

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18513 of 2008

=====

Suresh Kumar, son of Late Lalji Sah, resident of village Dhruv Pakri, Police Station Kalyanpur, District East Champaran

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Block Development Officer, Kalyanpur, East Champaran
3. The Block Education Extension Officer, Kalyanpur , East Champaran
4. Mukhiya, Gram Panchayat Pipra Khem, Block Kalyanpur, Police Station Kalyanpur, District East Champaran.
5. Panchayat Secretary, Gram Panchayat Pipra Khem, Block Kalyanpur, Police Station Kalyanpur District East Champaran
6. Rima Kumari, wife of Arbind Kumar Singh, resident of village Pipra Khem, Police Station Kalyanpur, District East Champaran.

... .. Respondent/s

=====

with
Civil Writ Jurisdiction Case No. 18743 of 2008

=====

Kumari Nutan , wife of Sudhir Kumar Singh, resident of village Pipra Khem, Police Station Kalyanpur, District East Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Block Development Officer, Kalyanpur, East Champaran
3. The Block Education Extension Officer, Kalyanpur , East Champaran
4. Mukhiya, Gram Panchayat Pipra Khem, Block Kalyanpur, Police Station Kalyanpur, District East Champaran.
5. Panchayat Secretary, Gram Panchayat Pipra Khem, Block Kalyanpur, Police Station Kalyanpur District East Champaran
6. Nita Kumari, wife of Birendra Singh, resident of village Pipra Khem, Police Station Kalyanpur, District East Champaran.

... .. Respondent/s

=====

Appearance :

(In Civil Writ Jurisdiction Case No. 18513 of 2008)

For the Petitioner/s : Mr. P.N. Shahi, Sr. Adv.

Mr. Sanjay Kumar Tiwari, Adv.

Mr.Raghwanand, Adv.

For the Respondent/s : Mr. Suryadeo Yadav, AAG 9

(In Civil Writ Jurisdiction Case No. 18743 of 2008)



For the Petitioner/s : Mr. P.N. Shahi, Sr. Adv.
Mr. Sanjay Kumar Tiwari, Adv.
Mr. Raghwanand
For the Respondent/s : Mr. Suryadeo Yadav, AAG 9

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
CAV JUDGMENT

Date : 30-05-2023

Petitioners in both the writ petitions being aggrieved by the letter no. 1024 dated 01.11.2008 and the selection list dated 06.02.2007 filed the present writ applications for quashing the letter dated 01.11.2008 bearing no. 1024 whereby B.D.O., Kalyanpur, Gram Panchayat- Pipra Khem, East Champaran directed the Mukhiya and the Panchayat Secretary for appointment of the private respondent no. 6 namely Rima Kumari in C.W.J.C. No. 18513 / 2008 and Nita Kumari in C.W.J.C. No. 18743 of 2008 on the post of Panchayat Shiksha Mitra (for short "P.S.M") in place of the petitioners.

2. Pursuant to the advertisement published in the year 2005 for the post of P.S.M. in Gram Panchayat- Pipra Khem, Block + P.S.:- Kalyanpur, District - East Champaran the petitioner of C.W.J.C. No. 18743 / 2008 Kumari Nutan was selected for appointment as P.S.M. and an agreement to this effect for eleven months was executed on 04.05.2005 between the petitioner and the Gram Panchayat. In the said selection list



one Nutan Kumari at serial no. 6 did not join the post and against the said vacant post applications were invited vide notice no. 33 dated 30.01.2006 by the Selection Committee in which petitioner of C.W.J.C. No. 18513 of 2008 namely Suresh Kumar submitted his application and was appointed on the post of P.S.M. vide letter no. 43 dt. 14.02.2006 and pursuant thereto an agreement between the petitioner and the Gram Panchayat was executed. The initial engagement of the petitioners was for a period of eleven months and was further extended taking into consideration the satisfactory service. By virtue of coming into force of the new Rule i.e. Bihar Panchayat Elementary Teacher (Employment and Service Condition) Rules, 2006 (hereinafter referred to as "New Employment Rules 2006") the petitioners were absorbed as Panchayat Teacher with effect from 01.07.2006. After the absorption of the petitioners as Panchayat Teacher an enquiry was made regarding the appointment of petitioners as P.S.M. by the then B.D.O. and Block Education Extension Officer, Kalyanpur, East Champaran (i.e. B.E.E.O.), who prepared a fresh list of selected candidates on 06.02.2007 by which the petitioner of C.W.J.C. No. 18513 of 2008 was replaced by Rima Kumari (Private Respondent No. 6) and petitioner of C.W.J.C. No. 18743 of 2008 was replaced by Nita



Kumari (Private Respondent No. 6). Thereafter, the B.D.O. vide the impugned letter dated 01.11.2008 (Annexure-5) directed the Mukhiya and Panchayat Secretary to appoint respondent no. 6 in place of the petitioners.

