

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Jurisdiction Case No.1893 of 2015

IN

Civil Review No. 51 of 2011

Lalan Prasad

..... Petitioner

Versus

The State of Bihar through Principal Secretary, H.R.D. Department & Ors

..... Respondents

with

Civil Review No. 441 of 2016

IN

Civil Writ Jurisdiction Case No. 15909 of 2009

Lalan Prasad, Son of Shri Lal Bahadur Prasad, R/O Village + P.O.- Bahrauli
Kunwar Tola, P.S.- Mashrakh, District- Saran.

.....Respondent No. 10/Petitioner

Versus

1. The State of Bihar.
2. The Principal Secretary, Human Resources Development Department, Govt. of Bihar, Patna.
3. The Director Primary Education, Govt. of Bihar, Patna.
4. The District Magistrate Saran at Chapra.
5. The District Superintendent of Education Saran at Chapra.
6. The Block Development Officer, Mashrak, District- Saran.
7. The Block Education Extension Officer Mashrak, District- Saran.
8. The Mukhiya, Gram Panchayat Raj Bahrauli, Block Bahrauli, District- Saran.
9. The Panchayat Secretary, Gram Panchayat Raj Bahrauli, District- Saran.
...Respondents/Respondent 1st set.
10. Branjit Kumar Prasad, Son of Shri Ram Prasad, R/O Village- Bahrauli, P.S.- Mashrak, District- Saran, claimed as Panchayat Teacher in Primary School Kunwar Tola, Block Mashrakh, District- Saran at Chapra.

Petitioner/Respondents 2nd set.



Appearance :

(In MJC No.1893 of 2015)

For the Petitioner : Mr. Shashi Shekhar Tiwary, Advocate.

For the State : Mr. Ranjan Kumar, A.C. to G.P. 7.

(In C. REV. No.441 of 2016)

For the Petitioner : Mr. Shashi Shekhar Tiwary, Advocate.

For the State : Mr. Priyadarshi Matri Sharan, A.C. to

A.A.G. 15.

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

and

HONOURABLE MR. JUSTICE SUDHIR SINGH

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

Date: 28.02.2018.

In both the applications referred above, petitioner is the same person, and almost identical relief has been sought for by filing such applications, therefore, after analogous hearing, both the applications are being disposed by this common order.

M.J.C. No. 1893 of 2015

MJC No. 1893 of 2015 has been filed for modification of the order dated 18.03.2015 passed in Civil Review No. 51 of 2011(arising out of L.P.A. No. 1621 of 2010) by a Co-ordinate Bench of this Court. The petitioner has sought modification in view of the contentions made by the answering respondents in another Civil Review No. 37 of 2013, filed by the review petitioner in connection with C.W.J.C. No. 21380 of 2012. The contention of the review petitioner is that the answering respondents therein, had contended in the said Civil Review No. 37 of 2013 that the order under challenge, in C.W.J.C. No. 15909 of 2009 was never been passed by the District Superintendent of Education, rather it was merely a suggestion vide Letter No. 757 dated 07.03.2008



to the concerned Selection Committee as to rectify the mistake and such fact was not brought to the notice of the Co-ordinate Bench of this Court, thus the order dated 18.03.2015 in Civil Review No. 51 of 2011 came to be passed on the incorrect premise that letter dated 07.03.2008 was a termination order, passed by the District Superintendent of Education, Saran.

The learned counsel for the petitioner also submitted that it would be evident from 'Annexure-6' to the L.P.A. No. 1621 of 2010 that the enquiry in question was made by the Block Education Officer, Masrakh, Saran, at the instance of Block Development Officer, Masrakh, Saran, which was never challenged by the writ petitioner. It was also submitted that the order dated 12.08.2010 passed in C.W.J.C. No. 15909 of 2009 was an ex-parte order, and such grounds taken in the connected intra-court appeal L.P.A. No. 1621 of /2010 as well as Civil Review No. 51 of 2011, remained uncontroverted.

