

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1160 of 2019

In

Civil Writ Jurisdiction Case No.17523 of 2019

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Awadhraj Singh, aged about 45 years, male, S/o Asheshwar Singh, Resident of Village- Nirkhapur, P.S.- Siswan, District- Siwan.

... .. Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Education, Bihar, Patna.
2. The Director Primary Education Department of Education, Bihar, Patna.
3. The District Magistrate, Siwan.
4. The Deputy Development Commissioner-cum-Chairman, District Education Establishment Committee, Siwan.
5. The District Education Officer, Siwan.
6. The District Programme Officer (Establishment), Siwan.
7. The Block Development Officer, Siwan, Siwan.
8. The Block Education Extension Officer Siwan, Siwan.
9. The Mukhiya, Gram Panchayat Raj, Raj Gyaspur, Siwan.
10. The Panchayat Secretary, Gram Panchayat Raj, Gyaspur, Siwan, Siwan.
11. Acchelal Singh, S/o Rudal Singh, Resident of Village- Nirkhapur, P.O.- Gyaspur, P.S.- Siswan, Distt.- Siwan.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Mrigank Mauli, Sr. Adv. Mr. Mukesh Kumar, Adv.
For the Respondent No. 11	:	Dr. Uma Shankar Prasad, Sr. Adv. Mr. Kamala Kant Tiwary, Adv.
For the State	:	Mr. Shashi Shekhar Tiwari, AC to AAG-13

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 20-03-2023

Heard Mr. Mrigank Mauli, the learned Senior Advocate for the appellant and Mr. Uma Shankar Prasad, the learned Senior Advocate for respondent No. 11.

2. The State is represented by Mr. Shashi Shekhar Tiwari, the learned A.C. to A.A.G.-13.

3. This appeal is against the order dated 28.08.2019 passed in C.W.J.C. No. 17523 of 2019, whereby the writ petition was dismissed in view of the Full Bench judgment of this Court in ***Kalpana Rani v. The State of Bihar & Ors.; 2014 (2) PLJR 665.***

4. Since the order was very cryptic, the appeal was first entertained on 14.12.2021, when the Bench hearing the matter found that the appeal needed to be allowed *inter alia* for various reasons but primarily for the reason of the order under challenge to be non-speaking. Nonetheless, the matter was adjourned for a further



hearing.

5. In **Kalpana Rani** (supra), it has been held by the Full Bench in paragraph 106 as hereunder :-

*"106. A question, therefore, would arise as to whether in term of the repeal of the executive instruction of Panchayat Shiksha Mitra in terms of Rule 20(i) of 2006 Rules, could any dispute be adjudicated for appointment on the post of Panchayat Shiksha Mitra? The answer to this must be in negative, inasmuch as, if the entire provision for Panchayat Shiksha Mitra was itself repealed, there could not have been any appointment on the abolished post of Panchayat Shiksha Mitra. It is this aspect of the matter which has been dealt elaborately in the earlier Division Bench judgment in the case of Smt. **Renu Kumar Pandey** (supra) and I do not find any error in the same."*

6. Certain facts are necessary to be recounted for disposing of this appeal finally.

7. The Government of Bihar in the Department of Primary, Secondary and Adult Education came out with a Resolution dated 11.08.2004, in which it was resolved that Panchayat Shiksha Mitras shall be engaged on contract basis and that such appointees ought to be not more than



30 years on 1st of January of the year in which the engagement/appointment is to take place.

8. The appellant and respondent No. 11, both, had applied as according to their estimation, they had requisite qualification and the age to apply for being engaged as Panchayat Shiksha Mitra. For some reason or the other, specially litigation, the engagement process could not be taken up in the year 2004 and it was extended to 2005.

9. Later, by a Circular, it was clarified that the aspirants/applicants who had filed their requisite application in the year 2004 would not require to file fresh application for their consideration.

10. Pursuant to the process which was started in 2005, the appellant was appointed on the post of Shiksha Mitra on 10.05.2005. However, the appointment of the appellant was cancelled for which a communication was made by the *Mukhiya* of Gram Panchayat, Gyaspur addressed to the Head-Master, Primary School, Gyaspur, whereby it was intimated that the appellant had wrongly



been appointed even though he was overage.

11. The appellant challenged the aforesaid cancellation of his engagement *vide* C.W.J.C. No. 14497 of 2005, wherein the issue was whether it was justified for the *Mukhiya* of the Gram Panchayat, Gyaspur to have cancelled the appointment of the appellant.

