

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.264 of 2018

In

Civil Writ Jurisdiction Case No.8439 of 2011

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Rekha Kumari W/o Sri Madhusudan Nirala, Resident of Village- Ukaura, P.S.
Block- Pakribarawan, District- Nawadah.

... .. Appellant/s

Versus

1. The State Of Bihar
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, Distirt- Nawadah.
7. The Mukhiya Gram Panchayat Raj- Ukaura, Block- Pakribarawan, District- Nawadah.
8. The Panchayat Secretary, Gram Panchayat Raj- Ukaura, Block- Pakribarawan, District- Nawadah.
9. The Head Master, Middle School, Ukaura, Block- Pakribarawan, District- Nawadah.
10. Rajendra Kumar 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, District- Nawadah.

... .. Respondent/s

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with

Letters Patent Appeal No. 263 of 2018

In

Civil Writ Jurisdiction Case No.10755 of 2010

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Rekha Kumari W/o Madhusudan Nirala, R/O Village- Ukaura, P.S.-
Pakribarawan, Distt.- Nawadah, At Present Posted as Siksha Mitra, Middle
Prathmic School Ukaura, Anchal Pakriwaran, Distt.- Nawada.

... .. Appellant/s

Versus

1. The State Of Bihar through District Magistrate, Nawadah.
2. The District Superintendent Of Education, Nawadah.
3. The Head Master Middle School/Prathmic School, Ukaura Anchal Pakriwaran, Distt.- Nawadah.
4. The Block Education Extension Officer, Anchal Pakribarawan, 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, Resident of Village- Dola, P.O.- Dhewdha, P.S. and Anchal- Pakribarawan, District- Nawadah.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Arun Kumar Gupta, Advocate
For Respondent/s	:	Mr. Arun Kumar, Advocate
For the State	:	Mr. Ashutosh Ranjan Pandey -Aag15

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 13-03-2019

These two appeals arise out of a common judgement dated 5.2.2018 by a learned Single Judge whereby C.W.J.C. No. 10755 of 2010, filed by the appellant Rekha Kumari, has been dismissed and C.W.J.C. No. 8439 of 2011, filed by the respondent Rajendra Kumar Paswan, has been allowed quashing the order dated 20th July, 2009, passed by the Block Development Officer, Pakribarawan, District Nawada, whereby the claim of Rekha Kumari that she was the validly appointed Panchayat Shiksha Mitra was accepted and the appointment of the respondent Rajendra Kumar Paswan as Panchayat Shiksha Mitra and then his consequential continuance as Panchayat Teacher had been held to be invalid.

The dispute, in short, is as to whose appointment



amongst the two as Panchayat Shiksha Mitra in Gram Panchayat Ukaura was valid so as to allow it to be treated to have been absorbed on the post of Panchayat Teacher. The dispute, therefore, is in two parts; one, as to the validity of the appointment as Panchayat Shiksha Mitra which is being claimed by the appellant and the contesting respondent, and the second part is the absorption as Panchayat Teacher being consequential on the basis of valid continuance as Panchayat Shiksha Mitra.

The order dated 20th July, 2009 was passed by the Block Development Officer, that was challenged by the respondent in C.W.J.C. No. 8439 of 2011, but prior to that the appellant had filed C.W.J.C. No. 10755 of 2010 praying for a mandamus for payment of salary in terms of the very same order dated 20th July, 2009. Both the writ petitions were clubbed together and finally disposed off by the impugned judgement dated 05.02.2018. Thus, two appeals have been filed by the appellant, one against the judgement allowing the writ petition of the respondent and the other challenging the same judgement whereby her writ petition had been dismissed.

The respondent Rajendra Kumar Paswan, in his writ petition, categorically averred in Paragraph 4 that he was appointed after due selection as Panchayat Shiksha Mitra under



the then relevant Panchayat Shiksha Mitra Engagement Guidelines dated 20th June, 2002. The selection was held on 28.02.2005 and it was for the period 01.03.2005 to 31.01.2006.

The then Mukhia and the President of the Committee Shri Aurangazeb issued the select list of six Shiksha Mitras of Gram Panchayat Ukaura under his signature and jointly endorsed by the then Panchayat Sevak-cum-Secretary Saryu Singh. This document is filed as Annexure 1 to his writ petition. The fact of his appointment in the year 2005 has been admitted by the appellant Rekha Kumari in Paragraph 6 of her counter affidavit, but her stand is that the qualification for appointment of Shiksha Mitra had already been enhanced to Intermediate on 11.08.2004. Therefore, the appointment of the respondent was invalid as he was only High School pass.

