

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8439 of 2011

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Rajendra Kumar Paswan @ Rajendra Paswan, S/O Late Kashi Paswan, resident of Village-Dola, P.O.+P.S. Block-Pakribarawan, District-Nawadah, Shiksha Mitra Turned Panchayat Teacher, Primary School, Tanpura, Gram Panchayat Raj-Ukaura, P.S.-Block-Pakribarawan Distt-Nawadah.

.... Petitioner

Versus

1. The State of Bihar through of Principal Secretary, Department of Human Resources Development, Government of Bihar, Patna.
2. The Director, Primary Education, Bihar, Patna.
3. The District Magistrate, Nawadah.
4. The District Superintendent of Education, Nawadah.
5. The Block Development Officer, Pakribarawan, District-Nawadah.
6. The Block Education Extension Officer, Pakribarawan, District-Nawadah.
7. The Mukhia, Gram Panchayat Raj-Ukaura, Block-Pakribarawan, District-Nawadah.
8. The Panchayat Secretary, Gram Panchayat Raj-Ukaura, Block Pakribarawan, District-Nawadah.
9. Rekha Kumari, W/O Sri Madhusudan Nirala, resident of Village-Ukaura P.S. Block-Pakribarawan, District-Nawadah.
10. The Headmaster, Middle School Ukaura, Block Pakribarawan Distt-Nawadah.

.... Respondents

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with

Civil Writ Jurisdiction Case No.10755 of 2010

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Rekha Kumari, W/O Madhusudan Nirala, R/O Vill.- Ukaura, P.S.- Pakriwaran, Distt.- Nawadah, at present posted as Siksha Mitra, Middle/Prathmic School Ukaura, Anchal Pakriwaran, Distt.- Nawadah.

.... Petitioner

Versus

1. The State of Bihar, through District Magistrate, Nawadah.
2. The District Superintendent of Education, Nawadah.
3. The Head Master Middle/Prathmic School, Ukaura Anchal Pakriwaran, Distt.- Nawadah.
4. The Block Education Extension Officer, Anchal Pakriwaran, Distt.- Nawadah.
5. The Block Development Officer, Nawadah.
6. The Mukhiya of Gram Panchayat Ukaura, Distt.- Nawadah.
7. Rajendra Paswan, S/O Sri Kashi Paswan, R/O Vill.- Dola, P.O.- Dhewdha, P.S. and Anchal Pakriwaran, Distt.- Nawadah.

.... Respondents

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Appearance :

(In CWJC No.8439 of 2011)

For the Petitioner : Mr. Arun Kumar, Advocate.

For the Respondents : Mr. Kundan Bhadur Singh, S.C. 22.

(In CWJC No.10755 of 2010)

For the Petitioner : Mr. Shyamdeo Pd.Singh, Advocate.

For the State : Mr. Sunita Kumari, A.C. to A.A.G. 13.

For the Pvt. Respondents : Mr. Arun Kumar Gupta, Advocate.

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CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
CAV ORDER

8 05.02.2018 The petitioner named Rajendra Kumar Paswan @

Rajendra Paswan has filed C.W.J.C. No. 8439 of 2011 for the

following relief(s):-

“1 (i) A writ in the nature of certiorari setting aside the office order dated 20.07.2009 issued from the level of Respondent- Block Development Officer, Pakribarawan (hereinafter B.D.O. only) as contained in Annexure-8 which has never been served upon the petitioner, whereby and whereunder in course of hearing the claim of Private Respondent No. 9 in pursuance to direction of this Hon’ble Court in C.W.J.C. No. 9218 of 2008 Rekha Kumari Vs. The State of Bihar disposed of vide order dated 22.01.2009 without taking into account the whole matter in right perspective and without taking into account the relevant documents and Government notification the selection of petitioner has been declared wrong or void as also declared the appointment of Private Respondent as valid and ordered for payment of her salary.
(ii) For a direction upon the Respondents concern to approve



the service of the petitioner as Panchayat Teacher in view of the Government notification that a Shiksha Mitra who is working on or before 01.07.2006 will be deemed as Panchayat Teacher and since the petitioner has continuously worked up to 30.07.2009 and thereafter he has been restrained from working.

