

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Letters Patent Appeal No.1068 of 2017  
In  
Civil Writ Jurisdiction Case No.15375 of 2010**

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1. The State of Bihar.
  2. The Principal Secretary, Human Resources Development Department, Government of Bihar, Patna. Now Department of Education, Bihar, Patna
  3. The Director, Primary Education, Bihar, Patna.
  4. The Divisional Commissioner, Saran Division at Chapra.
  5. The District Magistrate, Siwan.
  6. The Deputy Development Commissioner -Cum- Chairman, District Education Establishment Committee, Siwan.
  7. The District Superintendent of Education, Siwan. Now redesignated District Programme Officer (Establishment) Education, Siwan.
  8. The Block Development Officer, Bhagwanpur Hat, District- Siwan.
  9. The Block Education Officer, Bhagwanpur Hat, District- Siwan.
- Appellants/Respondents.

Versus

1. Sawalia Rai, S/O Shri Kallu Rai, R/O Village- Chakmunda, P.O.- Bankat, P.S.- Bhagwanpur Hat, District- Siwan, At present posted and working as Panchayat Teacher in Govt. Primary School, Beera Bankat, Anchal- Bhagwanpur Hat, Distt.- Siwan.
  2. Shiv Narayan Rai, S/O Shri Mahanth Rai, R/O Village- Mahammadpur, P.O.- Aruwan, P.S.- Bhagwanpur Hat, District- Siwan, at present posted and working as Prakhand Teacher in Govt. Kanya Middle School, Mahammadpur, Anchal- Bhagwanpur Hat, District- Siwan.
  3. The Prakhand Pramukh, Bhagwanpur Hat Prakhand, District- Siwan.
  4. The Mukhiya of Gram Panchayat Raj, Mahammadpur, Block- Bhagwanpur Hat, District- Siwan.
  5. The Panchayat Secretary of Gram Panchayat Raj, Mahammadpur, Block- Bhagwanpur Hat, District- Siwan.
  6. The Headmaster, Govt. Primary School, Beera Bankat, Anchal- Bhagwanpur Hat, District- Siwan.
  7. The Headmaster, Govt. Kanya Middle School, Mahammadpur, Anchal- Bhagwanpur Hat, District- Siwan.
  8. The Member, District Teacher's Employment Appellate Authority, Siwan.
- 2<sup>nd</sup> Set Respondents/ Respondents
9. Bijendra Kumar Singh, S/O Shri Lal Babu Singh, R/O Village- Mahammadpur, P.O.- Aruwan, P.S.- Bhagwanpur Hat, District- Siwan.
  10. Shri Ishwar Prasad, S/O Lakhon Sah, R/O Village- Rampur Kothi, P.S.- Bhagwanpur Hat, District- Siwan.
  11. Sri Shailesh Kumar Singh, S/O Shri Ramnath Singh, R/O Village- Mahammadpur, P.O.- Aruwan, P.S.- Bhgwanpur Hat, District- Siwan.
- 3<sup>rd</sup> Set Private Respondents/Private Respondents
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**Appearance :**

|                                 |   |                                    |
|---------------------------------|---|------------------------------------|
| For the Appellant/s             | : | Mr. Kumar Alok, S.C.-7             |
|                                 | : | Mr. Akhilesh Kumar Sinha, Advocate |
| For the Respondent Nos. 1 and 2 | : | Mr. Umesh Kumar Mishra, Advocate   |
| For the Respondent No. 10       | : | Mr. Bipin Bihari Singh, Advocate   |
|                                 | : | Mr. Shayamkant Singh, Advocate     |

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**CORAM: HONOURABLE THE CHIEF JUSTICE**  
**and**  
**HONOURABLE JUSTICE SMT. ANJANA MISHRA**  
**ORAL JUDGMENT**  
**(Per: HONOURABLE JUSTICE SMT. ANJANA MISHRA)**

**Date : 14-12-2018**

**Re.: I.A. No. 5408 of 2017**

The present application under Section 5 of the Limitation Act has been filed for condoning the delay in filing the appeal.

