

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19922 of 2018

Arvind Kumar Singh S/o Late Baidhynath Singh R/o Vill- Singha Tola
Panditpura, P.O. Hathua, P.S.- Mirganj, District- Gopalganj

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Education Department, Government of Bihar, Patna
3. The Director Primary Education, Government of Bihar, Patna
4. The State Appellant Authority, Education Department, Niyojan Bhawan,
Bailey Road, Patna through its
5. The District Teacher's Appointment Appellate authority, Gopalganj
6. The District Education Officer, Gopalganj
7. The District Programme Officer, Establishment Gopalganj
8. The Block Development Officer, Block- Hathua, Dist.- Gopalganj
9. The Block Education Officer, Hathua, Block, Dist.- Gopalganj
10. The Mukhiya Gram Panchayat Raj Singha, Block- Hathua, Dist.- Gopalganj
11. The Panchayat Secretary, Gram Panchayat Raj Singha, Block- Hathua, Dist.-
Gopalganj
12. Ashok Kumar S/o Sri Madho Prasad Singh R/o Vill- Singha Tola, Bagahi,
P.O.- Smraw, Via Hathua, P.S.- Mirganj, Dist.- Gopalganj

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Rajeev Kumar Singh, Advocate
For the Respondent/s	:	Mr. Ram Vinay Pd. Sinha, AC to GA-12
For Respondent No.12	:	Mr. D.K. Sinha, Sr. Advocate
		Mr. Manoj Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
CAV JUDGMENT/ORDER

18-05-2023

Heard Mr. Rajeev Kumar Singh, learned counsel for the petitioner, Mr. Ram Vinay Prasad Sinha, learned AC to GA-12 for the State and Mr. D.K. Sinha, learned senior counsel for the Respondent No. 12.

2. The present writ application has been filed challenging the order dated 05.09.2018 passed in Appeal No.



226/2017 by the State Appellate Authority, Education Department, Bihar, Patna whereby the order dated 04.08.2009 by District Teachers' Employment Appellate Authority, Gopalganj, cancelling the appointment of Respondent No.12, has been set aside.

3. The matter relates to appointment of Panchayat Shiksha Mitra (in short 'PSM') in the year 2005. According to the writ petitioner the appointment process for appointment of PSM was initiated in the year 2005 and total ten posts were advertised out of which five posts were for female and rest five were for, Unreserved-3, MBC-1 and SC-1.

4. The petitioner claims to be a General Category candidate having 62% Marks in Intermediate and also having B.A. qualification applied for PSM. As per petitioner's estimation, the petitioner was entitled for 15 Bonus Marks as having 62% and additional 04 Marks for Graduation and Respondent No.12 was entitled for 10 Bonus Marks having 52% Marks in Intermediate and he is not a Graduate and falls under OBC Category.

5. The appointment letter was issued in favour of the petitioner on 09.05.2005 with nine other candidates in which name of the petitioner is at Serial No. 2. A copy of the



appointment letter has been annexed as Annexure-3 to the writ petition. After receiving the appointment letter on 10.05.2005, the petitioner submitted his joining in the Government Primary School, Singha Tola Baghi, Hathua Block which was accepted by the Headmaster and the Headmaster of the School relieved the petitioner and two others for training on 10.05.2005 itself. On 10.05.2005, the petitioner along with other submitted their joining for training which was held at Rajkiya Primary School, Pipra Block, Hathua and after acceptance of the same, the petitioner started his training. After ten days of training, the petitioner was restrained from pursuing his training on 22.05.2005 and upon enquiry, the petitioner came to know that Respondent No. 12, Ashok Kumar has manipulated the appointing authority and has been appointed on illegal consideration. The petitioner claims to have filed a representation in this regard before Block Education Officer, Hathua on 23.05.2005 and subsequently, also filed representations on 26.11.2007 and 06.06.2009 before the Block Education Officer.

6. On 08.06.2009, the petitioner gave written representation before Block Development Officer, Hathua, Gopalganj. The representations filed by the petitioner have been



annexed as Annexures 7 to 10. When no action was taken, the petitioner filed an appeal before the District Appellate Authority, Gopalganj and the said Authority *vide* letter no. 2121 dated 20.06.2009 directed the B.E.O, Hathua to make enquiry and submit the report. The B.E.O, Hathua *vide* Memo No. 406 dated 15.07.2009 (Annexure-10) submitted its report to the District Appellate Authority, Gopalganj stating that Respondent No.12 has only 15 points on merit whereas the petitioner has got 19 points and was higher in merit. The District Appellate Authority, Gopalganj by its order dated 04.08.2009 held the appointment of Respondent No. 12 as illegal and further directed to appoint the petitioner on the post of Panchayat Teacher. The order dated 04.08.2009 passed by the The District Appellate Authority, Gopalganj is at Annexure 11 to the writ application.

