

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1966 of 2023

=====

Mala Kumari W/o Shri Shiv Nath Rai R/o Village Fulpura, P.O.-
Chaksikandar, P.S.- Bidupur, District- Vaishali.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Education, Govt. of Bihar, Patna.
2. The Principal Secretary, Department of Education, Govt. of Bihar, Patna.
3. The Director, Primary Education, Govt. of Bihar, Patna.
4. The District Magistrate, Vaishali.
5. The District Education Officer, Vaishali.
6. The District Programme Officer (Establishment), Vaishali.
7. The Block Development Officer, Block- Bidupur, Vaishali.
8. The Block Education Officer, Block- Bidupur, Vaishali.
9. The Panchayat Secretary-cum-Secretary, Panchayat Teachers Employment Unit, Gram Panchayat Raj Chakathkursi Kusiari, Block- Bidupur, Vaishali.
10. The Headmaster, J.T. High School, Barua, Bahuara, District- Vaishali.
11. The Bihar School Examination Board, Patna through its Chairman.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Arun Kumar, Advocate Mr. Shambhu Sharan Kumar, Advocate
For the State	:	Mr. Jitendra Kumar Roy 1, SC-13
For the B.S.E.B.	:	Ms. Binita Singh, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

6 09-08-2023 Heard learned counsel for the petitioner, learned
counsel for the State and learned counsel for the Bihar School
Examination Board (hereinafter referred to as the ‘Board’).

2. This writ application has been filed for the
following reliefs:-

“a) For issuance of an appropriate writ in the
nature of Certiorari, quashing & setting aside the



order dated 04.11.2022 passed by the Chairperson (A), State Appellate Authority, Patna in Original Appeal No.:- 435/2022, wherein and whereby, the learned State Appellate Authority rejected the appeal filed by the Petitioner against the Office Order dated 26.08.2022 vide Memo No. 106 issued under the signature of Panchayat Secretary, Gram Panchayat Raj Chakathkursi Kusiari whereby and whereunder services of the Petitioner has been terminated with immediate effect in the light of 2020 Rules as well as against the stoppage of payment of salary to her;

b) For holding and declaring that the order passed by the learned State Appellate Authority, Patna in Original Appeal No.:- 435/2022 is misconceived and erroneous in the eye of law as the learned Authority failed to appreciate that the Petitioner has not suppressed any fact and has not committed any forgery about her date of birth at the time of her selection as Panchayat Siksha Mitra or at later stages;

c) For issuance of an appropriate writ in the nature of Certiorari, quashing & setting aside the Officer Order dated 26.08.2022 vide Memo No. 106 issued under the signature of Panchayat Secretary, Gram Panchayat Raj Chakathkursi Kusiari whereby and whereunder services of the Petitioner has been terminated with immediate effect in the light of 2020 Rules;

d) For issuance of an appropriate writ in the nature of Mandamus, directing the respondent authorities to pay salary for the period 01.07.2022



till the termination of the Petitioner;

e) For grant of any other relief or reliefs to which the petitioner is found entitled in the facts and circumstances of this case.”

Brief facts of the case

3. It is the case of the petitioner that she being eligible for the post of Panchayat Shikha Mitra (PSM) in Gram Panchayat Raj Chakathkursi Kusiari in accordance with the State Government's Resolution No.1079 dated 20.06.2003, applied for the said post on the basis of marks obtained in her matriculation examination. The Sukh Subidha Committee, Gram Panchayat Raj Chakathkursi Kusiari issued letter no.07 dated 18.02.2003 by which the petitioner was engaged as PSM on contractual basis for 11 months. The petitioner submitted her joining and was performing her duties satisfactorily. Later on, in terms of the Government's policy as contained in memo no.974 dated 01.07.2006 of the Human Resources Department, Government of Bihar, all the PSMs working as on 01.07.2006 were duly recognized as Panchayat Teacher. In this manner, the petitioner also became a Panchayat Teacher.

4. It appears that one Ashok Kumar made a complaint before the District Public Grievance Redressal Officer, Vaishali on 12.07.2019 against the engagement of the petitioner as PSM. The allegation was that the true and correct date of birth of the



petitioner is 10.09.1986 whereas she got her engagement as PSM by declaring a false date of birth i.e. 10.09.1984. In other words, the allegation is that the petitioner was only about 16 years and 6 months approximately on the date of her engagement as PSM but she had given a wrong date of birth to show her age as 18 years and above.