The second document relied on by the respondent was with regard to his continuance and further extension from 18.03.2006 to 18.02.2007 for a second tenure of 11 months. It may be stated that only three tenures, to a maximum of 33 months, was provided for under the scheme and this was claimed to be the second tenure by the respondent. The document to support this has been filed as Annexure 2, which is again signed by the same Mukhia Shri Aurangazeb on



24.02.2006 and counter-signed by the then Panchayat Secretary Mr. Om Prakash. This document has been contested by the appellant in her counter affidavit stating that no such letter was issued to Rajendra Kumar Paswan.

We may place on record that the only counter affidavit filed on behalf of the State is that of Respondent No. 2 who has nowhere denied the aforesaid allegations of the petitioner nor it has supported the allegations of the appellant, who was the respondent in the said writ petition. The counter affidavit of the Respondent No. 2, in paragraph 3 states that he reserves the right to file a detailed counter affidavit, as and when advised. This counter affidavit was filed after an order was passed by the learned Single Judge on 25.07.2017 and 23.08.2017.

In the writ petition filed by the appellant Rekha Kumari also, no counter affidavit has been filed by the State and it is only Rajendra Kumar Paswan who has filed his counter affidavit disputing the allegations contained therein.

The appellant Rekha Kumari has categorically come out with a case that she was appointed as Shiksha Mitra for the first time on the basis of a recommendation letter dated 22nd February, 2006. To support this stand, she has further come out with a case that an advertisement was issued for appointment



against which she had applied and for this reliance has been placed on Annexure R-9/1 to her counter affidavit, which is a receipt issued by the same Panchayat Secretary Shri Om Prakash to have received her application offering herself for appointment of Panchayat Shiksha Mitra on 22.02.2006. To support her claim for appointment, she relies upon a letter of appointment on a printed format mentioning that in view of the recommendations dated 22.02.2006, she was being appointed for the period 18.03.2006 to 18.02.2007. This letter of appointment has also been issued allegedly under the signature of Shri Aurangazeb, the same Mukhiya on 22.02.2006 and alleged to have been counter signed by the then Panchayat Secretary Shri Om Prakash.

This claim of appointment by the appellant has been disputed by Rajendra Kumar Paswan categorically challenging the same on the ground that Aurangazeb, who was the previous Mukhia, lost the elections in the year 2006 and then he issued this manufactured letter of appointment in connivance with the appellant mentioning her posting at Primary School, Ukaura. To challenge the factum of such appointment of the appellant, the respondent Rajendra Kumar Paswan further relied on the fact that a list of working Shiksha Mitras was issued on 12.07.2006



keeping in view the proposals for absorption as Panchayat Shikshak wherein the name of the respondent has been mentioned and not that of the appellant Rekha Kumari. A letter was also issued for an enquiry and a detailed enquiry report was submitted on 08.02.2007 in his favour. It was thereafter that he was also released salary on 10th July, 2007.

It is further the submission on behalf of respondent Rajendra Kumar Paswan that it was alleged as if he had been removed from service on account of his lower qualification and the qualification required was Intermediate and thereafter Rekha Kumari was appointed in his place. This was totally against the record inasmuch as there was no material to either indicate removal of Rajendra Kumar Paswan or issuance of any fresh advertisement whereunder the appellant could have claimed fresh appointment.

It has also been contended by the learned counsel for the respondent Rajendra Kumar Paswan that even assuming for the sake of argument that the appellant had obtained a letter of appointment of the same date as against his extension, which is also of the same date, then in that event, it is to be noted that the appellant claims appointment against the post at Primary School, Ukaura whereas the respondent was appointed in 2005



at Tanpura and continued to occupy the said post and his services were even extended further. Thus, the claim of appointment of the appellant was not at Tanpura school.

It may be mentioned at this juncture that under Gram Panchayat Ukaura, six posts of Shiksha Mitras are stated to have been sanctioned and it appears that six appointments were made in the year 2005. Annexure 1 to the writ petition is the notified selection and appointment list which includes the name of Rajendra Kumar Paswan and which fact has not been denied by the appellant. To the contrary, what has been alleged is that the appointment of Rajendra Kumar Paswan was invalid as he was only a Matriculate. It is not the claim of the appellant that she was also appointed in 2005.