7. The Respondent No. 12 challenged the order dated 04.08.2009 passed by the District Appellate Authority, Gopalganj before this Court in CWJC No. 16327/2010 but withdrew the writ application with liberty to prefer an appeal before the State Appellate Authority.

8. Appeal No. 226/2017 was filed by the Respondent No. 12 before the State Appellate Authority, Education Department, Bihar, Patna against the order dated 04.08.2009



passed by the the District Appellate Authority, Gopalganj . The State Appellate Authority by its order dated 05.09.2018 set aside the order dated 04.08.2009 passed by the District Appellate Authority, Gopalganj with a further direction for reinstatement of Respondent No. 12 on the post of Panchayat Teacher with continuity.

9. A counter affidavit has been filed by Respondent No.7 i.e., District Programme Officer, Establishment Gopalganj stating therein that ten candidates were selected including Respondent No.12 on 09.05.2005. He also received honorarium from 10.05.2005 to 09.04.2006 as PSM. On 01.07.2006, Respondent No.12 became Panchayat Teacher and received his salary. The controversy has arisen due to reason that two sets of employment letters were issued by Mukhiya Gram Panchayat, Singha *vide* its Memo No. 14 dated 09.05.2005. In this regard, a complaint was filed by Respondent No. 12 before the authority prior to 01.07.2006 but the petitioner did not file any representation. After absorption of Respondent No. 12 as Panchayat Teacher, the petitioner filed an appeal in the year 2009. The State of Bihar introduced new Rules relating to employment of Panchayat Teacher as Bihar Panchayat Teachers (Employment and Service Conditions) Rule 2006 (in short ‘The



Employment Rules 2006') and amended Rule 2008 whereby the District Appellate Authority has been empowered to hear and decide appeals relating to employment of Panchayat Teachers. Rule-18 of the said Employment Rules, 2006 does not give jurisdiction to the District Authority to entertain, hear and decide the appeal related to PSM because the post of PSM stood abolished w.e.f 01.07.2006.

10. A counter affidavit has been filed by Respondent No.12 bringing on record the minutes/proceeding book of Sukh Suvidha Committee (Appointment Committee) dated 09.05.2005. The appointment letter issued in favour of Respondent No. 12 dated 09.05.2005 signed by Mukhiya and the appointment letter dated 09.05.2005 of the petitioner signed on 10.05.2005 having the same Memo and the counter affidavit filed by Panchayat Secretary before the State Appellate Authority in Appeal No. 226/2017 are annexed as Annexures 'B', 'C' and 'D'.

11. Learned counsel for the petitioner while challenging the impugned order submits that the petitioner is a General Category candidate having 62% Marks in Intermediate and was entitled for 15 Bonus plus 04 Marks for his graduation degree which he passed with 47.08% whereas Respondent



No.12 was entitled for 10 Bonus Marks as having 52% in Intermediate and is not a Graduate and he belongs to OBC Category. As per advertisement, there was no post for OBC Category. The petitioner was appointed legally but during his training period the panel was changed by the Panchayat Secretary and the petitioner was restrained from pursuing his training after ten days without any show-cause notice and instead Respondent No. 12 was appointed. Respondent No.12 has done physical training and as per the Employment Rules, 2006 physical trained does not come in the category of trained certificate. The State Appellate Authority failed to appreciate the fact that Respondent No. 12 was illegally appointed which has come in the order of District Appellate Authority upon enquiry conducted by the B.E.O, Hathua and without applying any judicial mind and without considering the law laid down in LPA No. 183/2014 and LPA No. 773/2014 passed the impugned order for reinstatement of Respondent No.12 with continuity.

12. On the other hand, learned senior counsel appearing for Respondent No.12 submits that appointment letter of petitioner is not genuine and is a duplicate/forged letter of appointment and is without any approval from Appointment Committee and is not supported by the minutes/decision of the



Appointment Committee. The appointment letter produced by the petitioner does not bear the signature of Mukhiya and the alleged signature of Mukhiya is in the Memo having the date of 10.05.2005 whereas the appointment letter was issued on 09.05.2005.

13. I have heard learned counsel for the parties and have gone through the material on record. From the rival submissions of the parties and the fact available on record, it appears that the dispute involved in the present writ application pertains to the appointment on the post of Shiksha Mitra. Petitioner claims to have been appointed on 10.05.2005 and was sent for training and completed his training for ten days but subsequently was restrained from pursuing his training. Respondent no.12 also claims to have been appointed pursuant to the appointment letter dated 09.5.2005 as Shiksha Mitra and subsequently, was converted as Panchayat Teacher w.e.f. 01.07.2006.