Civil Review No. 441 of 2016

This application has been filed by the petitioner, seeking review of the order dated 12.08.2010 passed in CWJC No. 15909 of 2009. The contention of the petitioner is that the writ petition bearing C.W.J.C. No. 15909 of 2009 came to be disposed of under wrong supposition that the respondent no.10, who is the review petitioner herein, had been served notice in the writ proceeding but did not choose to appear whereas in fact, no such notice was even issued to the respondent no.10 (review petitioner), therefore, the order of the



Learned Writ Court, which adversely affected the review petitioner, had been passed without according him an opportunity of hearing, and in violation of the principle of natural justice..

The learned counsel for the petitioner submitted that in pursuance to the Resolution No. 1458 dated 11.08.2004 of Human Resources Development Department, Government of Bihar, an advertisement was published for the purposes of selection of 'Shiksha Mitra' in Bahrauli Panchayat in the district of Saran. As many as 11 candidates including the petitioner were selected thereafter appointed vide Letter No. 14 dated 07.05.2005. The petitioner made his joining in the Primary School, Bahrauli, on the post of 'Shiksha Mitra' and served the post till October, 2005. The then Mukhiya of the concerned Gram Panchayat without giving any opportunity of show cause, restrained the petitioner from teaching job, whereupon the petitioner made complaint to the B.D.O., Masrakh, Saran, District Superintendent of Education, Saran and District Magistrate, Saran. Thereafter in the year 2006, the petitioner again selected for the post of 'Shiksha Mitra' vide letter dated 27.03.2006, but the then Mukhiya did not allow him to serve the post of Shiksha Mitra. The petitioner reported the matter to the various authorities, but no one paid any heed to the grievances of the petitioner. He also made complaint to the Governor of Bihar. The petitioner being aggrieved by the inaction of the respondents, approached this Court filing C.W.J.C. No. 12317 of 2007. During pendency of the said writ petition, the Block Education Officer, Masrakh, Saran, submitted his



enquiry report vide Letter No. 394 dated 05.10.2007, indicating therein that irregularities have been committed in the matter of selection and appointment of 'Panchayat Shiksha Mitra' in the concerned Gram Panchayat. In the said enquiry report, it was also mentioned that the petitioner was earlier appointed as a 'Panchayat Shiksha Mitra' and made his joining on 10.05.2005 in Primary School, Bahrauli, and had served the post till 27.10.2005. The Block Education Officer further recommended to reinstate the petitioner after making removal of one Branjeet Kumar Prasad, having lesser marks than the petitioner. Thereafter the District Superintendent of Education, Saran, vide Letter No. 757 dated 07.03.2008, asked the Block Development Officer, Masrakh, Saran, as to cancel the appointment of Branjeet Kumar Prasad and to allow the petitioner to continue on the post. The Panchayat Secretary of the concerned Gram Panchayat intimated the Headmaster of the Primary School, Bahrauli, vide Letter No.01 dated 05.04.2008 that in pursuance to the said order of the District Superintendent of Education, Saran and the Block Development Officer, Masrakh contained in Memo No. 220 dated 25.03.2008, the appointment of Branjeet Kumar Prasad has been cancelled, and the appointment of the petitioner made on 07.05.2005 had been allowed to continue, and the Headmaster was further directed to ensure marking of attendance of the petitioner in the school attendance register. In the meantime, on 04.08.2009, the petitioner withdrew the writ petition before this Court, as his grievances were already been redressed.



The petitioner again filed writ petition bearing C.W.J.C. No. 10539 of 2009 before this Court, raising grievance regarding payment of his arrears of salary and current salary as well. Vide order dated 03.11.2009 this Court directed the concerned Panchayat Secretary and the Mukhiya to look into the matter of stoppage of salary of the petitioner and to start making payment at once, within a period of two weeks from the date of receipt/production of the copy of the order. The petitioner had filed one contempt petition for non-compliance of the order dated 03.11.2009 passed in C.W.J.C. No. 10539 of 2009 for payment of current salary as well as arrears of salary, but during pendency of the contempt petition, the respondent authorities started payment of salary of the petitioner along with making payment of the arrears of the salary.