The appellant's claim is based on an alleged appointment letter dated 22.2.2006. It may also be stated that in order to accommodate the appellant at Ukaura Primary School, one Ramesh Kumar was transferred to Tanpura.

In this background, when the claim of salary was set up and a simultaneous claim of status of Panchayat Shikshak on account of absorption with effect from 01.07.2006 was claimed, the appellant was called upon not to discharge duties any further and she was restrained from functioning by the Head Master as



well as by the Panchayat Secretary as Ukaura.

Upon being restrained, the appellant filed C.W.J.C. No. 9218 of 2009 for payment of salary and the said writ petition was disposed off on 22nd January, 2009 by the following order:

“Heard the counsel for the petitioner, for the State and other respondents.

Counter affidavits have been filed on behalf of the D.S.E. Nawada, the Headmaster, Middle Prathamic School, Ukaura, Anchal Pakri Barawan, Nawada and Mukhiya of Gram Panchayat, Ukaura, District Nawada (respondent nos. 2, 3 & 5) respectively.

From the statements made in the counter affidavits as well as statement of the petitioner in the writ application, it seems that several disputed questions of fact are involved which need proper consideration on the basis of the relevant records.

Prayer of the petitioner is for a direction to make payment of salary for the period, she has worked as Panchayat Shikshamitra in any school under Ukaura Gram Panchayat, Anchal Pakri Barawan, District Nawada. **Both the petitioner as well as respondent no. 6 are claiming that they have been appointed as Panchayat Shikshamitra vide Memo No. 09 of 2006 dated 22.02.2006. Under the same Memo, two appointment letters have been issued; in one letter, name of the petitioner is missing and in another appointment letter, name of the respondent no. 6 is appearing.**

It is desirable that in this circumstance, the Block Development Officer, Pakribarawan who is a



competent authority under Clause 18 of BIHAR PANCHAYAT PRARAMBHIK SHIKSHAK (NIYOJAN AWAM SEWA SHART) NIYAMAWALI, 2006 will consider and decide the matter in accordance with law considering the relevant records, giving proper opportunities to the parties for hearing. Before deciding this dispute, the petitioner, respondent no. 6 as well as Mukiya, Panchayat Sewak, all should be noticed, relevant records be called for, and within eight weeks from the date of production/communication of this order, everything should be decided in accordance with law as per rules. The petitioner, if found to be genuinely appointed, should be paid arrears of salary as well as current salary.

This application is, accordingly, disposed of.”

It may be mentioned that Rajendra Kumar Paswan was arrayed as Respondent No. 6 in the said writ petition but it appears to have been disposed off at the initial stage without issuing notice. After the disposal of the said writ petition, it appears that the matter was dealt with by the Block Development Officer who was directed to decide the same and on 20th July, 2009 the order was passed by him that came to be impugned in the writ petition filed by the Respondent Rajendra Kumar Paswan.

The Block Development Officer held that since Rajendra Kumar Paswan was only Matriculate and was not possessed of the qualification of Intermediate, which was the



minimum eligibility required after the qualifications were revised on 11.08.2004, his appointment in 2005 was not valid. He was, therefore, removed from his service. The appellant Rekha Kumari being a lady was offered appointment as the Government had come up with a policy to accommodate 50 females and, therefore, she was accommodated at Ukaura and Ramesh Kumar who was previously working at Ukaura was transferred to Tanpura school within the same Gram Panchayat.

The officer also, while proceeding to record findings, categorically stated that the then Mukhia Smt. Mamata Devi had supported the claim of Rajendra Kumar Paswan and had also stated that the claim of engagement by Rekha Kumari was unlawful.

The officer also recorded that the current Panchayat Secretary Shri Raj Kumar Dwivedi had stated that Rekha Kumari had been restrained from functioning as her engagement had been allegedly made under the Extremely Backward Category, whereas she belonged to the Backward Category (Female). He, however, failed to produce any record in this regard.

The officer further recorded the statement of the erstwhile Mukhia, Shri Aurangazeb, who stated that in place of



Rajendra Kumar Paswan, Rekha Kumari was appointed as she was a female and Rajendra Kumar Paswan was only Matriculate, as a result whereof he was not eligible.