14. Now, the question which requires consideration as to whether the validity of appointment/non selection/non continuance of the petitioner can be gone into after coming into force the Employment Rules, 2006 after which the post of PSM stood abolished w.e.f. 01.07.2006. The petitioner has produced



appointment letter having name of the petitioner at Serial No.2 but the said appointment letter is not signed by the Mukhiya at the place where it was required to, i.e., at the foot of appointment letter. But the signature of Mukhiya, Gram Panchayat, Singha is dated 10.05.2005 below the Memo No. 14 dated 09.05.2005. The appointment letter produced by the petitioner is not supported by any minutes of the Appointment Committee showing that the petitioner was considered by the Committee at any point of time for appointment.

15. Respondent No. 12 has brought on record the minutes of Appointment Committee dated 09.05.2005 having signatures of all the members of the Appointment Committee including Mukhiya dated 09.05.2005. From perusal of Agenda No. 4 at page 90 of the brief, it transpires that petitioner has been selected against unreserved category and his name finds place at Serial No.1 out of ten selected candidates selected by the Committee. Agenda No. 5 at page 91 records that all the members of the Committee unanimously directed to issue the appointment letter to the selected candidates on 09.05.2005 itself, so that they may join their respective schools on 10.05.2005. The name of the petitioner is not there amongst the selected candidates in the minutes of the Appointment



Committee Meeting. Page 92 of the brief contains the appointment letter of Respondent No.12 and others and from perusal of the same it appears that the appointment letter contains the signature of Mukhiya at the place it was required to be signed and below Memo No. 14 dated 09.05.2005. Meaning thereby, the appointment letter was issued as per decision/direction of the Selection Committee on 09.05.2005 itself having name of Respondent No. 12 and others and not on 10.05.2005.

16. A counter affidavit filed by the Panchayat Secretary before the State Appellate Authority in Appeal No. 226/2017 annexed as Annexure 'D' to the counter affidavit filed by Respondent No.12 clearly states that from 10.05.2005 till 09.04.2006 a sum of Rs. 1500/- was paid to Shiksha Mitra including Respondent No. 12 as per absentee report on the basis of fact that Respondent No. 12 was appointed as Shiksha Mitra on 10.05.2005 and subsequently, he was absorbed on the post of Panchayat Teacher w.e.f. 01.07.2006.

17. Respondent No.7, the District Programme Officer in his counter filed in the present writ application has also stated that the Respondent No. 12 was selected as Shiksha Mitra on 09.05.2005 and received honorarium from 10.05.2005



to 09.04.2006 as PSM and on 01.07.2006, he became Panchayat Teacher and received his salary. The petitioner did not file any representation after absorption of Respondent No. 12 as Panchayat Teacher and filed an appeal in the year 2009 before the District Appellate Authority.

18. The State Appellate Authority in the impugned order has come to the finding that before 01.07.2006, the State Government had authorized and empowered the District Magistrate to hear and decide the complaints related to employment of PSM but Respondent No. 9 (Respondent No.12 herein) did not file a representation to District Magistrate, Gopalganj before 01.07.2006. An appeal before the District Appellate Authority was filed in the year 2009. He has also recorded the finding that the appellant (Respondent No.12) was employed as PSM and continued as such till he became Panchayat Teacher w.e.f 01.07.2006 under the provision of Rule 20(iii) of the Employment Rules, 2006, the employment letter issued to the appellant (Respondent No.12) is also supported by the proceeding of the meeting of Sukh Suvidah Samiti held on 09.05.2005 in which ten candidates including the appellant (Respondent No.12) had been recommended for appointment as PSM. The appeal before the District Authority was filed in the



year 2009 after an inordinate delay of four years. After Notification of 'Employment Rules 2006, all PSM employed under the previous Circulars, Resolutions, Orders, Instructions etc., and working as such were deemed to be employed as Panchayat Teachers w.e.f 01.07.2006. Secondly, the post of PSM stood abolished on 01.07.2006. Therefore, after 01.07.2006 the appointment of PSM cannot be inquired into and cancelled retrospectively. Since the post of PSM stood abolished on 01.07.2006, no person can be employed, claim employment/deemed employment as PSM, deemed absorption as Panchayat Teachers retrospectively. The tribunal has also arrived at the finding that no person can be employed as PSM nor can there be deemed employment as PSM, nor can there be deemed nor can there be deemed absorption in the service as Panchayat Teacher by operation of Rule 20(iii) of the Employment Rules. Even in a case where a person has a legitimate grievance in respect of his or her non selection as PSM at relevant time or non continuance as PSM, such person cannot be deemed to have been appointed as PSM, nor can he/she be deemed to have been employed as PSM as on 1st July, 2006.

