

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.2299 of 2016

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Neha Raj Wife of Nand Kishore Prajapati Village- Arka, P.O. Amba, P.S.
Kutumba, District- Aurangabad.

... .. Appellant/s

Versus

1. The State Of Bihar and Ors
2. The Director Superintendent of Education, Aurangabad.
3. The Panchayat Secretary, Gram Panchayat Raj, Amba, P.O. Amba, P.S.
Kutumba, District Aurangabad.
4. The Head Master, Primary School Arka, P.O. Amba, P.S. Kutimba, District
Aurangabad.
5. The District Teacher Employment Appellate Authority, Aurangabad, P.O. P.S.
District- Aurangabad thr
6. Binay Kumar S/o Parsuram Singh At Present working as Panchayat Teacher
in Primary School, Arka, P.O. Amba, P.S. Kutumba, District Aurangabad.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Rajeev Kumar Singh, Advocate

For the Respondent/s : Mr.Ashutosh Ranjan Pandey- AAG 15

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 25-01-2019

Heard learned counsel for the appellant and the
learned counsel for the respondent-petitioner as well as learned
counsel for the State of Bihar.



The challenge raised is to the judgement of the learned Single Judge dated 29.11.2016 raising a two fold submission that the very initial appointment of the Respondent No. 6-petitioner as a Panchayat Shiksha Mitra was based on an incorrect information tendered by him with regard to his date of birth as 07.10.1975. The contention of the learned counsel for the appellant is that undisputedly the correct date of birth of the respondent-petitioner is 07.10.1974 which is evident from a copy of his Certificate of High School. This date of birth was deliberately reflected by reducing it by one year in the merit list which was prepared for selecting the respondent-petitioner at the time of his engagement as Panchayat Shiksha Mitra as 07.10.1975. The error committed by the learned Single Judge is that the said date of birth as reflected in the merit list was assumed to be the correct date of birth without advertng to the aforesaid fact of the real date of birth of the respondent-petitioner as recorded in his High School Certificate.

The second ground of challenge is that even on merits the respondent-petitioner was below the appellant in merit and that his appointment had been made contrary to the roster applicable as a Shiksha Mitra. It was on the strength of such engagement that he was absorbed as Panchayat Shikshak.



Aggrieved, the appellant had approached the District Teachers Employment Appellate Authority where the appeal of the appellant was allowed recording findings against the respondent-petitioner on all the aforesaid three issues.

The respondent-petitioner challenged the order of the District Teachers Employment Appellate Authority dated 1st of July, 2010 which has been set aside by the learned Single Judge. Learned counsel submits that the impugned judgement proceeds on an erroneous assumption of fact and law both and, therefore, it deserves to be set aside.

Resisting the arguments on behalf of the appellant, learned counsel for the respondent-petitioner has submitted that the appeal before the District Appellate Authority was filed after five years of the absorption of the respondent-petitioner as a Panchayat Shikshak. Learned counsel submits that the entire scheme relating to appointment or even continuance of Shiksha Mitra stood terminated with the scheme of absorption and, therefore, the District Teachers Employment Appellate Authority had no jurisdiction to entertain any such complaint, that too even after five years of absorption as a Panchayat Shikshak. In fact, the respondent-petitioner was questioning the very initial appointment of the answering respondent as a Shiksha Mitra



which was beyond the jurisdiction of the District Teachers Employment Appellate Authority not only on account of promulgation of the new scheme of absorption, but also on account of heavy delay and laches of five years.

Learned counsel then submits that as on the date of absorption the answering respondent was fully eligible as per the terms of absorption under the scheme dated 01.07.2006. Consequently, the answering respondent did not suffer from any ineligibility for being absorbed as a Panchayat Shikshak and in the absence of any such infirmity in absorption, there was no grievance available or ground available to the appellant to question the same before the District Teachers Employment Appellate Authority. In fact, the challenge raised was not to the absorption as Panchayat Shikshak but to the appointment as a Shiksha Mitra which was not permissible to be raised in the circumstances indicated above.

Learned counsel has heavily relied on the Full Bench decision of this Court in the case of Kalpana Rani Vs. State of Bihar, reported in 2014 (2) PLJR 665. The contention is that in view of the ratio therein the very claim raised by the appellant was not entertainable either before the District Appellate Teachers Employment Authority or before any other forum.



It appears that an interim order was passed in this appeal on 23.12.2016 staying the operation of the impugned judgement. Thereafter parties have exchanged their affidavits and, consequently, the matter has been heard by us.

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, the same may have a bearing on the absorption of the respondent-petitioner as a Panchayat Shikshak. It may not be appropriate to interfere with the appointment of the respondent-petitioner at the instance of the appellant who has been unable to carve out any right for herself for interference by this Court but this, however, does not take away the powers of the Competent Authority having made the appointment of the



respondent-petitioner to examine the issue of absorption of the respondent-petitioner by any dubious means.

The contention raised by the learned counsel for the respondent that the District Appellate Authority did not have the jurisdiction to deal with this issue does not appeal to reason keeping in view the fact that the Full Bench decision in the case of Kalpana Rani (supra) itself has referred to the circular dated 14.05.2009 in paragraph 94 of the reported judgement and in paragraph 96 has categorically held that the law was delegation of power made by the State Government in the circular dated 14.05.2009 vesting powers of deciding any dispute relating to Panchayat Shiksha Mitra only by the Tribunal. In view of this clear pronouncement and the aforesaid circular, it cannot be said that the Tribunal did not have the jurisdiction to deal with the matter.

In view of what has been concluded hereinabove, the appeal is partly allowed to that extent that the date of birth of the respondent-petitioner as assumed to be 07.10.1975 by the learned Single Judge is set aside. The date of birth of the respondent-petitioner undisputedly remains 07.10.1974. Insofar as the claim of the appellant is concerned, as observed above, the same cannot be considered in the light of the observations of the



Full Bench. The said relief stands declined. Appeal stands disposed off accordingly.

It will be open to the concerned authority to pass an appropriate order keeping in view the observations made above.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

K.C.Jha/Uma/-

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