12. The Bench hearing the matter *vide* order dated 17.02.2009 found that since the appointment was to be made as per the Government's Resolution dated 11.08.2004, referred to above, issued by the Department of Primary, Secondary and Adult Education, Government of Bihar, the appellant was resident of the same *Panchayat*, had the Intermediate degree with 45 marks and on 1st of January, 2004, he was not more than 30 years of age and, therefore, he could not have been removed and his engagement could not have been cancelled even though the appointment was made in the year 2005, when on the date of appointment, the appellant had crossed 30 years of age.

13. Taking this into account, the learned Single



Judge found that the order of cancellation of the engagement of the appellant was in violation of the guidelines provided for appointment of Panchayat Shiksha Mitras.

14. Pursuant to the afore-noted judgment of the learned Single Judge, the appellant was reinstated as Panchayat Shikshak on 17.03.2009.

15. Be it noted that when the engagement of the appellant was cancelled on 13.05.2005, the respondent No. 11/Acchelal Singh was engaged in place of the appellant on 14.05.2005.

16. Thus, with the reinstatement of the appellant on 17.03.2009, the respondent No. 11 stood ousted from the engagement.

17. Thereafter, the respondent No. 11 preferred a review petition *vide* Civil Review No. 263 of 2009, which too was dismissed by order dated 03.12.2010.

18. Against the afore-noted orders passed in the writ petition and its review, an appeal was filed *vide* L.P.A. No. 15 of 2012 by the respondent No. 11, which was as



prayed for by him, permitted to be withdrawn, but with the clarification that the Appellate Bench had not examined the challenge made in the appeal on merits and that respondent No. 11 would be at liberty to challenge the order of removal from service in a substantive proceeding before the appropriate forum. In the event of the respondent No. 11 challenging his removal from service, the same would be considered in accordance with law and nothing stated in the order of appeal or the impugned judgments, passed by the learned Single Judge, would be read prejudicial to the interest of respondent No. 11.

19. Emboldened by the afore-noted observation in appeal, the respondent No. 11 preferred a writ petition *vide* C.W.J.C. No. 23747 of 2012, which was disposed of on 29.08.2017, directing the respondent No. 11 to prefer an appeal before the District Teachers Appellate Authority within a period of 30 days.

20. Complying with the afore-noted direction of the learned Single Judge, the respondent No. 11 preferred an appeal before the District Teachers Appellate Authority,



Siwan, *vide* Appeal No. 45 of 2017, which was allowed on the ground that the appellant herein was not of the requisite age on 1st of January in the year of appointment, *i.e.*, 2005 and, therefore, the appointment of the appellant was bad and the respondent No. 11 was required to be reinstated.

21. This order passed by the District Teachers Appellate Authority was challenged by the appellant before the State Appellate Authority, Department of Education, Government of Bihar, which confirmed the order of the District Teachers Appellate Authority and ratified and upheld the decision that the respondent No. 11 was required to be continued on the post of Panchayat Shikshak.

22. While upholding the order of the District Appellate Authority, the State Appellate Authority referred to Rule 20 of 2006 Rules by which all rules/orders/resolutions/instructions regarding employment of elementary teachers in rural areas/physical teachers/Panchayat Shiksha Mitras was deemed to have



been repealed from the date of commencement of the Rules. The Rules further specified that despite the repeal, the payment and service condition of the teachers appointed under the provisions of previous Rules shall not be affected and that the Panchayat Shiksha Mitras, employed under previous circular, orders and instructions, shall be deemed to have been employed as Panchayat Shikshak under these Rules.

23. Thus, it was reiterated by the State Appellate Authority that Rule 21 clearly declared that all instructions regarding engagement of Shiksha Mitras stood repealed from the date of commencement of the Rules of 2006. The State Appellate Authority also took into account the judgment of the Full Bench in **Kalpana Rani** (*supra*), which closed the chapter with respect to appointment of Panchayat Shiksha Mitras after the Rules were made in the year 2006.

24. This order passed by the State Appellate Authority was challenged by the appellant before the learned Single Judge *vide* C.W.J.C. No. 17523 of 2019,



which was disposed of on 28.08.2019 and which order has been impugned in the present appeal.