The brief facts necessary for consideration of the matter in issue are noticed by us hereinafter. As it is evident from the records of both the matters that one Brenjit Kumar Prasad (writ petitioner) filed C.W.J.C. No. 15909 of 2009, seeking quashment of the order dated 07.03.2008 as contained in Annexure-5 to the writ petition, passed by the District Superintendent of Education, Saran, Chapra, by which there being a direction as to cancel the appointment of the writ petitioner on the post of 'Panchayat Shiksha Mitra' made on Bahrauli Gram Panchayat under Block Mashrakh within the district of Saran and further to ensure that the respondent no.10 therein, be allowed to continue on the said post, and further for quashing the consequential



direction issued by respondent no.6 the Block Development Officer, Mashrakh

In the said writ petition, a common counter affidavit was filed on behalf of the respondent nos.8 and 9 i.e. concerned Mukhiya and Panchayat Secretary, contending therein that the writ petitioner and respondent no.10 therein, were selected as 'Panchayat Shiksha Mitra' in the year 2005. The petitioner joined on 10.05.2005 and he had been working on the post and getting honorarium on the basis of absentee report of the Headmaster. The petitioner had got extension of contractual engagement, as his services being found satisfactory, thereafter in terms of Bihar Panchayat Elementary Teacher (Appointment and Service Condition) Rules, 2006 (hereinafter referred to as 'Rule 2006'), the petitioner came to be absorbed on the post of Panchayat Teacher with effect from 01.07.2006 and had been serving the post. It was also contended that the respondent no.10 in spite of being selected did not serve the post. Thereafter again in the year 2006 for appointment of 'Panchayat Shiksha Mitra' in the concerned Panchayat Bahrauli, an advertisement was made, in pursuance thereof. the respondent no.10 made his application and again came to be selected, but did not join the post. After absorption of the Shiksha Mitra in terms of 'Rule 2006' w.e.f. 01.07.2006, the respondent no.10 made complaint before the various authorities, thereafter the District Superintendent of Education, Saran, who directed for cancellation of appointment of the writ petitioner.



The learned Single Bench of this Court vide order dated 12.08.2010 allowed the writ petition in following terms:

“Thus, having heard the parties and considering the argument, I find that on all counts the termination of services of the petitioner cannot be sustained. The challenge not having been made within the time prescribed and before the authority prescribed the challenge to petitioner’s appointment could not have been entertained. Further, once rules have been made confirming authority as the Block Development Officer to decide the matter, the District Superintendent of Education had no business to look into the matter and pass orders. His interference was without jurisdiction. Lastly it is well settled that no order to the prejudice of any one can be passed without hearing him. Here the petitioner was not even noticed and neither any proceeding was initiated to the knowledge of the petitioner and, as such, for the reason aforesaid the impugned orders cannot be sustained. Accordingly, Annexure-5 and 6 issued by the District Superintendent of Education, directing cancellation of the appointment of the petitioner and the consequential order issued by the Mukhiya concerned dated 27.04.2010 are quashed. Consequently, it would be deemed that the petitioner has been in continuous service for all purposes.”

The respondent no.10 of the said writ petition filed L.P.A. No. 1621 of 2010 against the order dated 12.08.2010 passed by the learned Single Judge in C.W.J.C. No.15909 of 2009 on the grounds that the order dated 12.08.2010 of the learned Single Judge suffers from error of record as there was no notice ever issued to the appellant in the writ proceedings, but the learned Single Judge had mentioned in his



order that notices being issued to the private respondent (appellant) besides the Mukhiya and Panchayat Secretary and the order of the learned Single Judge was passed without according any opportunity of hearing to the appellant and further on the ground that the appellant had made his complaint within the prescribed period and before the prescribed authority.