It is to be noted that the then Panchayat Secretary Sri Om Prakash who is alleged to have counter signed the letter of appointment of the appellant as well as that of Rajendra Kumar Paswan had been summoned, but the officer in the order dated 20th July, 2009 has categorically stated that neither he turned up nor he submitted any explanation in this regard in spite of notice. Consequently, the officer, in the order dated 20th of July, 2009, concluded that the claim of Rekha Kumari was valid and she had also been granted extension for future tenure after the 11 months of her engagement with effect from 22.02.2006 had come to an end.

The learned Single Judge, after having recorded that the Block Development Officer had no jurisdiction to decide the dispute of Panchayat Shiksha Mitra, further came to the conclusion that in view of the Government Memo dated 4th July, 2008, the respondent Rajendra Kumar Paswan had acquired the qualification of Intermediate in the year 2006 and, therefore, there was no occasion to remove him.

It is the said judgement which has been assailed by



the appellant contending that the learned Single Judge has overlooked the fact that the benefit of acquiring qualification, consequently, would have been available to those Panchayat Shiksha Mitras who had been appointed prior to the change of qualification on 11.08.2004. The appointment of the respondent Rajendra Kumar Paswan was admittedly in the year 2005 on which date he was not possessed of Intermediate qualification. In the said background, he cannot get the benefit of any consequential benefit under the Government Memo dated 4th July, 2008 of having acquired the qualification within 33 months of initial engagement. It is further contended by the learned counsel for the appellant that if the initial engagement Rajendra Kumar Paswan is held invalid for want of qualification, then any subsequent claim for absorption as Panchayat Shikshak is invalid and, hence, the impugned judgement deserves to be set aside.

Having considered the submissions raised, it is evident that the appointment of Panchayat Shiksha Mitras and engagement on contractual basis was under the guidelines dated 20th June, 2002. The qualification prescribed therein for such engagement was High School. The said qualification was enhanced to Intermediate by a new set of Guidelines relating to



eligibility with effect from 11th August, 2004. The scheme of engagement of Panchayat Shiksha Mitras came to be abandoned and, simultaneously, the Panchayat Shiksha Mitras came to be automatically absorbed as Panchayat Teachers under the Rules and Guidelines in this regard with effect from 1st of July, 2006.

The Rules governing the same are the Bihar Panchayat Elementary Teacher (Employment and Service Conditions) Rules, 2006. Rule 20 thereof incorporates the annulment of all the previous Guidelines, Resolutions and Government Orders for engagement of Panchayat Shiksha Mitras. The same was considered in detail by a Division Bench of this Court in the case of Smt. Renu Kumari Pandey Vs. The State of Bihar, reported in 2011 (4) P.L.J.R. 297 and which again came up for consideration by the Full Bench of this Court in the case of Kalpana Rani Vs. The State of Bihar & Ors., reported in 2014 (2) P.L.J.R. 665. S.L.P. (C) No.1071 of 2015 was filed questioning the correctness of the said Full Bench Judgement that was heard along with S.L.A. (C) No.34639 of 2014 and the Special Leave Petitions were dismissed by the Apex Court by the following order:

“Heard Mr. Nagendra Rai, learned senior
counsel appearing for the petitioner.



We do not find any merit in this special leave petition. It is accordingly dismissed. However, observations made by the Court against the senior counsel, Mr. Y.V. Giri at various parts of the judgment stand deleted. The cost imposed by the High Court is made easy.

Though we have dismissed the special leave petition, yet we observe that if the petitioners are working, as submitted by Mr. Nagendra Rai, learned senior counsel, it is open to them to submit representations to the competent authority for adjustment in any posts that are available.”

According to the said judgement, the question of the validity of appointment of Panchayat Shiksha Mitras could not be re-opened irrespective of the validity of the appointment as Panchayat Shiksha Mitras. This was considered by us in the case of Neha Raj Vs. The State of Bihar & Ors. (L.P.A. No.2299 of 2016) where there was a dispute about the eligibility of a candidate due to her wrong date of birth on the basis of which appointment had been obtained. The Division Bench, after having noticed the Full Bench judgement, observed as under:

“At the very outset, we may point out that the fact that the date of birth of the **respondent-petitioner is 07.10.1974 remains undisputed. Thus, the assumption, by the learned Single Judge of the date of birth of the respondent-petitioner as 07.10.1975 is incorrect.** To that extent, the judgement of the learned Single Judge, therefore, deserves to be rectified.

