

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3310 of 2020

Nutan Kumari, Wife of Diwakar Jha, Resident of Village Kayastha Kabai,
P.O. Raghapur Deodhi, P.S. Manigachhi, District Darbhanga, Bihar-847239.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Department of Human Resources Department, Government of Bihar, New Secretariat, Patna.
2. The District Magistrate, Collectorate, Darbhanga.
3. District Panchayat Raj Padadhikari, Collectorate, Darbhanga.
4. District Superintendent of Education, Darbhanga.
5. District Deputy Superintendent of Education, Darbhanga.
6. Block Development Officer, Manigachhi, District-Darbhangha.
7. Block Education Officer, Manigachhi, District-Darbhangha.
8. Chairman, Panchayat Teacher Employment Committee-cum-Mukhiya, Gram Panchayat Raj-Raghapur West, Block Manigachhi, District-Darbhangha.
9. Secretary, Panchayat Teacher Employment Committee-cum-Panchayat Secretary, Gram Panchayat Raj-Raghapur West, Block Manigachhi, District-Darbhangha.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. P.N. Shahi, Sr. Adv Mr. Sanjeev Shankar
For the Respondent/s	:	Mr. Jitendra Kumar Royl (Sc13)

CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL JUDGMENT

Date : 07-05-2024

Re:- I.A. No.01 of 2021

This interlocutory application has been filed on behalf of the petitioner to incorporate the following additional reliefs in the prayer portion of the main writ application:-

- (i) For quashing of office order bearing memo no.2122 dated 22.09.2020 issued under the signature of Block Development Officer, Manigachhi (Respondent No.6) by which employment



of the petitioner has been cancelled in view of the order of the District Magistrate dated 16.03.2019.

(ii) For issuance of writ directing the respondents to allow the petitioner to continue on her post with all of its benefits.

(iii) For issuance of writ directing the respondent to pay all the arrear and current dues of the petitioner forthwith.

(iv) For initiation of suo moto criminal proceedings against the respondents for giving false statements in the counter affidavit filed by them in the writ application which have been given with an only intention to mislead this Court.

Having heard learned counsel for the parties, as the present Interlocutory Application being formal in nature, is not opposed, and hence allowed.

The Registry is directed to add the additional prayer made in paragraph 1 of the present petition to the prayer portion of the main writ petition.

Re:-C.W.J.C. No.3310 of 2020

The present writ application has been filed on behalf of the petitioner for the following reliefs:

(i) For issuance of writ for quashing of order dated 16.03.2019 passed by the respondent no.2 in the concerned file, after calling for the same from the said respondent, by which employment of the petitioner on the post of Siksha Mitra has been cancelled on the



ground that the said employment was illegal since the same was made against the roaster point reserved for SC candidate.

(ii) For issuance of writ for quashing of letter no.973 dated 02.04.2019, issued under the signature of the respondent no.3 by which respondent no.8 and 9 have been informed that on the basis of the investigation report of the District Deputy Superintendent of Education, District Superintendent of Education and in terms of order dated 16.03.2019 passed by the respondent no.2 in the concerned file, it has been ordered to cancel the employment of the petitioner on the post of Siksha Mitra. The said respondents have been directed to implement the order of the respondent no.2 and submit the report within 15 days to District Panchayat Section, Collectorate, Darbhanga.

(iii) For issuance of writ for quashing of memo no.32 dated 07.05.2019 issued under the Secretary, Panchayat Teacher Employment Committee, respondent no.9 herein by which the aforesaid letter dated 02.04.2019 has been communicated to the petitioner with instruction to submit her show cause within a week for further action in the matter.

(iv) For issuance of writ commanding the respondents to pay arrear of her monthly salary which has been illegally withheld from the month of April 2019 till January 2020 and thereafter regular salary from the month of February, 2020 onwards.

(v) Any other relief as deem fit and proper in the facts and circumstances of the case.

2. Learned Senior Counsel for the petitioner submits that



petitioner was appointed on the post of Siksha Mitra in the year 2005 and pursuant to the order of aforesaid appointment, petitioner submitted her joining in Middle School, Raghopur, Deodhi, which was accepted by the competent authority and petitioner discharged her duties on the post of Siksha Mitra to the best satisfaction of her superior authorities.

3. In the year 2004, State Government came out with a notification dated 01.07.2006 by which it had been decided that nomenclature of post of Siksha Mitra will be changed and the Siksha Mitra posted in the Primary Teacher will be deemed as Panchayat Sikshak and Siksha Mitra posted in the Middle School will be deemed as Block Teacher.