25. The learned counsel for the appellant has argued several issues including that the judgments in ***Smt. Renu Kumari Pandey & Ors. Vs. The State of Bihar & Ors.; 2011 (4) PLJR 297*** and **Kalpana Rani** (*supra*) would not be applicable to the facts of the case of the appellant as the appellants therein stood engaged/employed before the onset of the Rules of 2006.

26. The other argument raised on behalf of the appellant was that under the Resolution, the advertisement was published in the year 2004 pursuant to which the appellant had applied for being considered. According to the guidelines, on 1st of January, 2004, a candidate/aspirant was required to be not above the age of 30 years. The appellant fulfilled all the academic and age qualification.

27. For no fault of the appellant or any one of the aspirants, the appointment process was delayed and a fresh advertisement was issued in the year 2005, but with



a clarificatory Circular that the candidates/applicants who had applied for being considered against the 2004 advertisement would not be required to file any fresh application for their consideration.

28. The appointment was made in the year 2005. It was, thus, argued by the appellant that merely because the appellant crossed the threshold of 30 years in the year of appointment, *i.e.*, 2005, that could not have been the reason for terminating his appointment as he had become overage in the year of the appointment.

29. The further contention of the appellant is that when the issue stood decided by the learned Single Judge in C.W.J.C. No. 14497 of 2005, that the order of removal by the local *Mukhiya* was bad and the review against that order also stood dismissed, such issue could not have been raked up against, especially in view of the fact that the appeal preferred by respondent No. 11 was permitted to be withdrawn with a liberty, of course, to respondent No. 11 to challenge his removal from the engagement because of the rein-statement of the appellant.



30. It was further urged that the place became vacant only with the removal of the appellant for a while, which was put to challenge and, ultimately, the appellant had succeeded.

31. In the interregnum, the respondent No. 11 had been engaged against a vacancy which had fallen vacant only because of the removal of the appellant. Thus, the respondent No. 11 was a complete outsider to the lis and had no locus to file either the review petition or appeal or a fresh writ petition challenging the reinstatement of the appellant.

32. In support of the afore-noted contention, the learned counsel for the appellant has relied upon the judgment of the Supreme Court in ***Poonam v. State of Uttar Pradesh and Ors.; (2016) 2 SCC 779***. In the afore-noted case, the license of a fair-price shop which was being run by one of the respondents in the District of Mau, in the State of Uttar Pradesh, was cancelled and the appellant therein was appointed as the fair-price shop dealer. The cancellation of license of the respondent was



challenged by him before the Commissioner, Azamgarh, in which the appellant had been impleaded as a party. The cancellation of license of the respondent was found to be bad in the eyes of law and facts and the respondent was directed to be restored the license and his allotment to be resumed.

33. This order in favour of the respondent was challenged by the appellant, but it was dismissed for the reason that the appellant, in that case, had no right to continue with the litigation, being a subsequent allottee for which she had no independent right.

34. While deciding this case, the Supreme Court dealt with the concept of necessary or proper party in a proceeding and referred to a Four-Judges' Bench judgment in ***Udit Narain Singh Malpaharia Vs. Additional Member Board of Revenue, Bihar & Anr.; AIR 1963 SC 786***, in which it was observed that a necessary party is one without whom no order can be made effectively; a proper party is one in whose absence, an effective order can be made but whose presence is necessary for a



complete and a final decision on the question involved in the proceeding.

35. The Supreme Court also referred to the decisions in ***Vijay Kumar Kaul & Ors. Vs. Union of India & Ors.; (2012) 7 SCC 610*** and ***Indu Shekhar Singh & Ors. Vs. State of U.P. & Ors.; (2006) 8 SCC 129*** and came to the conclusion that in case the shop had become vacant and because of the vacancy having arisen in the event of cancellation of license of the respondent and when the original allottee had succeeded in challenging such order of cancellation of his license, the appellant did not have any right to continue with the litigation. She was neither a necessary party nor a proper party and she could not have assailed the order setting-aside the cancellation of the license of the respondent, which could have been done only at the instance of the State, which had not chosen to challenge such order of restoration of license.

36. While summing up, the Supreme Court posed a question to itself as to whether there was any



curtailment or extinction of a legal right of the appellant in that case. The Bench concluded that it was difficult to hold that the appellant had an independent legal right. It was the first allottee who could have continued in law, if his license would not have been cancelled. He was entitled in law to prosecute his cause of action and get his legal rights restored. The restoration of the legal right was pivotal. There was only an eclipse over his right, which eclipse was removed and he was made to come back to the same position. The right of the first allottee therefore gets revived and that revival of right cannot be dented by a third party.