Learned counsel for the appellant submits that the delay in filing the appeal may be condoned as after the order dated 29.11.2016 passed in C.W.J.C. No. 15375 of 2010 came to the knowledge of the authorities necessary steps were taken for filing the appeal and after due scrutiny the decision was taken to prefer an appeal against the aforesaid order.

Having heard learned counsel for the appellant, there are adequate grounds for condoning the delay as sufficient cause has been made out by the appellants for explaining the delay in filing the appeal. As such, the delay in filing the appeal stands condoned.



The interlocutory application (I.A. No. 5408 of 2017) is, accordingly, disposed of.

**Re.: L.P.A. No. 1068 of 2017**

This intra court appeal has been preferred by the State of Bihar and its authorities against the order dated 29.11.2016 passed in C.W.J.C. No. 15375 of 2010 by which a Bench of this Court has allowed the writ petition filed by the first respondents and the order passed by the District Teachers Employment Appellate Authority, Siwan dated 14.08.2010 in Case No. 125 of 2010 has been quashed and the petitioners therein have been reinstated on their respective posts of Panchayat Teachers with all consequential benefits.

It was submitted that in the year 2002, a scheme for engagement of Panchayat Shiksha Mitra was commenced with a stipulation that the Shiksha Mitras should continue for a period of 11 months. As such, engagements were to be made on contractual basis and the guidelines for such engagements were contained in Resolution No. 1079 dated 20.06.2002 issued under the signature of the Secretary, Primary and Adult Education Department (Annexure-7 to writ petition).

Consequently, the Secretary, Primary and Adult Education Department, vide Memo No. 336 dated 21.06.2002



issued certain guidelines for implementation of the aforementioned resolution fixing the requisite qualifications in which the minimum educational qualification was to be matriculate or equivalent with 45% marks and further that the candidate had to be of that very Panchayat.

In the year 2004, the Secretary, Primary and Adult Education Department, Bihar, Patna issued a further Memo No. 1458 on 11.08.2004 with regard to the selection of Panchayat Shiksha Mitra whereby the minimum educational qualification were enhanced to Intermediate with certain relaxation to lady candidates (Annexure-8 to the writ petition).

In pursuance of such scheme and in view of such guidelines for selection of Panchayat Shiksha Mitra, a Aam Sabha (General Meeting) was called for at Gram Panchayat Raj Mahammadpur, Block-Bhagwanpur Hat, District-Siwan wherein a decision was taken by them in which Mukhiya was presiding over the Sukh Suvidha Samiti. The President of the School Education Committee as well as the Headmaster of the concerned school took a conscious decision of selecting and preparing a merit-list of Panchayat Shiksha Mitra. A merit-list of 11 candidates in the female category and 10 under the male category, found to be eligible was prepared in which the names



of the writ petitioners appeared at Serial No. 5 and 6 respectively in the male category. As such, vide Memo No. 4 dated 08.05.2005 issued under the signature of the Mukhiya. The petitioners/respondent 1<sup>st</sup> set came to be selected in which the name of petitioner No. 1 was at Serial No. 17 and that of petitioner No. 2 at Serial No. 16 (Annexure-10 to the writ petition).

Accordingly, the petitioner No. 1 joined in Government Primary School, Beera Bankat, Anchal-Bhagwanpur Hat, District-Siwan and the petitioner No. 2 joined in Government Kanya Middle School, Mahammadpur, Anchal-Bhagwanpur Hat, District-Siwan, and they began to discharge their duties and continued to do so and further they were granted a second term of 11 months which would be evident from Annexure -11.

A notification dated 01.07.2006 was issued by the Human Resources Development Department, Government of Bihar, Patna, whereby the Primary Teacher (Employment and Service Condition) Rule, 2006 was issued for selection of Elementary School Teachers and another rule was also issued for Bihar Zila Parishad, Secondary and Higher Secondary Employment Service Condition Rule, 2006 of the same date.



These rules fixed the maximum and minimum criteria regarding selection. Soon thereafter, the Human Resources Development Department, Government of Bihar, Patna, issued Letter No. 1082 dated 18.07.2006 addressed to the Director, Bihar State Education Project Council, Patna for payment of salary/honorarium to the same Panchayat Shiksha Mitra. In this letter it was categorically mentioned that since 01.07.2006 Bihar Panchayat Primary Teachers (Employment and Service Conditions) Rules, 2006 were being implemented. As such, in the said Rule, sub-rule 20(iii), all the Panchayat Shiksha Mitra will be Panchayat Teacher with effect from 01.07.2006 and their salary will be Rs. 4000/- (Annexure-12 to the writ petition.)