5. The petitioner was served with a show cause notice by the District Programme Officer (Establishment), Vaishali. The petitioner submitted her reply in which she took a plea that her date of birth is 10.09.1984 but in her matriculation certificate, the Board has wrongly mentioned her date of birth as 10.09.1986 and that she had already given an application to the Board for correction of the same. The District Programme Officer (Establishment), Vaishali submitted a report before the District Public Grievance Redressal Officer, Vaishali whereafter the complaint against the petitioner was dropped vide order dated 01.10.2019 stating that till the final decision is taken by the Board there is no requirement of any action in the matter.

Submissions on behalf of the petitioner

6. Mr. Arun Kumar, learned counsel for the petitioner submits that the petitioner had earlier filed a writ application being CWJC No.502 of 2022 for a direction to the Board to



correct her date of birth. The said writ application was disposed of vide order dated 08.03.2022 in the light of the judgment of this Court passed in the case of Suresh Ram Vs. The State of Bihar and Ors. (CWJC No.5489 of 2020). This Court was of the view that all the matters concerning the teachers pending before this Court deserve to be first adjudicated on merits and on facts by the District Appellate Authority.

7. It appears that finally vide its order contained in memo no.106 dated 26.08.2022 the service of the petitioner has been terminated on the ground that she had obtained her engagement as PSM by changing her date of birth. A copy of the office order of termination has been brought on record as Annexure- '12' to the writ application.

8. The petitioner challenged the order of termination before the State Appellate Authority in O.A. No.435 of 2022 on various grounds. The learned Tribunal has dealt with the grounds raised by the petitioner and came to a conclusion that the order of termination of the appellant cannot be held to be wrong in any manner. The appeal has been rejected.

9. Learned counsel for the petitioner submits that the petitioner had taken steps for correction of date of birth in the matriculation certificate as back as on 09.01.2018 and prior to



the filing of the complaint before the District Public Grievance Redressal Officer, Vaishali to show her bonafide. It is submitted that the petitioner is still pursuing her remedy before the Board.

Stand of the Board

10. A counter affidavit has been filed on behalf of the Board. A reading of the counter affidavit of the Board would show that the Board has looked into the issues raised by the petitioner with regard to her date of birth and verified the same with the connected records/documents available at the level of the Board i.e. Original Tabulation Register (OTR) and the Duplicate Tabulation Register (DTR) pertaining to her annual matriculation examination, 2001. It has been found that she was a candidate in the said examination vide Roll Code-5309, Roll No.0118 as a regular candidate from J.T. High School, Barun Bahuara having her date of birth recorded as 10.09.1986. The details were mentioned in paragraph '12' of the counter affidavit filed by the Board. According to Board, the details are mentioned from the entries/information made available by the examinees/candidates concerned themselves through their examination forms, duly forwarded and submitted by the headmaster of the school concerned at the relevant point of time.



Consideration

11. This Court has heard learned counsel for the petitioner, learned counsel for the Board and the State as also perused the order passed by this State Appellate Authority (Annexure-‘13’ to the writ application). It appears that before the Appellate Authority, it was contended that in view of the decision of the Hon’ble Full Bench of this Court in **Kalpana Rani Vs. the State of Bihar & Ors.** reported in **2014(2) PLJR 665 (FB)** the issue pertaining to appointment of PSM cannot be reopened. The State Appellate Authority has quoted the relevant paragraph from the judgment of the Hon’ble Division Bench in LPA No.2299 of 2016 which would make it clear that this ground raised by this petitioner is contrary to the views expressed by the Hon’ble Full Bench in the case of **Kalpana Rani** (supra). The Tribunal has not committed any error in rejecting this ground.

12. This Court further finds that the petitioner claimed that she was not given an opportunity to explain before passing of the impugned order. This Court has found in paragraph ‘15’ of the writ application that in his report vide letter no.1252 dated 16.09.2019 (Annexure-‘8’) the District Programme Officer (Establishment), Vaishali has stated that a report was called



from the concerned teacher who has submitted her reply. This statement of the District Programme Officer (Establishment) may be found in Annexure-‘8’ which is an admitted document and the contents thereof have not been challenged by the petitioner. Thus, the plea taken by her that she was not given an opportunity to explain was not a correct plea before the State Appellate Authority.