37. Lastly, it has been submitted that the appellant, after his reinstatement, has continued till date, which factual position has been seriously rebutted by respondent No. 11.

38. On behalf of respondent No. 11, a rather slender argument was made that the appointment took place in the year 2005 in which year, the age of a candidate had to be calculated. In the year 2005, the



appellant had become more than 30 years of age and, therefore, his engagement/appointment was rightly cancelled, which ought not to have been interfered with. Without the necessary age qualification having been complied with, the appointment/engagement of the appellant was *non-est* in the eyes of law. No sooner was it discovered, the engagement was cancelled.

39. It has further been urged on behalf of respondent No. 11 by Mr. Uma Shankar Prasad, the learned Senior Advocate that in the year 2006, when the Rules came into existence, the respondent No. 11 had been working as Shiksha Mitra, which was the cut off date to be decided whereafter there could be any litigation with respect of vindication of any right whatsoever to seek any appointment on such post of Panchayat Shikshak or Panchayat Shiksha Mitra, nomenclature of which had been changed with the onset of the Rules.

40. It has further been submitted that on a plain reading of the Resolution of the Government in the year 2004 and which was repealed in 2005 reflected that the



age shall be calculated as on 1st of January of the year of appointment. A clarificatory Resolution in the form of FAQ was also taken out in which it was clearly stated that since the appointment was made in the year 2005, the calculation of the age of a candidate would be in terms of his age as on 1st of January, 2005 and not otherwise.

41. This clarification and Circular was never put to challenge by the appellant, who had only questioned the decision of the *Mukhiya* in cancelling the appointment of the appellant.

42. Mr. Shashi Shekhar Tiwary, the learned Advocate for the State reinforces the contention of respondent No. 11 and submits that the appellant never qualified for being engaged as a Shiksha Mitra in the year 2005 as he had crossed the threshold of 30 years on 1st of January, 2005.

43. After having heard the learned counsel for the parties, we find that though the appellant and the respondent No. 11 had applied for being considered in the year 2004, but their applications were considered in the



year 2005 for which a fresh advertisement was issued with the same clause with respect to the age limit. In the year 2005 also, the requirement remained the same, *i.e.*, a candidate was not to be more than 30 years of age as on 1st of January of the year of appointment. For removal of any doubt, a resolution in the form of FAQ was also issued and it was clarified that the age in this instance, *i.e.*, with respect to the appointment process of 2005, would be considered in terms of the age as on 1st of January, 2005.

44. This left no ambiguity in the matter.

45. It matters not whether it was permitted by the Department not to file any fresh application in the year 2005. Such instances of applicants in 2004 being of the age at the cusp could not have been anticipated. Even otherwise, with the publishing of the clarificatory Circular in the form of FAQ, the appellant ought to have challenged that before the process of appointment/engagement began.

46. The judgment of the Supreme Court in **Poonam vs. State of Uttar Pradesh** (*supra*) is not



applicable to the case of the appellants for the reason that the appellant's engagement was, in the first instance, not in accordance with the guidelines with respect to age and, therefore, such engagement is to be deemed as *non-est* in the eyes of law. It is not as if the vacancy arose because of the cancellation of the appointment/engagement of the appellant, but because of his not being of the requisite age for being considered for such engagement. Even otherwise, on the cut off date, *i.e.*, date of the promulgation of the Rules of 2006, the respondent No. 11 had been working as the Panchayat Shikhsak.

47. Thus, we find that the appellant has not been able to make out any case for interference with the decision of the learned Single Judge even though that order is too cryptic, which prompted a co-ordinate Division Bench to observe that the appeal requires to be allowed for the reason of it being completely non-speaking.

48. We have given careful consideration on such observation of the co-ordinate Bench, but we find that remanding the matter to the learned Single Judge would



unnecessarily prolong the matter when the Rules have been changed and in the year when the appointment of the appellant was made, he was more than 30 years of age, rendering his appointment/engagement a nullity in the eyes of law as it was in complete breach of the guidelines issued in the year 2004 and repeated in the year 2005.

49. There is no merit in this appeal and it is, accordingly, dismissed.

50. The consequences of this order shall follow.

(Ashutosh Kumar, J)

(Harish Kumar, J)

Sharun/Praveen

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