

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2733 of 2019

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Manoj Kumar S/o Sri Ram Prasad Ram Resident of Village-Rasalpur,P.S.
Jandaha,Dist.-Vaishali

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary,Human Resource Department, Govt. of Bihar, Patna
2. The Principal Secretary, Human Resource Department,Govt. of Bihar,Patna
3. The Director, Primary Education, Department of Human Resource and Development,Govt. of Bihar,Patna
4. The Deputy Director, Primary Education, Department of Human Resource and Development, Govt. of Bihar, Patna
5. The District Magistrate, Vaishali, Bihar
6. The Presiding Officer, District Appellate Authority, Vaishali, Bihar
7. The Presiding Officer, State Appellate Authority,Patna
8. The District Education Officer, Vaishali
9. The District Programme Officer, Vaishali
10. The Block Development Officer, Jandaha,Dist.-Vaishali
11. The Panchayat Secretary, Gram Panchayat Raj, Rasalpur Purushottam, Jandaha, Dist.-Vaishali
12. The Mukhiya, Gram Panchayat Raj, Rasalpur Purushottam Jandaha, Dist.-Vaishali
13. Naresh Ram S/o Late Kusheshwar Ram R/o village-Rampur Challala, P.S. Jandaha,Dist.-Vaishali

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Dharmendra Kumar
For the State	:	Mr. S. S. Tiwary
For Respondent no. 13	:	Mr. Shashi Bhushan Kumar
		Ms. Nidhi Kumari

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

JUDGMENT AND ORDER

ORAL

Date : 31-10-2023



The petitioner has filed the present writ application being aggrieved by the order, dated 10.05.2018, passed, in Appeal No. 346 of 2017, by the State Appellate Authority, Patna, Bihar, whereby the order, dated 21.04.2015, passed by District Appellate Authority, Vaishali, cancelling the appointment of petitioner, has been upheld.

2. The brief facts of the case is that 18 posts of Panchayat Shiksha Mitra (in short, 'PSM') were notified in the Gram Panchayat Raj Rasalpur, Purusottam, Jandaha, in the district of Vaishali, in September, 2004. A merit list was prepared on 27.05.2005, wherein the respondent no. 13 was placed at Serial No. 10, having 15 points with 613 marks. Accordingly, the respondent no. 13 was appointed as PSM for 11 months, vide Memo No. 02, dated 27.05.2005 and was posted at Primary School, Chak Faridabad.

3. The petitioner and several other aggrieved candidates made complaints to the authorities in the year 2008. On the complaint made by the candidates against the selection process, an enquiry was held and upon enquiry, appointment of respondent no. 13 was cancelled by the Panchayat Secretary, vide Memo No. 12, dated 20.08.2008, holding it to be illegal. Thereafter, vide letter no. 16, dated 11.09.08, appointment letter was issued in favour of the



petitioner and he joined on the post of Panchayat Teacher on 15.09.2008.

4. In the light of the order, dated 23.09.2008, passed in CWJC No. 13814 of 2008, filed by the petitioner, the Block Development Officer, Jandaha, Vaishali, passed a final order, on 28.09.2008, by which the appointment of respondent no. 13 was cancelled.

5. The respondent no. 13, Naresh Ram, being aggrieved by the aforesaid order, dated 28.09.2008, preferred CWJC No. 16543 of 2008, which was subsequently permitted to be withdrawn, vide order, dated 31.01.2012, with liberty to the petitioner to move before the District Appellate Authority, Vaishali.

6. In pursuance thereof, the respondent no. 13 filed an appeal before the District Appellate Authority, Vaishali, on 22.02.2012, which could not be disposed of in view of the pendency of CWJC No. 13874 of 2008 filed by the petitioner.

7. Accordingly, respondent no. 13 filed another writ application, bearing CWJC No. 20698 of 2012, which was disposed of on 31.03.2014 by this Court, in which a direction was given to the District Appellate Authority to decide the case within a period of six months.



8. Accordingly, the respondent no. 13 filed an appeal, which was registered as Case No. H.C./08/14, in which the petitioner was made as respondent no. 8. The District Appellate Authority, Vaishali, passed final order in the aforesaid appeal on 21.04.2015, by which the appeal filed by the respondent no. 13 was allowed and the order/letter cancelling the appointment of the respondent no. 13 was set aside, with further direction to reinstate respondent no. 13 on the post of Panchayat Teacher in the same school.