The Co-ordinate Bench of this court vide order dated 07.01.2011 passed in L.P.A. No. 1621 of 2010, noticing the fact that the writ petitioner Brenjit Kumar Prasad, was appointed as 'Panchayat Shiksha Mitra' and subsequently absorbed on the post of 'Panchayat Teacher' with effect from 01.07.2006, in terms of 'Rule 2006', thereafter a complaint was made in the year 2008 by the appellant against the selection of the writ petition, whereupon the District Superintendent of Education, Saran, on the basis of an enquiry report directed for termination of the appointment of the writ petitioner. In terms of Rule 18 of the 'Rules 2006' the Block Development Officer was the competent authority, who could have passed such order of termination. Relying upon the ratio of the judgment of Alok Kumar & Ors. –VS- The State of Bihar & Ors, reported in 2009 (2) PLJR 929, the Co-ordinate Bench of this Court dismissed the appeal, being in agreement with the reasoning given by the learned Single Judge.

The appellant of L.P.A. No. 1621 of 2010 filed Civil Review No. 51 of 2011 against the order dated 07.01.2011 passed in L.P.A. No. 1621 of 2010, which came to be dismissed vide order dated 18.03.2015.



The Co-ordinate Bench of this Court while dismissing the said review application held that the review petitioner was not able to produce any law, circular or instruction of the government, which authorized the District Superintendent of Education to look into the complaint against appointment of Shiksha Mitra/Panchayat Teacher and/or to issue direction for cancellation of such appointment.

The appellant/review petitioner filed M.J.C. No. 1893 of 2015, seeking modification or recall of the order dated 18.03.2015 passed in Civil Review No. 51 of 2011, in view of the stand taken by the respondent nos.4 and 7 in another Civil Review No. 37 of 2013, pending before a learned Single Bench of this Court, wherein the answering opposite parties had rightly taken a stand that the order impugned, which was subject matter of C.W.J.C. No. 15909 of 2009 was not a removal order being passed by the then District Superintendent of Education, rather it was merely a suggestion vide Letter No. 757 dated 07.03.2008 to the concerned selection committee as to rectify the mistake.

In the meantime, the said Branjit Kumar Prasad filed C.W.J.C. No. 21380 of 2012 for payment of salary after his reinstatement in terms of order dated 12.08.2010 passed in C.W.J.C. No. 15909 of 2009. A Bench of this Court vide order dated 14.12.2012, directed the State authorities as well as functionaries of Gram Panchayat that all legitimate payments of the petitioner be made available to him within the period of three months from the date of the



order.

The petitioner herein also filed Civil Review No. 37 of 2013, against the order dated 14.12.2012 passed in C.W.J.C. No. 21380 of 2012. In the said Civil Review, the Block Development Officer, Masrakh, Saran, contended that on the direction of the Divisional Commissioner an enquiry was made by the B.E.O., Masrakh, who submitted the enquiry report vide letter no. 394 dated 05.10.2007 to the B.D.O., Masrakh, to the effect that there being irregularity and illegality in the selection process, as in place of vacancy of five posts as many as six persons came to be appointed as 'Panchayat Shiksha Mitra', therefore, B.E.O., Masrakh, Saran, recommended in his enquiry report that the review petitioner ought to have been appointed in place of the writ petitioner namely Brenjit Kumar Prasad. The said enquiry report was forwarded to the District Superintendent of Education, Saran, who vide Letter No.757 dated 07.03.2008 directed the B.D.O., Masrakh to remove the writ petitioner and to allow the review petitioner to serve the post. Consequently the review petitioner was allowed to join the post of Panchayat Teacher.

At this juncture, we would like to take notice of the Letter No. 757 dated 07.03.2008, issued by the then District Superintendent of Education, Saran, being addressed to the Block Development Officer, Mashrakh, Saran, which was made to challenge in C.W.J.C. No. 15909 of 2009 and was also brought on record vide Annexure-5 to the supplementary affidavit filed on behalf of the petitioner in M.J.C. No.