(iii) To reinstate the petitioner on the post of Panchayat Teacher with consequential monetary benefit including due salary since February 2007 to July 2009 which has not been paid by the Respondent-Gram Panchayat despite making available from the level of Respondent-D.S.E., Nawadah.

(iv) And/or for any other relief or reliefs for which the petitioner is found to be entitled in the facts and circumstances of this case.”

The petitioner named Rekha Kumari has filed C.W.J.C.

No. 10755 of 2010 for the following relief(s):-

“1 (a) Issuance of a writ of Mandamus or any other appropriate writ, order or direction, directing the respondents to pay the arrears of salary from 29.07.2009 to uptill now on the basis of order dated 20.07.2009, passed by Block Development Officer, Pakribarawan (Respondent no. 5) in the light of Hon’ble High Court’s order dated 22.01.2009 passed in C.W.J.C. No. 9218 of 2008 after maintaining all appropriate proceedings.

(b) Issuance of any other appropriate writ, order or direction,



directing the respondents to also pay the arrears of salary from the period of March, 2006 to 28.07.2009 for which the Respondents have taken work but prevent to make attendance deliberately without jurisdiction Mukhiya of the said Panchayat who has no power at all.

(c) Issuance of any other appropriate order, or direction, commanding the respondents to give such relief or reliefs to which this petitioner is entitled to.”

In both the writ petitions referred above, ‘matter in issue’ are almost same. Therefore, rival contentions of the parties in C.W.J.C. No. 8439 of 2011 are firstly noticed hereinafter.

Learned counsel for the petitioner submitted that vide office order contained in Memo No. 06/2005 dated 28.02.2005, the initial appointment of the petitioner named Rajendra Kumar Paswan @ Rajendra Paswan was made on contractual basis for the period 01.03.2005 to 31.01.2006, accordingly, his posting was made at Primary School, Tanpura, under Gram Panchayat Ukaura, Block-Pakribarwan, District-Nawadah. Thereafter, extension of services of the petitioner on the post of Shiksha Mitra was made vide Memo No. 09/2006 dated 22.02.2006 (Annexure-2) for the period 18.03.2006 to 18.02.2007, making his posting in the same School. The initial appointment of the petitioner on the post of



Shiksha Mitra was made on the basis of his Matriculation qualification, in the meantime, the minimum qualification for appointment of Shiksha Mitra was enhanced and fixed as 'Intermediate' in place of Matriculation, by the State Government. The petitioner passed out Intermediate Examination in the month of May, 2006. The petitioner had been working continuously on the post of Shiksha Mitra after getting extension of contractual period, in the meantime, Bihar Panchayat Elementary Teachers (Employment & Service Conditions) Rules, 2006 came into force with effect from 01.07.2006, and in terms of Rule 20 (iii), the petitioner was absorbed on the post of Panchayat Teacher. The Block Education Officer, Pakribarawan, District-Nawada, vide Letter No. 29 dated 12.07.2006 sent a list of working Shiksha Mitra for the purpose of payment of emoluments, in which the name of the petitioner is also figured. The petitioner also made an application raising his grievances before the District Superintendent of Education, Nawadah, who vide Letter No. 153 dated 16.01.2007 asked the Block Education Officer, Hisua, Nawadah, to make an enquiry and submit a report. Whereupon, vide Letter No. 127 dated 08.02.2007, the Block Education Officer, Hisua, Nawadah, submitted enquiry report to the District Superintendent of Education, Nawadah, indicating therein that the