However, on the other issues raised pertaining to the right of the appellant, suffice it to mention that the Full Bench in the



case of Kalpana Rani (supra) considered the impact of the promulgation of the scheme of absorption and the then Hon'ble Chief Justice, while delivering her judgement, in paragraph 26 observed as follows:

“26. In the matter before us also the appellant Kalpana Rani was never appointed as Panchayat Shiksha Mitra either in 2003 or at any time until 1st July, 2006. After 1st July, 2006, the appellant could not set up right to employment as Panchayat Shiksha Mitra or right to be absorbed as Panchayat Teacher. The belated challenge to the appointment of the respondent nos. 9 and 10 and the claim for absorption as Panchayat Teacher raised by the appellant after 1st July, 2006 was clearly an afterthought. Such a claim cannot be entertained. **Irrespective of the validity of the appointment of respondent nos. 9 and 10 as Panchayat Shiksha Mitra,** the appellant has no right to be appointed as Panchayat Shiksha Mitra or to be absorbed as Panchayat Teacher.”

The other learned Single Judge (Hon'ble Mr. Justice Mihir Kumar Jha) observed in paragraph 113 and 118 as follows:

“113. Thus, when the appellant on her own showing till coming of 2006 Rules came into force **did not even question the appointment of the writ petitioner on the post of Panchayat Shiksha Mitra, she had no right accrued**



under the repealed circular of Panchayat Shiksha Mitra much less right to get herself appointed in place of the writ petitioner. It is well settled that the power to take advantage of an enactment may without impropriety be termed a “right”, but the question is whether it is a “right accrued”. Lord Herschell said in *Abbott Vs. Minister of Lands* reported in 1895 A.C. 425 had said that mere right (assuming it to be properly so-called) existing in the members of the community or any class of them to take advantage of an enactment, without any act done by an individual towards availing himself of that right, cannot properly be deemed a “right accrued”. This view has also been received approval in India in the judgement of the Apex Court in the case of *Lalji Raja & Sons Vs. Hansraj Nathuram* reported in (1971) S.C. 924, in the case of *Hingerfold Investment Trust Ltd. Vs. Haridas Mundra* reported in 1972 S.C. 1826 and in the case of *Zobrali Vs. Arjuna* reported in 1980 S.C. 101.

118. Having thus given my anxious consideration, I am of the view that **after 01.07.2006, no person, who was earlier an aspirant for the post of Panchayat Shiksha Mitra, can be appointed only because his or her name figured in the panel of**



Panchayat Shiksha Mitra. The post of Panchayat Shiksha Mitra has been abolished with effect from 01.07.2006 and after abolition of the post, no one can be appointed on the post of Panchayat Teacher on the basis of his mere empanelment of Panchayat Shiksha Mitra. The view taken in the judgement of the Division Bench in the case of Smt. Renu Kumari Pandey (supra) is a good law. I will have no hesitation in holding that the earlier Division Bench judgement in the case of Kishori Prasad (supra), for the reasons indicated above, has not correctly decided the law and is, accordingly, overruled.”

The ratio displayed from the said pronouncement of the Full Bench, which is unanimous, appears to lay down the law that **once the scheme of absorption has come into force, then any person claiming a right to be appointed as a Shiksha Mitra cannot be reopened** thereafter as the very post stood abolished with effect from 01.07.2006. The appellant, therefore, does not get any right to claim appointment as, **admittedly, the appellant was not appointed as a Shiksha Mitra.** The scheme of Shiksha Mitra having been abandoned on 01.07.2006, there is no occasion now to consider the dispute raised by the appellant for appointment as Shiksha Mitra.”

However, a caution was put by us in cases which arose out of fraud or misrepresentation in the decision of the State of Bihar & Ors. Vs. Sawalia Rai & Ors., reported in 2019 (1) B.L.J. 164. In that case, the appointment had been obtained



by practising forgery and enhancing the marks that had been obtained in the High School and the Intermediate. This was, therefore, held that even though it related to the selection of Panchayat Shiksha Mitras, the Full Bench, in the case of Kalpana Rani would not be attracted as ‘forgery vitiates all solemn proceedings’. The observations made by us in the said judgement are as follows:-

“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 1st 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 1st 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.”