3. Mr. P.N. Shahi, learned senior counsel appearing for the petitioners while assailing the impugned order argued that Block Development Officer, Kalyanpur, East Champaran exceeded his jurisdiction and conducted an enquiry regarding the appointment of P.S.M. made prior to 01.07.2006. After such enquiry and after absorption of the petitioners as Panchayat Teacher with effect from 01.07.2006 the then B.D.O. and B.E.E.O. prepared a selection list of P.S.M. of the concerned Gram Panchayat by which the petitioners were replaced by Rima Kumari and Nita Kumari (private respondent no. 6) on the ground of *inter se* merit. The petitioners were appointed against vacant post after inviting applications on the post of P.S.M. which was duly converted into Panchayat Teacher whereas the private respondents did not find place in the merit list prepared by the Appointment and Selection Committee of the concerned Gram Panchayat on the post of P.S.M. The B.D.O. and the B.E.E.O. lack jurisdiction to enquire into the appointment as P.S.M. inasmuch as the B.D.O. has been



empowered as the competent authority under Rule 18 of the New Employment Rules 2006 in respect of appointment and transfer of Panchayat Teacher and not the P.S.M., who were appointed prior to coming into force of New Employment Rules 2006. The petitioners by virtue of coming into force of New Employment Rules were absorbed as Panchayat Teacher and have been working continuously since then. As per the New Employment Rules 2006 the post of P.S.M. came to be abolished and further in terms of Rule 20 (iii) all P.S.M. being appointed and working as on 01.07.2006 came to be absorbed on the post of Panchayat Teacher.

4. The impugned order dated 01.11.2008 [Annexure- 5] challenged separately in both the writ petitions were came to be quashed in CWJC No. 16423 / 2008 and analogous cases including the present petitions by a Co-ordinate Bench of this Court vide order dt: 17-03-2009. The private respondent no. 6 being aggrieved by the order dated 17-03-2009 filed L.P.A. No. 702 / 2009 and L.P.A. No. 698 / 2009. While preferring such letters patent appeal against the order of the writ court the private respondents took a plea that the impugned order in the writ petition dated 01-11-2008 having been set aside by the writ court without affording them any opportunity of hearing and



even without issuance of notice. Considering the submissions advanced by the private respondents and further their undertakings to file counter affidavit before the writ court Division Bench quashed the order of the writ court dated 17/03/2009 and remanded the matter back to the learned single Judge by order dt: 01-08-2011. Since the private respondents did not file counter affidavit within four weeks as per the undertaking given by the appellants / private respondents before Division Bench, by order dated 04-07-2018 notices were issued to the private respondents in the present writ applications. The order dated 14-08-2019 records that “despite valid service of notice on respondent no. 6, no one has entered appearance”. Despite several opportunities and notice having been served upon the private respondents they have not appeared in this matter nor have filed any counter affidavit till date. Learned counsel for the petitioner relied upon the judgment passed in Renu Kumari Pandey & Ors. v. The State of Bihar & Ors. reported in 2011 (4) PLJR 297 and Kalpana Rani v. The State of Bihar reported in 2014 (2) PLJR 665 in support of his argument.