4. While the petitioner was discharging her duties as Block Teacher, after taking due permission from the competent authority, petitioner successfully completed Diploma in Primary Education in 2009-11 session and passed TET test on 09.11.2009. Further petitioner completed her graduation in 2011-14 sessions. While the petitioner was discharging her duties satisfactorily and getting her salary, one Bindeshwar Ram filed complaint case no.27 of 2015, ten years after appointment before the office of District Teacher Employment Appellate Authority, Darbhanga alleging therein that appointment of the



petitioner is illegal since it has been made against the reserved post for SC candidate.

5. He further submits that the Appellate Authority, after hearing the parties passed the final order in the aforesaid complaint case on 04.08.2017 stating therein that appellant neither has explained the delay of six years in filing the appeal, nor has requested to condone such delay, the circumstances, no order can be passed on the time barred appeal in terms of order passed by the High Court in C.W.J.C. No.11923/2008 as such the said complaint was dismissed (Ann-6 of the writ petition).

6. While the petitioner was discharging her duties satisfactorily and getting her salary on monthly basis, surprisingly all of a sudden, impugned orders contained in Annexure-1 and 2 were communicated to the petitioner and salary of the petitioner was illegally withheld from the month of April 2019.

7. By the impugned order contained in Annexure-1, petitioner was asked to submit her show cause reply and accordingly, petitioner submitted her show cause reply on 11.05.2019 stating therein that no fraud has been committed by her and nothing has been suppressed by her with regard to her appointment and she has completed almost 15 years of



unblemished service.

8. He further submits that the respondents were sitting tight over the matter and her salary was illegally withheld, petitioner was compelled to file an appeal before the Presiding Officer, District Teacher Employment Appellate Authority, Darbhanga against order of cancellation of her appointment and non-payment of salary by L.No.03 dated 16.08.2019.

9. The District Teacher Appellate Authority, Darbhanga has disposed of the appeal with a direction to the petitioner to appear before the Patna Shikshak Niyojan Samiti. The District Teacher Appellate Authority, Darbhanga has disposed of the said application, mentioning therein that he the Authority has already decided the case of the respondent no.10, namely, Bindeshwar Ram.

10. Learned counsel for the petitioner further submits that since 2019, petitioner is running from pillar to post and though she is discharging her duties. During the pendency of the writ application, the service of the petitioner has been terminated and she has challenged the said termination order by way of I.A. No.1 of 2021 (Annexure-11 of the writ application).

11. He further submits that petitioner has filed the present writ application seeking various reliefs including quashing of



order dated 16.03.2019 passed by the respondent no.2 i.e. District Magistrate, Darbhanga in the concerned file for calling for the same from the said respondent, by which employment of the petitioner on the post of Siksha Mitra has been cancelled on the ground that the said employment was illegal since the same was made against the roster point reserved for SC candidate.

12. He further submits that the dismissal order Annexure-11 of the writ application is passed on the direction of the District Magistrate. The District Magistrate has no power to give direction to Block Education Officer to pass an order.

13. Learned counsel for the petitioner relied upon the judgment of Full Bench of this Court **Kalpana Rani vs. State of Bihar & Ors** reported in **2014 (2) PLJR 665**.

14. He further relied upon the judgment of a Division Bench of this Court reported in **2011 (4) PLJR 297**. In para-7 of the said judgment it is stated that the weightage being equal; persons with higher qualification be placed higher in the merit list.

15. He further relied upon the para-10 of the said judgment, in which it has been held that Rule 2 of the Rules defines “Primary School” to mean Government and nationalized schools imparting education for VIIth and VIIIth standard,



primary and middle schools. Rule 8 thereof provides for eligibility for appointment as Block Teacher and Panchayat Teacher. Rule 9 thereof provides for procedure for constitution of selection committee and for selection and appointment of Block Teachers and Panchayat Teachers. Rule 18 thereof provides for appeals arising out of the selection made under the Rules.

16. On the other hand, learned counsel for the respondent no.6 and 7 submits that from the perusal of Annexure-5 of the writ application, it is nowhere written that the petitioner has been appointed as General candidate against the reserved post of Scheduled Caste.

17. He further submits that the employment unit convened a meeting on 21.09.2020 and after going through all the records, it was found that the petitioner was illegally appointed on the reserve seat for Scheduled Caste as Shiksha Mitra. It was decided that the employment of the petitioner should be cancelled and accordingly, the employment of the petitioner was cancelled by the respondent no.6 vide memo no.2122 dated 21.09.2020.

18. Heard the parties at length and perused the materials available on record.



19. It is an admitted fact that there is a delay in challenging the appointment of the petitioner and also that the District Appellate Authority has already passed the order in favour of the petitioner and only on the interference of D.M., termination order was passed against the petitioner. Accordingly, in view of the discussions made above, this writ application stands allowed.

20. The respondent authorities are directed to re-instate the petitioner in service with all consequential benefits.

(Anjani Kumar Sharan, J)

shikha/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17.05.2024
Transmission Date	NA

