

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.385 of 2016

In

Civil Writ Jurisdiction Case No.14204 of 2010

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Seema Kumari Wife of Sri Arun Prasad, D/O of Hari Prasad, resident of
village- Jagatpur, P.S. Harnaut, District- Nalanda

... .. Appellant

Versus

1. The State of Bihar, through the Secretary, Human Resources Department,
Government of Bihar, Patna
2. The Secretary, Human Resources Department, Government of Bihar, Patna
3. The Secretary, Primary & Adult Education Department, Government of Bihar,
Patna
4. The District Magistrate, Nalanda
5. The District Superintendent of Education, Nalanda
6. The Block Development Officer, Harnaut, Nalanda
7. The Block Extension Education Officer, Harnaut, Nalanda
8. The Mukhiya, Gram Panchayat Raj, Soradih, District- Nalanda
9. Rekha Kumari, Wife of Vijay Kumar Nirala, resident of Jagat Chiddi, P.S.-
Harnaut, District- Nalanda

... .. Respondents

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Appearance :

For the Appellant :	Mr. Shahabuddin Azeem, Advocate
For the Respondent State:	Mr. S.S.Tiwary, AC to AAG-15
For the Pvt. Respondent :	Mr. Chakrapani, Advocate
	Mr. Madhuresh Singh, 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 : 15-02-2018

Heard counsel for the parties.

This *intra*-Court appeal has been preferred by the appellant
against the order dated 05.11.2014 since the writ application of the
private respondent, Rekha Kumari, was allowed with a direction
upon the Block Education Officer, Harnaut, Nalanda, to pay her



salary and even an order dated 19.10.2011 refusing to pay salary was quashed.

The primary reason why the learned single Judge allowed the writ application was because the private respondent, who was the petitioner, came to be appointed as a Panchayat Shiksha Mitra in the year 2005 after the present appellant was removed from the post of Panchayat Shiksha Mitra since she did not hold an intermediate degree. Her initial engagement was on the basis of matriculation. The private respondent continued on the post of Panchayat Shiksha Mitra and vide a deeming fiction after the coming of the Bihar Panchayat Teacher Elementary (Appointment & Service Conditions) Rules, 2006, became a Panchayat Teacher with effect from 01.07.2006.

The learned single Judge, therefore, based on the Full Bench decision in the case of *Kalpana Rani vs. The State of Bihar and Others*, reported in **2011 (4) PLJR 297**, held that no person who was not holding the post of a Panchayat Shiksha Mitra on the magical date of 01.07.2006, could be appointed as a Panchayat Teacher.

An argument is made on behalf of the appellant that much prior to the said date she had acquired an intermediate degree and no order of her removal as such was ever passed and that by virtue



of a Division Bench decision passed in a Letters Patent Appeal she was entitled to be restored back in service.

A deeper look into her so-called intermediate degree reveals that the appellant has purchased a degree from the Hindi Vidyapeeth, Deoghar, which is not an educational institution and only sale such degrees to people to be utilized for purposes of begetting employment. This aspect has already been held by this Court in the case of ***Reeta Srivastava and Others vs. The State of Bihar and Others***, reported in **2012 (3) PLJR 353**, which has been upheld even up till the Hon'ble Apex Court.

With the above two factual aspects that the appellant did not have any valid intermediate degree but a procured kind of degree and also the fact that her lack of qualification of intermediate at the relevant time led to her removal from the post of Panchayat Shiksha Mitra and she was not holding a post of Panchayat Shiksha Mitra on 01.07.2006, she could not be restored back to her post and the private respondent, therefore, cannot be denied the benefit of her salary and continuance since she was appointed against the vacancy so caused by the appellant.

An effort is made on behalf of the appellant to point fingers in the manner of appointment of the private respondent to which we are not attracted for the simple reason that it is not the



challenge for appointment of the private respondent which is the issue before this Court, but the decision rendered by the learned single Judge in favour of the private respondent giving a direction for payment of salary.

The appeal has no merit. It is dismissed.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

Pawan/-

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