name of the petitioner is also mentioned as a working teacher in the report dated 12.07.2006 made by the Block Education Officer, Pakribarawa, and the removal of the petitioner for the purpose of making adjustment of one Ramesh Kumar in the Primary School Tanpura on transfer, was not expedient. It is further submitted that the District Superintendent of Education, Nawadah, vide Letter No. 6165 dated 10.07.2007, released a sum of Rs. 1,37,800/- for the purpose of payment of Panchayat Shiksha Mitra, in which the name of the petitioner was also mentioned, and a sum of Rs. 53,000/- was made payable to him towards emoluments for the period 01.03.2005 to 30.05.2006. It was further submitted that in the meantime, respondent no. 9 approached this Court filing C.W.J.C. No. 9218 of 2008, which came to be disposed of vide order dated 22.01.2009, by which the Block Development officer, Pakribarawan, was directed to decide the inter-se appointment despite of respondent no. 9 and the petitioner, whereupon the Block Development Officer, Pakribarawan, vide order dated 20.07.2009 held the appointment of the petitioner not to be valid and further directed the Headmaster of the concerned School as not to allow him to serve the post, accordingly, the appointment of the petitioner was cancelled with immediate effect and petitioner was removed from the post of Panchayat Teacher on 30.07.2009,



as is evident from Annexure-9 to the writ petition.

Learned counsel for the private respondent (respondent no.9) submitted that she came to be appointed vide Memo No. 09/2006 dated 22.02.2006, accordingly, she made her joining on 18.03.2006 on the post of Shiksha Mitra in the Middle School, Ukaura, and she had been working on the post of Panchayat Shiksha Mitra on 01.07.2006, when the 'Rule 2006' came into force. The appointment letter of the respondent no. 9 has been brought on record as R9/B. It was further submitted that though the respondent no. 9 was working on the post since 18.03.2006 but she was paid nothing towards her emoluments, therefore, she filed C.W.J.C. No. 9218 of 2008 before this Court, which came to be disposed of vide order dated 20.01.2009, by which the Block Development Officer, Pakribarawan, in terms of Rule 18 of '2006 Rules' was directed to consider and decide the matter in accordance with law after giving proper opportunity to all concerned. In pursuance to the order of this Court dated 22.01.2009 passed in C.W.J.C. No. 9218 of 2008, the Block Development Officer, Pakribarawan, passed an order dated 20.07.2009 holding therein that the appointment of respondent no. 9 was valid, which must be allowed to continue and concerned Mukhiya/Panchayat Secretary/Headmaster was directed to ensure



payment of emoluments of the respondent no. 9, and it was further held that the appointment of the petitioner was invalid, therefore, the same was cancelled with immediate effect and concerned Headmaster was also directed not to allow the petitioner to serve the post.

A counter affidavit has also been filed on behalf of the Respondent no. 2, the Director, Primary Education, Government of Bihar. In the said counter affidavit, it was contended that in pursuance to the decision of L.P.A. No. 940 of 2007 dated 12.02.2008 rendered by the Division Bench of this Court, the State Government took a decision vide resolution contained in Memo No. 2517 dated 04.07.2008 that the candidates being appointed on the post of Panchayat Shiksha Mitra, on the basis of qualification of Matriculation and have acquired qualification of Intermediate within 33 months from the date of such appointment or those having already qualification of Intermediate (though the total obtained marks be less than 45%), all such Panchayat Shiksha Mitra shall be deemed to be validly appointed and absorbed on the post of Panchayat/Prakhand Teacher with effect from 01.07.2006.

The said Resolution No. 2517 dated 04.07.2008 further makes it clear that such validly appointed Shiksha Mitra, who had been removed from service due to said reasons shall be deemed to



be reinstated w.e.f., the date of the removal. Noticing the submission advanced on behalf of the petitioner and respondent no. 9 in C.W.J.C. No.8439 of 2011, as also, the reliefs sought for in both the writ petitions referred above, I find that the petitioner in the first case, is aggrieved by the order dated 20.07.2009 passed by the B.D.O., Pakribarawan, and the petitioner in the second case as also, made her claim on the basis of the said order of the B.D.O. dated 20.07.2009, therefore, propriety and legality of the said order of the B.D.O. Pakribarawan is only to be tested by this Court in both the writ petitions.