5. Learned counsel for the respondent - State argued that private respondent no. 6 was not applicant in the year 2006 however in the earlier advertisement she had made her



application which was not considered for appointment by the Panchayat Employment Committee and the petitioner came to be appointed on the post of P.S.M. The then Block Development Officer, Kalyanpur, East Champaran and the B.E.E.O., Kalyanpur, East Champaran made an enquiry regarding the validity of appointment of the P.S.M. made in 2005 and 2006 and found irregularities and thus prepared a new selection list on 06 / 02 / 2007 and in the said list respondent no. 6 were selected replacing the petitioners on the ground that the private respondent no. 6 were having higher marks than the petitioners in the Intermediate Examination. Considering the *inter se* merit of the petitioners and the private respondents the enquiry committee of B.D.O. and the B.E.E.O. prepared a fresh selection list and accordingly the B.D.O. directed, vide his letter dt- 01.11.2008 bearing no. 1024, the Mukhiya and the Panchayat Secretary of the concerned Gram Panchyat to make appointment of the private respondents in place of the petitioners. However the petitioners remained working on the post of Panchayat Teacher during the pendency of the writ petitions inasmuch as the then employment unit never implemented the letter / order dt- 01.11.2008 of the B.D.O.

6. I have heard learned counsel for the parties and have



perused the relevant materials available on record. From the facts of this case it is apparent that the dispute involved in the present writ applications pertain to non-selection / non-continuance / non -appointment of the private respondents on the post of P.S.M. Admittedly the petitioners were appointed as P.S.M. as per the then prevailing policy for appointment of P.S.M. It is not in dispute that the petitioners were working as P.S.M. after coming into force the New Employment Rules, 2006 as on 01-07-2006 and by virtue of the New Employment Rules 2006 the petitioners were absorbed as Panchayat Teacher and since then they have been working till date. The respondent no. 6 were never appointed as P.S.M.

7. After conversion of the post of P.S.M. into Panchayat Teacher with effect from 01-07-2006 the B.D.O. along with the B.E.E.O. came to prepare the new selection list of P.S.M. on 06.02.2007 in which the name of private respondents were included and directed the Mukhiya and Panchayat Secretary of concerned Gram Panchayat vide letter dated 01.11.2008 to appoint the private respondent no. 6.

8. Now the main question which requires consideration by this court is as to whether non- selection / non- continuance / non -appointment of the private respondents as P.S.M. by the



Selection Committee of the Gram Panchayat can be gone into by the B.D.O. after coming into force of the New Employment Rules, 2006 after which the post of P.S.M. stood abolished with effect from 01-07-2006. The name of the private respondents is not there amongst the list of selected candidates prepared by the Appointment Committee of the Gram Panchayat on 04-05-2005 and 14 / 02 / 2006. After notification of the New Employment Rules 2006 all P.S.M. employed under the previous Circulars, Resolutions, Orders, Instruction etc. and working as such were deemed to be employed as Panchayat Teacher with effect from 01-07-2006. Secondly, the post of P.S.M. stood abolished on 01-07-2006. Therefore after 01.07.2006 the appointment of P.S.M. cannot be enquired into and cancelled retrospectively. Since the post of P.S.M. stood abolished on 01-07-2006 no person can be employed, claim employment / deemed employment as P.S.M. and deemed absorption as Panchayat Teacher retrospectively by operation of Rule 20 (iii) of New Employment Rules 2006.

9. The B.D.O. after 01.07.2006 examined the validity of the appointment of the petitioners as P.S.M. made prior to coming into force of the New Employment Rules, 2006 which in my opinion was not permissible and the B.D.O. was not



competent to examine the validity of appointment of the petitioners as P.S.M. Even in a case where a person has a legitimate grievance in respect of his / her non- selection as P.S.M. at relevant time or non continuance as P.S.M. , such person cannot be deemed to have been appointed as P.S.M., nor can he / she be deemed to have been employed as P.S.M. as on 1st July 2006.

10. A Division Bench of this Court in the case of Smt. Renu Kumari Pandey & Ors. v. That 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.”

11. 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.”

12. In view of the discussions made hereinabove on facts and law, I come to the conclusion that the private respondent no. 6 have no right to claim employment or deemed employment as P.S.M. or right to be absorbed as Panchayat Teacher by operation of Rule 20 (iii) of the New Employment Rules 2006.

13. In the result the impugned letter / order dated 01.11.2008 (Annexure- 5 in both writ petitions) and selection list dated 06.02.2007 (Annexures- 4 & 3 respectively in both the application) are hereby quashed.

14. Both the writ applications are allowed.

15. There shall be not order as to cost.

praful/-

(Anil Kumar Sinha, J)

AFR/NAFR	AFR
CAV DATE	20-04-2023
Uploading Date	31-05-2023
Transmission Date	NA

