure-4.

6. From the tenor of Annexure-4, it appears that at the dictate of the District Education Officer, the Headmaster has passed the order of termination. It appears on scrutiny of



Annexure-4 that Headmaster has no jurisdiction to terminate the petitioner as Rule does not permit the Headmaster to terminate the Panchyat teacher after his absorption under Rules 2006 and action of the Head master at the dictate of Area Education Officer, Triveniganj is also unsustainable as order passed at the dictate of superior is nullity in the eye of law.

7. Reference in this regard may be made to the judgment of the Apex Court in the case of **Purtabpore Co. Ltd. Vs Cane Commissioner of Bihar & Ors. reported in AIR 1970 SC 1896**, the appellate authority declined to interfere with the order passed by the Headmaster contained in Annexure-4 on the ground that he has no such jurisdiction to decide the issue of termination under Rule which constituted the District Teachers Employment Appellate Authority is justified in not entertaining the appeal as it has no such jurisdiction but the fact remains that the order of termination contained Annexure-4 is otherwise unsustainable and as such the Court has no option but to quash the order contained in Annexure-4.

8. As a result, the writ petition is allowed. The petitioner is directed to be reinstated as Panchayat Shikshak and the respondents are directed to grant all consequential benefits to the petitioner by restoring his status as Panchayat Shikshak



from the date of termination so far as claim for payment of salary for the period the petitioner has not worked on account of his termination. Ends of justice can be made by directing the respondents to pay 100 per cent salary for the period petitioner has actually worked and 40 per cent salary for the period the petitioner was not allowed to work with further direction to treat the entire period as continuous service for all other practical purpose. Final decision in this regard by the respondents within a maximum period of four months from the date of receipt/production of a copy of this order.

9. With the aforesaid, the writ petition stands disposed of.

(Anil Kumar Upadhyay, J)

Ravi/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	14.08.2018
Transmission Date	