1893/2015, which reads thus:-

“पत्रांक – 757

प्रेषक,

श्री सुशील श्रीवास्तव,
जिला शिक्षा अधीक्षक, सारण।

सेवा में,

प्रखण्ड विकास पदाधिकारी
मशरक (सारण)।

छपरा, दिनांक 7.3.08

विषय :- मशरक प्रखण्ड के बहरौली पंचायत के शिक्षक नियोजन के संबंध में।

महाशय,

उपर्युक्त विषयक क्षेत्रीय विकास पदाधिकारी के पत्रांक 140 दिनांक 14.01.2008 के आलोक में कहना है कि मशरक प्रखण्ड के बहरौली पंचायत के शिक्षा मित्र नियोजन कार्य के विरुद्ध श्री ललन प्रसाद, ग्राम + पो0 बहरौली द्वारा दाखिल परिवाद पत्र के सन्दर्भ में आपके पत्रांक 787 दिनांक 27.11.06 एवं प्रखण्ड शिक्षा प्रसार पदाधिकारी मशरक (सारण) के पत्रांक 394 दिनांक 05.10.2007 के द्वारा जाँच किया गया है। जाँच प्रतिवेदन स्वतः स्पष्ट है। जाँच प्रतिवेदन के आधार पर श्री ब्रेन्जीत कुमार (अंक 636 एवं वेटेज 15) के नियोजन को रद्द करते हुए श्री ललन प्रसाद (अंक 648 वेटेज 15) के नियोजन बरकरार रखने की कार्रवाई सुनिश्चित की जाए।

विश्वासभाजन

ह0/- अस्पष्ट

जिला शिक्षा अधीक्षक

सारण।

03.03.2008”

It is apparent from the contents of the letter dated 07.03.2008, as referred above, that the then District Superintendent of Education, Saran, asked the Block Development Officer, Mashrakh, Saran, as to cancel the appointment of the writ petitioner namely Brenjit Kumar Prasad and to ensure that the petitioner of M.J.C. No. 1993 of 2015 and Civil Review No. 441 of 2016 (respondent no.10 in C.W.J.C. No. 15909/2009) be allowed to continue on the post.

Therefore, we are of the considered opinion that in the said letter dated 07.03.2008 there was a clear direction for cancellation of the appointment of the writ petitioner namely Brenjit Kumar Prasad and further direction to allow the private respondent (petitioner herein) to



serve the post. Now the issue which requires to be adjudged: whether such direction of the then Superintendent of Education, Saran, does suffer from want of jurisdiction in terms of 'Rule 2006'.

Such issue regarding competence of District Superintendent of Education or any other authority to pass order regarding cancellation of appointment of Panchayat Teacher who being initially appointed on the post of 'Panchayat Shiksha Mitra' and absorbed in terms of Rule 20 (ii) of 'Rule 2006' on the post of Panchayat Teacher with effect from 01.07.2006, is not res-integra. In the present case, it is not in dispute that the writ petitioner namely Brenjit Kumar Prasad was initially appointed on the post of 'Shiksha Mitra' by the Panchayat Selection Committee, thereafter made his joining on 10.05.2005 and he was serving the post on 01.07.2006 as a 'Panchayat Shiksh Mitra', therefore, in terms of Rule 20 (ii) of 'Rules, 2006' he came to be absorbed on the post of Panchayat Teacher and had been serving the post of Panchayat Teacher when the Letter No. 757 dated 07.03.2008 of the then Superintendent of Education, Saran came to be issued, which was made to challenge in C.W.J.C. No. 15909 of 2009.

Here the 'matter in issue' relates with the validity of appointment on the post of 'Panchayat Shiksha Mitra' made in the year 2005. The claim of the review petitioner is based on the letter bearing no. 757 dated 07.03.2008 issued by the District Superintendent of Education, Saran, and the writ petitioner was also aggrieved by the directions contained in the said letter dated 07.03.2008 of the District



Superintendent of Education, Saran.

Now, we may notice the Full Bench decision of this court rendered in the case of Kalpana Rani -Vs- The State of Bihar & Ors., reported in 2014 (2) PLJR 665. For convenience and clarity the relevant paragraphs are reproduced hereunder:

“21.The scheme framed under government resolution dated 21st June, 2002 and modified on 11th August, 2004 and 7th April, 2005; and explained on 21st April,2005 has been considered and discussed in the above referred judgment of Smt. Ranu Kumari Pandey in extenso. The relevant paragraph are reproduced hereunder for convenience-