The dispute which is the subject-matter of the present lis, arose thereafter on 30.07.2009 when one Ishwar Prasad, private respondent No. 17 in the writ and respondent No. 10 in the present appeal, filed an application before the District Teachers' Employment Appellate Authority, Siwan alleging irregularity in the selection of Panchayat Shiksha Mitra of the year 2005 for Gram Panchayat Raj Mahammadpur, stating that he had passed Intermediate with 578 marks in the 1<sup>st</sup> Division and was a candidate for the selection as Panchayat



Shiksha Mitra on 30.04.2005, to the Secretary of Gram Panchayat with a valid application Serial No. 9 but the Mukhiya and the Panchayat Secretary ignored his application and on the basis of forged marksheet two persons, namely, Shiv Narayan Rai (petitioner No. 2) and Sawalia Rai (petitioner No. 1) had been appointed falsely indicating 676 and 678 marks as such he requested for an enquiry in the matter and for inclusion of his name in the merit-list (Annexure-14).

On such an application having been received by the authorities Case No. 36 of 2009 was instituted and after perusing and after hearing and perusal of the records, it was found that the allegations of Shri Ishwar Prasad, were supported and though he had obtained 578 marks, the selection unit had selected the candidates with lesser marks and his name was not included in the merit-list. It also appeared that one Shri Bijendra Kumar Singh who had obtained 574 marks in Intermediate had been indicated in the merit-list to be having 542 marks, for which reason, he too was not selected. Thirdly, one Shailesh Kumar Singh, who was also an applicant for the same Panchayat and was possessing 603 marks in Intermediate was also not selected by the Selection Committee, but though the Selection of Ishwar Prasad was directed to be considered



sympathetically by the Selection Committee of the Gram Panchayat Raj Mahammadpur, the application of other respondents private respondents 16-18 were considered to be time barred and were accordingly rejected, in the light of a reported judgment of this Court in the case of Shri Alok Kumar V. State of Bihar (C.W.J.C. No. 16423, 18513 and 18743 of 2008 and 1063 of 2009).

Further, the Selection Committee, Gram Panchayat Raj Mahammadpur was directed to ensure compliance of the order within 15 days which was communicated to it vide Memo No. 723 dated 10.07.2010. Vide order dated 14.08.2010 contained in Memo No. 847 passed by the District Teachers' Employment Appellate Authority, Siwan, the selection of the petitioners were terminated with a direction to the Selection Committee to select one Bijendra Kumar Singh, private respondent No. 16 and Ishwar Prasad, private respondent No. 17.

Another applicant, namely, Jai Prakash Rai, also filed a writ application bearing C.W.J.C. No. 8146 of 2009 alleging irregularities in the appointment of Sawalia Rai and Shiv Narayan Rai (Respondnts herein) who had secured less marks than Jai Prakash Rai in the Intermediate and on the basis



of a forged marksheet had secured their selection. This Court vide order dated 16.07.2009 directed the D.M., Siwan to conduct an enquiry and on the basis of a proper enquiry, it was found that the respondents 9 and 11, namely, Sawalia Rai and Shiv Narayan Rai had been appointed illegally and as such the matter was referred to District Teachers Appointment Appellate Tribunal for passing an appellate order within the statutory period.

In the said enquiry conducted under the directions of this Court during verification of marksheets, it was found that both the petitioners had manipulated their marks of Intermediate for selection to the post which was clearly demonstrated in Letter No. 3355 dated 10.06.2011 issued by the Deputy Secretary of the Bihar School Examination Board. According to the said report, it was found that petitioner No. 1, namely, Sawalia Rai has changed his marks of intermediate from 554 to 616 and petitioner No. 2, namely, Shiv Narayan Rai has changed his marks of Intermediate from 553 to 678 and thus both the petitioners had fabricated their marks of intermediate and have committed forgery. This fact stands demonstrated from Annexure-A and A/1 of the counter affidavit of respondent No. 7.