19. A Division Bench of this Court in the case of



Smt. *Renu Kumari Pandey & Ors v. The State of Bihar & Ors*

reported in **2011(4) PLJR** has held as under:-

“17. Coming to the second issue, we are of the opinion that the Rules are statutory in nature and have to be implemented in letter and spirit. Under Clause (i) of Rule 20 of the Rules all earlier 15 / 17 resolutions, orders, directions issued in respect of employment of Panchayat Shiksha Mitra are repealed. Consequently, the posts of Panchayat Shiksha Mitra stood abolished. Thereafter, no person can be employed as Panchayat Shiksha Mitra; nor can there be a deemed employment as Panchayat Shiksha Mitra; nor can there be a deemed absorption in the service as Panchayat Shikshak by operation of Rule 20(iii) of the Rules. In our opinion, even in a case where a person has a legitimate grievance in respect of his or her non-selection as Panchayat Shiksha Mitra at the relevant time or non-continuance as Panchayat Shiksha Mitra, such person cannot be deemed to have been appointed as Panchayat Shiksha Mitra; nor can he/she be deemed to have been employed as Panchayat Shiksha Mitra as on 1st July 2006; nor can such person be deemed to have been absorbed in service as Panchayat Shikshak under the Rules.

18. We may also note here that though the State Government framed a complete scheme for employment of Panchayat Shiksha Mitra at Gram Panchayat level in furtherance of its goal of "Education for All", in none of the aforesaid Resolutions the Government had provided for an adjudicatory machinery. In other words, the State Government did not make any provision for redressal of grievance in respect of selection and employment of Panchayat Shiksha Mitra or their reemployment after the expiry of the contractual period. On perusal of the records of the above writ petitions, we find that in absence of such machinery, the aggrieved persons



approached the authority whom such persons considered to be the competent /the convenient authority. In our opinion, in absence of powers expressly conferred upon any such authority the reports or the orders made by such 16 / 17 authority are of no consequence. No relief can be granted on the basis of the finding recorded by such authority. We may also point out that Elementary Teachers Appellate Authority constituted under Rule 18 of the Rules, as amended by Bihar Panchayat Elementary Teacher (Employment and Service Conditions) (Amendment) Rules, 2008 is empowered to entertain, hear and decide the appeals arising out of the employment of elementary teachers under the Rules. The said appellate authority has no jurisdiction to entertain, hear or decide the disputes relating to the employment of Panchayat Shiksha Mitra under the then prevalent Resolutions, Circulars, Orders, Instructions.

20. The aforesaid judgment passed in the case of ***Renu Kumari Pandey (supra)*** has been confirmed by Full Bench of this Court in the case of ***Kalpana Rani v. The State of Bihar reported in 2014(2) PLJR 665***, wherein it has been held under para-118 which are as follows:-

118. Having thus given my anxious consideration, I am of the view that after 1.7.2006, no person, who was earlier an Patna High Court LPA No.1569 of 2010 dt. 15-05-2014 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 1.7.2006 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 judgment 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 judgment in the case of Kishori Prasad (supra), for the reasons indicated above, has not correctly decided the law and is, accordingly, overruled.

21. I have given my anxious consideration upon the facts and law discussed herein-above and come to the finding that the writ petitioner is claiming his right for appointment as PSM or his non continuance as PSM. From the fact, it emerges that Respondent No. 12 was appointed as Shiksha Mitra in 2005, received honorarium as Shiksha Mitra and was also converted as Panchayat Shikshak after coming into force the Employment Rules, 2006 w.e.f 01.07.2006 and also received his salary as Panchayat Teacher. The writ petitioner after four years of appointment of Respondent No. 12 and his non appointment as PSM filed an appeal before the District Appellate Authority which cancelled the appointment of Respondent No. 12 and directed for appointment of the petitioner on 04.08.2009. The petitioner was not employed as PSM as on 01.07.2006. As such, he has no right to claim employment or deemed employment as PSM or has a right to be absorbed as Panchayat



Shikshak by operation of Rule 20(iii) of the Employment Rules, 2006.

22. Accordingly, I come to the conclusion that order impugned dated 05.09.2018 passed in Appeal No. 226/2017 by the State Appellate Authority, Education Department, Bihar, Patna does not suffer from any illegality, hence, the same does not require any interference by this Court. In the result, the relief prayed for by the writ petitioner cannot be granted and the same stands dismissed.

23. There shall be no order as to costs.

(Anil Kumar Sinha, J)

perwez

AFR/NAFR	AFR
CAV DATE	24.03.2023
Uploading Date	18.05.2023
Transmission Date	