9. The petitioner, being aggrieved by the aforesaid order passed by the District Appellate Tribunal, Vaishali, filed CWJC No. 7405 of 2015 before this Court, which was disposed of by order, dated 18.08.2017, giving liberty to the petitioner to file an appeal before the State Appellate Authority, Patna.

10. The petitioner thereafter filed Appeal No. 346 of 2017 before the State Appellate Authority, Patna which, by order, dated 10.05.2018, upheld the order, dated 21.04.2015 passed by the District Appellate Authority, Vaishali, and rejected the claim of the petitioner as Panchayat teacher.

11. Learned Counsel for the petitioner, challenging the impugned order, submits that there is gross violation of principles of natural justice as neither the reply nor the order, dated



28.09.2008, passed by the Block Development Officer, Jandaha, Vaishali, was considered by the District Appellate Tribunal, Vishali, and the State Appellate Authority, Patna, before passing the impugned orders, allowing the case of the respondent no. 13 and cancelling the claim of the petitioner to the post of Panchayat Teacher. Both the Tribunals failed to consider that the petitioner was having higher marks than that of respondent no. 13. The respondent no. 13 was appointed in collusion with the Member/Mukhiya of the Gram Panchayat Raj Rasalpur as PSM, which would be evident from the fact that though the petitioner was having higher marks was deliberately left out. Hence, the appointment of respondent No.13 was arbitrary, malafide and in colorable exercise of power and same is liable to be cancelled forthwith.

12. Learned Counsel further submits that for the appointment of Shiksha Mitra, a guideline was framed by the Human Resource Development Department, vide Resolution No. 1458, dated 11.08.2004, and the impugned order lost sight of the main issue, i.e. merit of the petitioner, who has higher marks than respondent no. 13. There is no resolution/guidelines of the State Government, which could suggest that the preference is to be given on the basis of seniority.



13. Learned Counsel for the respondent no. 13 submits that the petitioner never made any complaint against the appointment of respondent no. 13 in the year 2005 and till 01.07.2006, when the new rules, i.e. Bihar Panchayat Elementary Teachers (Employment and Service Conditions) Rules, 2006 (in short, 'Employment Rules, 2006') came into existence and under the provisions of Rule 20 (iii) of the Employment Rules, 2006, the respondent no. 13 is deemed to be appointed as Panchayat Teacher in the same school, where he was working as PSM.

14. The petitioner made complaint, for the first time, after coming into force the Employment Rules, 2006, in the year 2008. The petitioner has claimed his appointment as PSM in place of respondent no. 13, but the Block Development Officer and the Block Education Extension Officer, Jandaha, issued direction to the Panchayat Employment Unit for appointment of the petitioner as Panchayat Teacher, which has been cancelled by the District Appellate Tribunal as well as the State Appellate Tribunal.

15. After 01.07.2006, the validity of appointment of PSM cannot be challenged, enquired into or cancelled. After 01.07.2006, the appointment of Panchayat Teacher can be cancelled only under the provisions of the Employment Rules, 2006, and the appointment of PSM cannot be cancelled



retrospectively under the then guidelines/resolution for appointment of PSM, which were repealed with effect from 01.07.2006. Therefore, the cancellation of appointment of respondent no. 13, with further direction for appointment of the petitioner, as Panchayat Teacher in the year 2008 by the Block Development Officer, Jandaha, was illegal. The orders passed by the District Appellate Authority as well as the State Appellate Tribunal are not violative of the law and the Employment Rules and the writ application is fit to be dismissed.

16. The State Appellate Authority has come to the conclusion, in the impugned order, that the respondent no. 13 was appointed as PSM in the year 2005, after following the procedure laid down in the relevant guidelines for appointment of PSM. Under rule 20 (i) of the Employment Rules, 2006, all previous Rules, Resolutions, Orders, Instructions etc., related to the appointment of PSM were repealed with effect from 01.07.2006.

