

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.688 of 2017
In
Civil Writ Jurisdiction Case No.13573 of 2015**

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Mohan Prasad, Son of late Dasrath Prasad, Resident of Village-Lalahata, P.S.-
Zamo Bazaar, District-Siwan

... .. Appellant/s

Versus

1. The State of Bihar
2. The Principal Secretary, Human Resources Development Department,
Government of Bihar, Patna.
3. The Director, Primary Education, Human Resources Development,
Department Government of Bihar, Patna
4. The District Magistrate-cum-Collector, Siwan
5. The District Education Officer, Siwan, District-Siwan
6. The District Programme Officer, Siwan, District-Siwan
7. The Block Development Officer-cum-Member Secretary, Block Shiksha
Niyojan Sammittee, Goreakothi, District-Siwan
8. The Block Education Officer, Goreakothi, District-Siwan
9. The Mukhiya, Gram Panchayat Raj Hatimpur, Anchal-Goreakothi District-
Siwan
10. The Panchayat Secretary, Gram Panchayat Raj Hatimpur, Anchal-Goreakothi
District-Siwan
11. The Head Master, Upgraded Middle School, Lala Hata, Anchal-Goreakothi,
District-Siwan
12. Mahesh Kumar, S/o Sri Charitar Mahto Resident of Village-Jagdishpur, P.S.-
Jamo Bazar, District-Siwan

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Mukesh Kant, Advocate Mr. Vijay Bardhan Pandey, Advocate Mr. Manish Kumar, Advocate
For the State	:	Mr. Ashutosh Ranjan Pandey, AAG-15 Mr. Priyadarshi Matri Sharan, AC to AAG-15
for private respondent	:	Mr. Naresh Prasad, Advocate

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date : 09-05-2018



Heard the parties.

Law is quite settled that issues relating to appointment, non-appointment on the then existing post of Panchayat Shiksha Mitra is not required to be opened or agitated after the Panchayat Shiksha Mitra were given a deeming status of a Panchayat Teacher w.e.f. 01.07.2006 by a deeming fiction. The Full Bench decision in the case of *Kalpana Rani vs. State of Bihar* reported in **2014 (2) PLJR 665** has dealt with this issue quite extensively and was of the opinion that since the status and the position or the post has undergone a change and there is no post of Panchayat Shiksha Mitra in existence any more after 01.07.2006, the disputes relating to engagement and extension for appointment as Panchayat Shiksha Mitra must rest.

In the present appeal, the story is the same. The present appellant came to be removed by the Block Employment Committee, Goreakothi, which became a subject matter of challenge before the District Teachers Employment Appellate Authority, Siwan. The matter travelled to the District Teachers Employment Appellate Authority at the behest of the private respondent, whose application was allowed and then the writ application in question came to be filed.



The matter relates to appointment or engagement of the present appellant vis-a-vis the private respondent as a Panchayat Siksha Mitra. The grievance of the private respondent is that the appellant had been wrongly shown in the category of Extremely Backward Caste and he came to be accommodated even though he had lesser marks than the private respondent. Since a fraud was committed, therefore, his continuance on the post of Panchayat Teacher also becomes suspect.

No doubt, the learned Single judge after examining the matter did find that the caste 'Kamkar' cannot be treated as EBC since they come under BC, and, therefore, the appointment of the present appellant cannot be allowed to continue.

The learned Single Judge somehow seems to have missed out the essence of the decision rendered by the Full Bench that such issues are dead issues. A new lease of life had been given by a legal fiction by a rule notified by the State of Bihar, and, therefore, there was no exception under which certain challenges could be thrown open on the appointment or non-appointment on the post of Panchayat Shiksha Mitra, whereas for others it was not permissible. The underlying principle is universal, therefore, there was no necessity for the learned Single Judge to go into all the



exercise whether he was treated illegally or erroneously as EBC or a BC.

Learned counsel representing the private respondent, however, draws the attention of this Court to a decision rendered in the case of *Umesh Kumar vs. The State of Bihar & Ors.* reported in **2017(3) PLJR 865** where a Division Bench was of the opinion that where a fraud had been committed at the very threshold, the legal protection, which was granted after the absorption of Shiksha Mitra as a Panchayat Teacher cannot come to his rescue.

No doubt, the Division Bench in the case of Umesh Kumar (supra) went by the age old principle that fraud vitiates all. But in the present case, there is no pleading that this was fraudulently done or that the appellant was in league with the appointing authorities with full knowledge with regard to the caste status. Since there are large numbers of caste which are in existence in various States, at times there is confusion and overlapping, and, therefore, there cannot be a presumption about fraud in every case, especially when certificate with regard to the particular caste was produced from the competent authority as to the status of the appellant.



Therefore, the present case does not come within the ambit of the ratio decided in the case of Umesh Kumar(supra). It does, however, come within the ambit of the decision rendered by the Full Bench in the case of Kalpana Rani (supra).

In totality, therefore, we are of the opinion that there was no occasion for the learned Single Judge to interfere with the appointment of the present appellant who had become a Panchayat Teacher with effect from 01.07.2006 on the basis of his initial engagement as a Panchayat Shiksha Mitra.

Appeal is allowed. Impugned order dated 21.03.2017 stands quashed. The appellant shall continue to work as Panchayat Teacher if he had been removed by virtue of the order of the learned Single Judge or by order of any subordinate authority earlier.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

Rajesh/-

AFR/NAFR	AFR
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