13. The Tribunal has relied upon a judgment of the Hon’ble Supreme Court in the case of **R. Vishwanatha Pillai Vs. State of Kerala and Others** reported in **(2004) 2 SCC 105** wherein it has been held that no right under Article 311 of the Constitution of India is available to a person obtaining appointment using fraud or forgery or crime or illegality. The Hon’ble Supreme Court has taken a view that in such case the appellant will not be entitled to payment of any salary by virtue of this appointment. Paragraphs ‘16’, ‘17’ and ‘18’ of the judgment of the Hon’ble Supreme Court in the case of **R. Vishwanatha Pillai** (supra) are being reproduced hereunder for a ready reference:-

“**16.** In *Ishwar Dayal Sah v. State of Bihar* [1987 Lab IC 390 : 1987 BBCJ 48 (Pat)] the Division Bench of the Patna High Court examined the point as to whether a person who obtained the appointment on the basis of a false caste certificate was entitled to the protection of



Article 311 of the Constitution. In the said case the employee had obtained appointment by producing a caste certificate that he belonged to a Scheduled Caste community which later on was found to be false. His appointment was cancelled. It was contended by the employee that the cancellation of his appointment amounted to removal from service within the meaning of Article 311 of the Constitution and was therefore void. It was contended that he could not be terminated from service without holding departmental inquiry as provided under the Rules. Dealing with the above contention, the High Court held that if the very appointment to the civil post is vitiated by fraud, forgery or crime or illegality, it would necessarily follow that no constitutional rights under Article 311 of the Constitution can possibly flow. It was held: (Lab IC pp. 394-95, para 12)

If the very appointment to civil post is vitiated by fraud, forgery or crime or illegality, it would necessarily follow that no constitutional rights under Article 311 can possibly flow from such a tainted force. In such a situation, the question is whether the person concerned is at all a civil servant of the Union or the State and if he is not validly so, then the issue remains outside the purview of Article 311. If the very entry or the crossing of the threshold into the arena of the civil service of the State or the Union is put in issue and the door is barred against him, the cloak of protection under Article 311 is not attracted.

17. The point was again examined by a Full Bench of the Patna High Court in *Rita Mishra v. Director, Primary Education, Bihar* [AIR 1988 Pat 26 : 1988 Lab IC 907 : 1987 BBCJ 701 (FB)] . The question posed before the Full Bench was whether a public servant was entitled to payment of salary to him for the



work done despite the fact that his letter of appointment was forged, fraudulent or illegal. The Full Bench held: (AIR p. 32, para 13)

“13. It is manifest from the above that the rights to salary, pension and other service benefits are entirely statutory in nature in public service. Therefore, these rights, including the right to salary, spring from a valid and legal appointment to the post. Once it is found that the very appointment is illegal and is non est in the eye of the law, no statutory entitlement for salary or consequential rights of pension and other monetary benefits can arise. In particular, if the very appointment is rested on forgery, no statutory right can flow from it.”

18. We agree with the view taken by the Patna High Court in the aforesaid cases.”

14. As regards the plea of the petitioner that she is still pursuing her remedy for correction of her date of birth the State Appellate Authority has rightly come to a conclusion that she should have taken steps immediately after she came to know about a different date of birth being mentioned in her certificate. This Court agrees with the views expressed by the learned Authority that on the face of definite verification by the Board in this regard, any document which may be produced by the petitioner at this stage cannot be entertained. This Court has taken note of the relevant paragraphs of the counter affidavit of the Board wherein it has been categorically stated that the date



of birth mentioned in the records of the Board are based on the declarations given by the examinees with the school records at the relevant time.

15. This Court is of the considered opinion that no illegality or infirmity may be found in the order of termination as well as the order passed by the State Appellate Authority.

16. This writ application has no merit. It is, accordingly, dismissed.

(Rajeev Ranjan Prasad, J)

arvind/-

U			
---	--	--	--