17. Under Rule 20 (iii) of the Employment Rules, 2006, all PSMs appointed and working in the light of previous Circulars, Orders, Instructions, were deemed to be appointed as Panchayat Teacher, with effect from 01.07.2006 under the Employment Rules, 2006. Consequently, the post of PSMs were abolished on 01.07.2006. The PSMs appointed, under the then prevailing



Circulars and Guidelines, could be removed only under those Circulars and Guidelines, before 01.07.2006 and not after that. Therefore, a PSM, absorbed as a Panchayat teacher on 01.07.2006, could be removed from service only under the provisions of the Employment Rules, 2006 and not otherwise.

18. I have heard learned counsel for the parties concerned and have gone through the materials available on record.

19. The question, which requires consideration, is as to whether the appointment of respondent no. 13 as PSM in the year 2005 can be reopened/gone into after coming into force the Employment Rules, 2006, after which the post of all PSMs stood abolished with effect from 01.07.2006.

20. From the facts available on record, it appears that the dispute involved in the present writ application pertains to the appointment on the post of PSM. The respondent no. 13 was appointed as PSM on 27.05.2005 and was absorbed as Panchayat Teacher after coming into force the Employment Rules, 2006, with effect from 01.07.2006.

21. Admittedly, prior to coming into force of the Employment Rules, 2006, no complaint was made by the petitioner. The petitioner also did not make a complaint after absorption of



respondent no. 13 as Panchayat Teacher in the year 2006. It was in the year 2008 complaints were made by some other candidates who were not selected. On 20.08.2008, the appointment of respondent no. 13 was cancelled and subsequently the District Appellate Authority and the State Appellate Authority passed orders in favour of respondent no. 13 with a direction to reinstate him on the post of Panchayat Teacher in the same school from where he was terminated.

22. A Division Bench of this Court, in the case of **Smt. Renu Kumari Pandey and Others v. The State of Bihar and Others**, Reported in **2011 (4) PLJR 297** has held, in paragraphs 17 and 18 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 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.”

23. The aforesaid decision, rendered in **Renu Kumari Pandey** (supra) has been affirmed by the Full Bench of this Court, in the case of **Kalpna Rani v. The State of Bihar**, reported in **2014 (2) PLJR 665**, wherein the Full Bench, in paragraph 118, has held as follows:

“118. Having thus given my anxious consideration, I am of the view that after 1.7.2006, no person, who was earlier 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.”

24. I have given my anxious consideration upon the facts as well as law discussed herein above.

25. The grievance of the petitioner was his non-selection as PSM, in the process of appointment which was initiated in the year 2004 and respondent no. 13 was selected. The respondent no. 13 was absorbed on the post of Panchayat Teacher after coming into force the Employment Rules, 2006, with effect from 01.07.2006. The petitioner and other candidates, after lapse of three years of the appointment of respondent no. 13 as PSM in the year 2005, made complaints in the year 2008.



26. The Full Bench, in the case of **Kalpana Rani** (supra) and the Division Bench, in **Renu Kumari Pandey** (supra), have held that on or after 01.07.2006, when Employment Rules, 2006, was enforced, the posts of PSM stood abolished and, therefore, no appointment can be made on the post of PSM, It was held that a belated challenge to the appointment of the private respondents and claim for absorption as a Panchayat Teacher could not be entertained irrespective of the appointment of private respondent as PSM. It has also been held by this Court that the services of PSM, absorbed as Panchayat Teacher, under the provisions of Employment Rules, 2006, cannot be terminated in any manner or for any reason other than the one prescribed under the Employment Rules, 2006.

27. The petitioner was admittedly not employed as PSM as on 01.07.2006, i.e. at the time of conversion of PSMs as Panchayat Teachers. As such, the petitioner has no right to claim employment or deemed employment as PSM or has a right to be absorbed as Panchayat Teacher by operation of Rule 20 (iii) of the Employment Rules, 2006.

28. Accordingly, I come to the conclusion that impugned order, dated 10.05.2018, passed in Appeal No. 346 of 2017, by the State Appellate Authority, Patna, does not suffer from any



illegality, and, as such, the same does not require any interference by this Court.

29. In the result, this writ application is dismissed.

30. There shall be no order as to costs.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	02-12-2023
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