From bare reading of the order dated 20.07.2009 of the B.D.O. Pakribarawan, it is apparent that the findings given in the said order are in two parts. Firstly, it has been held that in terms of enhancement of minimum educational qualification for appointment of Panchayat Shiksha Mitra made in the year 2005 by the State Government, the petitioner, who having qualification of Matriculation only, was terminated from the post of Panchayat Shiksha Mitra and the respondent no. 9 named Rekha Kumari came to be selected on 22.02.2006 against the post which was fallen vacant due to termination of the petitioner named Rajendra Paswan, thus, the selection and appointment of Rekha Kumari (Respondent no. 9) was valid. Secondly, it has been held that the



appointment of Rajendra Paswan by way of extension of contractual engagement vide Memo No.09 dated 22.02.2006 appears to be invalid, since he passed out the Intermediate Examination on 31.05.2006, after his extension of contractual employment made on 22.02.2006. In exercise of power conferred under Rule 18 of 2006 Rule, the B.D.O. had held the appointment of Rekha Kumari (Respondent No.9) to be valid, and the appointment of Rajendra Paswan to be invalid with consequential directions.

I find that the order of the B.D.O. Pakribarawan dated 20.07.2009 does not notice the Resolution of the State Government vide Memo No. 2517 dated 04.07.2008 contained in Annexure-A to the counter affidavit of the Director, Primary Education, which clearly stipulates that such Panchayat Shiksha Mitra being appointed on the basis of matriculation qualification and have acquired qualification of Intermediate within 33 months of his date of appointment shall be deemed to be validly appointed on the post of Panchayat Shiksha Mitra and absorbed on the post of Panchayat Teacher w.e.f., 01.07.2006 and it further stipulates that if any, validly appointed Shiksha Mitra who had been removed for the said reason shall be deemed to be reinstated with effect from the date of removal from service, therefore, the said



order has been passed in contravention of the Resolution vide Memo No. 2517 dated 04.07.2008 of the State Government.

I further find that on 20.07.2009, the B.D.O., was not the Appellate Authority in terms of 'Rule 2006' since the State Government vide Resolution No. 3153 dated 25.08.2008 had constituted 'District Teachers Employment Appellate Authority' in every district and for the said purpose an amendment was made in Rule 18 of '2006 Rule' in terms of Bihar Panchayat Elementary Teachers (Employment & Service Condition) (Amendment) Rules, 2008. One more fact, which is of much relevance that the petitioner had been serving the post of Panchayat Teacher till 29.07.2009, and in terms of the order of the B.D.O. in the forenoon of 30.07.2009 he was restrained from duty and relieved by the Headmaster of the concerned School.

In view of the judgment of the Court rendered in the case of Kishori Prasad, reported in 2008(2) PLJR 458, the petitioner named Rajendra Paswan cannot be removed from the post of Shiksha Mitra as he obtained the qualification of Intermediate in the month of May, 2006, within 33 months from the date of his initial appointment i.e., 28.02.2005 and he shall be deemed to be reinstated with effect from the date of his removal in terms of the resolution of the State Government contained in



Memo No. 2517 dated 04.07.2008. The Respondent No. 9 named Rekha Kumari herself claimed to be appointed against the resultant vacancy on account of termination of service of Rajendra Kumar Paswan @ Rajendra Paswan. Once the removal of Rajendra Kumar Paswan has been held to be illegal from the post of Shiksha Mitra, the incumbent named Rekha Kumari, who joined the post in the meantime, cannot claim her appointment to be valid and her right to continue on the post. Therefore, I held that Rekha Kumari had no legal right to serve the post of Shiksha Mitra thereafter Panchayat Teacher.

Thus, in view of the discussions and observations made above, I am of the considered opinion that the order of the B.D.O. Pakribarawan, dated 20.07.2009, requires interference, therefore, the same is quashed.

The writ petition bearing C.W.C.J. No. 8439 of 2011 stands allowed and the writ petition bearing C.W.J.C. No. 10755 of 2010 is dismissed.

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(Sudhir Singh, J)