It was only on the basis of such fabricated marks that both the petitioners had been selected as Panchayat Shiksha Mitra and had continued on the post and later on after 01.07.2006, on the basis of such forged and fabricated marksheet had continued. Thus, the selection of the petitioners were found to be *ab initio void* (Annexure B series of counter affidavit of respondent No. 7).

The District Magistrate, Siwan, vide letter No. 820 dated 29.06.2011 sent the Enquiry Report to the District Teachers Appellate Appointment Tribunal, Siwan which passed a fresh order contained in Memo No. 1128 dated 02.09.2011 whereby it was informed that the appointments of the petitioners have already been cancelled as their appointments were based on forged documents. (Annexure-C to Supplementary counter affidavit of Respondent No. 7).

It is needful to mention here that by virtue of an order passed in C.W.J.C. No. 8146 of 2009 (Jai Prakash Vs. State of Bihar), a 3-Member Enquiry Committee was constituted to enquire about the appointment procedure of Panchayat Shiksha Mitra in the year 2005 in Gram panchayat Mahammadpur Panchayat of Bhagwanpur vide Memo No. 51 dated 29.03.2010. Again, in C.W.J.C. No. 15375 of 2010



(Sawalia Rai & Ors. Vs. State of Bihar) on 03.04.2012, this Court had given a direction to the Collector, Siwan, to examine the matter himself and in compliance of the said order dated 03.04.2012 and 04.04.2012, the Enquiry Committee submitted its report on 30.04.2012 i.e., Annexure- A series to the counter affidavit of Respondent No. 5 and also a supplementary report contained in Letter No. 234 dated 12.06.2012, whereby the Committee came to a conclusion that the appointment of Shiksha Mitra various irregularities were found and the appointments of the petitioners were forged, fake and illegal. Accordingly, a first information report was lodged against the concerned persons being Bhagwanpur P.S. Case No. 110 of 2012 dated 29.06.2012 (Annexure-D) to the supplementary counter affidavit of respondent No. 5).

However, learned counsel for the appellant submitted that despite such reports, the learned Single Judge has after hearing the parties allowed the writ petition of the petitioners vide order dated 29.11.2016 and set aside the order of the Appellate Authority dated 14.08.2010 passed in Case No. 125 of 2010 (Annexure-16 to the writ petition) and erroneously held that the impugned order cannot be upheld. Thus, the petitioners have been reinstated on their respective posts with



full backwages. Being aggrieved by such an order reinstating the services of the writ petitioners (respondent 1<sup>st</sup> set herein) the State has preferred this appeal urging inter alia amongst other grounds that the judgment is wholly erroneous and unsustainable as the petitioners being guilty of fraud and forgery could not be permitted to be reinstated in service as fraud vitiates every decision.

We have heard Shri Kumar Alok-S.C.-7, learned counsel for the appellants and Shri Umesh Kumar Mishra, learned counsel for the respondent Nos. 1 and 2 and Shri Bipin Bihari Singh, learned counsel appearing on behalf of the respondent No. 10.

In the background of the facts and circumstances which have been narrated above, the main issue to be decided in this appeal is whether the appointments of the respondents in whose favour the impugned judgment has been passed by the learned Single Judge could be sustained in view of the concurrent findings which have been recorded against them by the previous enquiry committees that were set up under the orders of this Court. It appears that there are two reports which clearly indicate that petitioners in the writ applications were guilty of having secured employment as Panchayat Shiksha



Mitra by using forged and fabricated documents. The reports clearly demonstrate that their appointments were based on such fraud as has been indicated in the aforementioned reports. Consequently, the very basis of their selections being made on false and fabricated documents their appointments become *void ab initio*. Thus, any subsequent benefit which had accrued to them could not be perpetuated as fraud goes to the root and vitiates everything of the matter and this principle has been decided in a catena of cases particularly the decision in the case of S.P. Chengalvaraya Naidu V. Jagannath & Ors. reported in 1994(1) SCC 1. Paragraph No. 1 and 5 are quoted hereinbelow:-

1. "Fraud avoids all judicial acts, ecclesiastical or temporal" observed Chief Justice Edward Coke of England about three centuries ago. It is the settled proposition of law that a judgment or decree obtained by playing fraud on the court is a nullity and non est in the eyes of law. Such a judgment/decree by the first court or by the highest court has to be treated as a nullity by every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings.