In the instant case, it is undisputed that the respondent-petitioner Rajendra Kumar Paswan was appointed on 28.2.2005. It is correct that he was only High School pass, was not holding the qualification of Intermediate as required. However, he had not obtained the appointment on the basis of any fraud inasmuch as Annexure 1 to the writ petition, which is the select-list, mentions the name of the respondent-petitioner at Serial 5 with the qualification as Matric having obtained 515 marks out of 900 marks. One other candidate Shri Subhas Kumar, who was also Matric was selected and appointed at Serial 6. The respondent-petitioner was selected and appointed



at the Primary School, Tanpura. Shri Ramesh Kumar was appointed at the Middle School, Ukaura in the same capacity. It is, thus, clear that it was the respondent-petitioner and Shri Ramesh Kumar who had been selected and appointed as Panchayat Shiksha Mitras. Further, we find that the Full Bench case of Kalpana Rani (supra) was delivered in a contest between an aspirant and a selected candidate. It was in this context that it was held that a mere aspirant cannot challenge the appointment of a Panchayat Shiksha Mitras inasmuch as the scheme has come to an end on 1st July, 2006 and, therefore, since an aspirant cannot be now appointed as a Panchayat Shiksha Mitra, the validity of engagement of an appointed candidate was not required to be re-opened at the instance of such a person. It is correct that in the present case the appellant and the respondent are both claiming appointment and neither of them are aspirants. Yet, what is noticeable is that the respondent Rajendra Kumar Paswan was admittedly and undisputedly appointed prior to the appellant on 28th February, 2005. The then Mukhiya Aurangazeb is stated to have issued the letter of appointment who was also examined by the Block Development Officer while passing the impugned order on 20th July, 2009. The Mukhiya has nowhere denied the appointment of the respondent-petitioner in 2005 and



has rather proceeded to state that since the respondent-petitioner was only possessed of High School qualification, therefore, in his place in the year 2006 the appellant came to be appointed. The factum of removal of the respondent-petitioner was not established by any document or any material on record. The then Panchayat Secretary Om Prakash was not produced by the appellant and in spite of notice having been sent to him, he did not turn up nor did he send any explanation. In this background, there were two appointment letters, one of the respondent-petitioner that was a document of renewal for another period of 11 months and which appears to be in consonance with the earlier appointment in the previous tenure commencing from 1.3.2005 to 31.1.2006. The appointment in the previous tenure is not denied and, therefore, the renewal appointment of the respondent-petitioner dated 20th of February, 2006 is clearly in tune with the earlier engagement. However, there is no document relating to his removal.

What is surprising is that the appellant claims her fresh engagement and not renewal with effect from 20th February, 2006 whereas her letter of appointment, which is in a printed proforma, reflects that it was issued on the same date i.e. 20th February, 2006. This could not have been done without any



material of removal on record. The finding recorded by the Block Development Officer in this respect for assuming the removal of the respondent-petitioner and appointment of the appellant was clearly perverse and based on 'no evidence' except the bald statement of Aurangzeb and the appellant. This mischief was, therefore clearly generated at the instance of Aurangzeb.

This is further fortified by the fact that the appellant was not extended appointment at the Primary School, Tanpura where the respondent-petitioner had been appointed and was working as Panchayat Shiksha Mitra. In order to accommodate her, Ramesh Kumar, who was working at Ukaura, was pushed out and transferred to Tanpura and in his place the appellant is stated to have been accommodated at Ukaura. This was, therefore, also part of the manipulation for accommodating her and which establishes that it was not the respondent-petitioner who was either removed or disengaged, but it was Ramesh Kumar who had been transferred from Ukaura to Tanpura in whose place the appellant was accommodated. Consequently, the status of the letter of appointment of the appellant and the manner of accommodating her at Ukaura in no way disturbed the engagement of the respondent-petitioner at Tanpura.