“18. We may also note here that though the State Government framed a complete scheme for employment of Panchayat Shiksha Mitra at Panchayat level in furtherance of its goal of ‘Education for All’ in none of the aforesaid resolution, 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 there re-employment after the expiry of the contractual period. On perusal of the record of the above writ petition, we find that in absence of such machinery, the aggrieved person approached the authority whom such persons considered to be the competent/the convenient authority. In our opinion, in absence of powers expressly conferred upon 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.-----”

22. The aforesaid scheme came to an end with enactment of 2006 Rules which came into operation in 1st July, 2006. The scope and ambit of the Rules of 2006, particularly Rule 20 thereof have been discussed in the above referred matter of Smt. Ranu Kumari Pandey. The relevant paragraphs are reproduced for convenience-

“17. Coming to the second issue, we are of the



opinion that the Rules are statutory in nature and have to be implemented in letter in spirit. Under Clause (i) of the Rule 20 of the Rules, all earlier resolutions, orders, directions, issued in respect of employment of Panchayat Shiksha Mitra are repealed. Consequently, the post of Panchayat Shiksha Mitra stood abolished, thereafter no person can be employed as Panchayat Shiksha Mitra; nor can there be a deemed absorption in the service as Panchayat Shikshak by operation of Rule 20 (iii) of the Rules. In our opinion, even in a case, where a person has a legitimate grievance in respect of his/her non-selection as Panchayat Mitra at the relevant time or non-continuance as Panchayat Shiksha Mitra, such person cannot be deemed to have been appointed as Panchayat Shiksha Mitra; nor can he/she be deemed to have been employed as Panchayat Shiksha Mitra on 1st July, 2006; nor can such person be deemed to have been absorbed in service as Panchayat Shikshak under the Rules.”

29. Any judgment which has taken a view contrary to the above review expressed by us is emphatically overruled.”

In view of the Full Bench decision of this Court rendered in the case of Kalpana Rani (Supra), we find and hold that the District Superintendent of Education, Saran, was not competent to issue such direction to the Block Development Officer, regarding cancellation of appointment of the writ petitioner and further to allow the review petitioner namely Lallan Kumar as to serve the post of Panchayat Teacher, thus we find no valid reason to modify or recall the order dated 18.03.2015 passed in Civil Review No. 51 of 2011.

During pendency of M.J.C. No. 1893 of 2015, the petitioner also filed Civil Review No. 441 of 2016, seeking review of the order



dated 12.08.2010 passed by the learned Single Judge in C.W.J.C. No. 15909 of 2009, on the ground that while allowing the writ petition it was wrongly observed that notices were issued to the private respondent (review petitioner), whereas the order sheet of the writ proceeding itself indicates that no such notices being ever issued to the review petitioner and further on the ground that the order dated 12.08.2010 in C.W.J.C. No. 15909 of 2009 had been passed without according opportunity of hearing to the review petitioner.

From the contentions made in the said review petition, it is evident that the review petitioner (respondent no.10 in C.W.J.C. No. 15909 of 2009) is aggrieved by the order of the Learned Writ Court dated 12.08.2010, by which the learned Single Bench of this Court quashed the Letter No. 757 of 07.03.2008 of the District Superintendent of Education, directing cancellation of the appointment of the writ petitioner, as also quashed the consequential order.

As we have already made our view clear that the District Superintendent of Education, Saran, was not competent to issue such direction regarding cancellation of appointment of the writ petitioner, who was working on the post of Panchayat Teacher and further to issue direction as to allow the review petitioner as to continue on the post, therefore, we are of the view that the order dated 12.08.2010 passed in C.W.J.C. No. 15909 of 2009 does not require any revisit in terms of the discussions and observations made hereinabove, especially in view of the Full Bench decision rendered in Kalpana Rani Case (supra).



Therefore, M.J.C. No. 1893 of 2015 and Civil Review No. 441 of 2016, both are, accordingly, dismissed.

(Sudhir Singh, J)

Dr. Justice Ravi Ranjan,J:

I agree.

(Dr. Justice Ravi Ranjan, J)

U.K./-

AFR/NAFR	NAFR
CAV DATE	16.08.2017
Uploading Date	28.02.2018.
Transmission Date	N/A.