5. ....The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal-gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation.

In view of the settled position of law and taking



into consideration the reports which are marked as Annexure-A and Annexure-B to the counter affidavits filed in the writ application, we do not find any reason why such appointees be permitted to continue in service and, therefore, the order of the learned Single Judge cannot be sustained on this score alone.

Nevertheless, another important feature that has been raised by the contesting respondents is that this Court has categorically held on several occasions that the appointments of Shiksha Mitras cancelled after their absorption as Panchayat Teacher could not be sustained, as the Appellate Authority did not have the power to examine the legality of also as Shiksha Mitras as it is empowered to decide the appeal arising out of employment of teachers under the rules. This aspect of the matter was vehemently argued by the respondents. In this context, learned counsel for the respondents has referred to a decision reported in 2016(4) P.L.J.R. 173 (Hari Shankar Sah & Ors. Vs. State of Bihar & Ors.) wherein the same principle was decided. However, though reinstatement had been ordered, the same was without any backwages. A similar issue arose in a Full Bench decision of this Court in the case of Kalpana Rani Vs. State of Bihar (2014 (2) P.L.J.R. 665) wherein Rule 18 to 20 of the Bihar Panchayat Elementary Teacher Employment and



Service Condition Rules, 2006 was under consideration and the Full Bench of this Court held that on or after the 1<sup>st</sup> of July, 2006, when rules were enforced, the cadre of Panchayat Shiksha Mitra stood abolished and, therefore, no appointments could be made to the post of Shiksha Mitra. In the said case, it was held that a belated challenge to the appointments of the private respondents and claim for absorption as Panchayat Teacher could not be entertained, irrespective of the appointment of private-respondents as Shiksha Mitra. It was further held that the services of Shiksha Mitra absorbed as Panchayat Teacher under Rule 23 cannot be terminated in any manner or for any reason other than the one prescribed under Rules. The District Magistrate was not an authority competent to decide the grievance in respect of Shiksha Mitra or to resolve dispute relating to appointment, termination etc. of Panchayat Teacher. This principle was considered by the learned Single Judge while deciding the writ application and it was held that the removal of the private respondents was wholly illegal.

Having considered all facts and circumstances, we are fully conscious of the law as has been settled by the Full Bench in the case of Kalpana Rani (supra) and it has also been brought to our notice that the matter went up to the Apex Court



and the S.L.P. preferred against the aforementioned Full Bench judgment has been dismissed. Thus, there is no dispute with regard to the settled proposition of law as is being argued by the respondent 1<sup>st</sup> set herein, but in the given facts and circumstances, the said judgment cannot come to the rescue of the contesting respondents as the element of fraud is patent and manifests all through the chequered history of this litigation. Yet petitioners had continued in service till objections were raised. Such objections have been substantiated by subsequent reports particularly the Letter No. 3355 of 2011 dated 10.06.2011 issued by the Bihar School Examination Board (Senior Secondary), Budh Marg, Patna, (Annexure-A1 series).

In our opinion, the clear illegality committed in the matter of appointment of the respondents and the repeated reports of the authorities which were submitted in pursuance of an enquiry set up by this Court in a previous litigation, cannot also be overlooked.

Thus, having given the issue our conscious consideration, we do not find ourselves in agreement with the rationale adopted by the learned Single Judge in directing reinstatement of the writ petitioners and further directing payment of their backwages. A judicious discretion has to be exercised cautiously



under the extraordinary writ jurisdiction of Article 226 of the Constitution of India which cannot be invoked to acknowledge accrual of rights by passage of time inspite of being founded on established fraud.

In the result, the Appeal succeeds. The order of the learned Single Judge passed in C.W.J.C. No. 15375 of 2010 is set aside.

**(Amreshwar Pratap Sahi, CJ)**

**( Anjana Mishra, J)**

Saif/-

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| CAV DATE          |            |
| Uploading Date    | 14.12.2018 |
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