It is only after the dispute of salary arose that it came to be released in favour of the respondent at that stage and it was the appellant who was restrained from functioning at Ukaura. That gave rise to the filing of C.W.J.C. No.9218 of 2009, the judgement whereof has been extracted hereinabove, which has been disposed of without putting the respondent-petitioner to notice. In our opinion, the direction for a decision by the Block Development Officer under Clause 18 of the 2006 Ruls for deciding a dispute of Panchayat Shiksha Mitra is clearly in teeth of the judgements referred to hereinabove inasmuch as the dispute of a Panchayat Shiksha Mitra could not be decided under the said Rules which was exclusively meant for Panchayat Shikshaks. The observation of the learned Single Judge for deciding the matter by the Block Development Officer overlooked this aspect that under Clause 18 of the 2006 Rules, it is only a dispute of Panchayat Shikshak which could have been adjudicated by the competent authority and not that of a Panchayat Shiksha Mitra, the Guidelines and Rules whereof stood annulled under Rule 20 of the said Rules. Consequently, the conclusion drawn by the learned Single Judge in the impugned judgement to that effect is correct.

From the fact on record, it appears that the appellant



succeeded in getting payment only after the order of the Block Development Officer dated 20th July, 2009 and on the strength of a contempt application having been filed in this Court. This was also in relation to her engagement at Middle School, Ukaura. The Block Development Officer, even though noted the discrepancy in the mode of her engagement as a female candidate having been inducted under the Extremely Backward Category even though she belonged to the Backward Category, adds to her ingenuine claim.

The crucial point, however, still remains that the respondent-petitioner was not holding the minimum qualification of Intermediate as on the date of his first appointment in 2005. This fact has not been disputed. It appears that there were several such candidates and the Government came up with a Guideline that those Panchayat Shiksha Mitras who were engaged with the qualification of High School, if they acquire the Intermediate qualification within 33 months from the date of their initial engagement, their absorption as Panchayat Shikshak would be valid. Thus, a period of 33 months was given for acquiring the Intermediate qualification under the Govt. Memo. dated 4th of July, 2008. These competing claims relating to acquisition of Intermediate qualification came



to be considered in several decisions of this Court, including the case of Rehana Khatoon Vs. The State of Bihar & Ors., reported in 2013 (2) P.L.J.R. 469. In that case, the Intermediate qualifications were acquired on 7th July, 2007. The learned Single Judge, in paragraph Nos.8 and 9 observed as under:

“8. The case of the petitioner also appears to be on identical footing inasmuch as she has also acquired the requisite qualification on 7.7.2007.

9. In my opinion also, the enhanced qualification of intermediate must have been inducted by the authorities to improve the educational qualification of the Shiksha Mitra. Enhancement of qualification would definitely be useful for improving standard of teaching in Primary Schools which is the starting point of educational system which would be for the benefit of both the teachers and the students. However, intention behind these Government Circulars can never be of punitive nature for ousting a Shiksha Mitra who has already been absorbed as Panchayat Teachers and subsequently has also acquired the required qualification even though after the period of 33 months.”

The respondent-petitioner Rajendra Kumar Paswan acquired his qualification of Intermediate in 2006 itself, which is also undisputed. The contention of the learned counsel for the appellant is that if the very appointment of the respondent-petitioner with Matric qualification in 2005 was contrary to the then prevailing Guidelines which prescribed Intermediate qualification, then a subsequent acquisition of the qualification



will not validate his initial appointment. There may be some substance in this argument, but the fact remains that the appointment of the respondent-petitioner was not founded on any fraud or misrepresentation. As observed above, Annexure-1 to the writ petition, which is the select list, on the basis whereof the respondent-petitioner was appointed in 2005, clearly mentions his qualification as Matric. In the absence of any fraud or misrepresentation, we find it expedient, in the facts of the present case, that as against the claim of the appellant, the claim of the respondent is on a better footing inasmuch as it is the appellant's appointment which is an outcome of manipulation, as observed hereinabove. Further, after a passage of 13 years, it will not be appropriate to re-open the issue of the validity of the appointment of the respondent-petitioner, more so in the background that he has acquired the qualification of Intermediate way back in the year 2006 itself which remains undisputed. The induction of the appellant by a dubious method with the aid of the erstwhile Mukhiya, therefore, does not inspire any confidence so as to entertain the claim of the appellant.

The learned Single Judge was, therefore, correct in his conclusion that the order passed by the Block Development



Officer on 20th July, 2009 was unsustainable. For all the reasons
aforesaid, we dismiss these appeals and uphold the judgement of
the learned Single Judge.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

K.C.Jha/-

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