

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5610 of 2021

=====

Rajeev Kumar S/o Late Rayeesh Lal Sah, Resident of Village-Affour, P.S.-
Nagra, District-Sarana.

... .. Petitioner/s

Versus

1. The State of Bihar Bihar.
2. The District Magistrate, Saran.
3. The District Education Officer, Saran at Chapra.
4. The District Project Officer (East), Sarana Chapra.
5. The District Programme Officer, Saran.
6. The President Teacher Selection Committee, Nagra, Sarana.
7. The Block Education Officer, Nagra, Sarana.
8. The Mukhiya Affaura Panchayat, Affoura Nagra, Dist.-Saran
9. The Secretary, Affoura, Panchayat, Affoura, Nagra District-Saran
10. Madhu Kumari, W/o Subash Prasad, R/o Village Affour, P.S.-Nagra, Dis-
trict-Saran.
11. Bihar School Examination Board, Patna through its Secretary.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr.Sanjeev Ranjan, Adv. Mr.Binod Kumar Sinha, Adv. Mr.Ajay Kumar Prasad, Adv.
For the BSEB	:	Mr.Siddhartha Prasad, Adv.
For the Resp. no.10	:	Mr.SBK Magalam, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
CAV JUDGMENT

Date : 03-09-2024

Heard learned counsel for the petitioner and learned
counsel for the respondents.

2. The present writ application has been filed for the
following relief/s:-

“(i) For issuance of writ in the nature of



quo-warranto restraining the respondent no.10 from acting as Siksha Mitra in Affoura Nagra Panchayat, since she is not entitled to the aforesaid post being appointed on the basis of documents which was found to be forged in an enquiry report conducted by Block Education Officer, Nagra, Saran.

(ii) For quashing the illegal appointment of respondent no.10 after calling the appointment letter of respondent no.10 from the concerned respondents.

(iii) For a direction to respondent no.2 to recover entire salary which respondent no.10 received from the date of appointment till date as she did not fulfill the criterion/conditions fixed by the Government in Panchayat Shiksha Mitra Appointment Rules.”

3. The brief facts of the case is that for the purpose of imparting education in the village, the Government of Bihar decided to appoint Shiksha Mitra i.e. teachers through the Panchayat on the approval of District Magistrate on contract basis and for the purpose of appointment of Shiksha Mitras Rules namely Panchayat Shiksha Mitra appointment Rule (hereinafter referred to as “the Rule”) has been framed.



4. The respondent no.10 submitted documents for appointment on the post of Siksha Mitra. There were total nine posts of Siksha Mitra in Affoura Nagra Panchayat and the Sukh Suvidha Committee of Affoura Nagra Panchayat headed by respondent no.8 and 9 selected only five candidates for the appointment on the post of Siksha Mitra and they have been appointed by an order issued vide letter no.09 dated 08.02.2003 which has been confirmed by “Mukhiya” and Panchayat Secretary, Affoura Panchayat and list of selected candidates at sl. no.1 to 5, by which the respondent no.10 was also appointed.

5. Learned counsel for the petitioner further submits that the respondent no.10 had submitted forged documents showing 406 marks in connivance with appointment Committee. In fact, only 400 marks in the marksheet has been obtained by respondent no.10. Therefore, the petitioner raised objection before the Block Education Officer, “Public Jan Sikayat Koshang” respondent no.6 regarding appointment of respondent no.10 being ineligible against the Rules of Siksha Mitra.

6. Thereafter, petitioner asked from Public Information Officer, Bihar School Examination Board (hereinafter referred



to as BSEB), Patna under RTI Act, 2005, to furnish the matriculation marks of respondent no.10 and in response thereof, letter no.Pat1269 dated 08.11.2011 of Deputy Secretary, BSEB, Patna was furnished, in which, marks of 400 was said to be obtained by respondent no.10.

7. The Block Education Officer by his letter no.381 dated 20.09.2016 informed the District Programme Officer regarding illegal appointment of respondent no.10 on the basis of forged and fabricated documents and directed the Mukhiya and the Panchayat Secretary, Affoura Nagar Panchayat to submit the report after enquiry but they did not submit the report. Thereafter, respondent no.6 recommended the respondent no.3 to take action against the Panchayat Secretary, Affoura Nagra Panchayat in accordance with law.

8. It is next submitted that the District Project Officer (Establishment), Saran by his letter no.701 dated 07.09.2017 directed the Police Inspector, Vigilance Investigating Bureau, Saran, Chhapra, to take action against the fraud committed by the respondent no.10 in view of the enquiry report. Since irregularities were detected but no steps were taken by the respondent authorities, the petitioner again lodged objection on the working of respondent no.10 before the District



Teacher Appointment Appellate Authority, Saran, who did not pass any final order in view of the fact that CWJC No.5633 of 2020 is pending before this Court.

9. Per contra, learned counsel for the respondent no.10 submits that the writ petition is not maintainable in law as from the appointment of respondent no.10, no cause of action has arisen to the writ petitioner, as he was not an applicant for appointment as a Panchayat Siksha Mitra in the selection process pursuant to which, the respondent no.10 was appointed. The District Teachers Appellate Authority before whom the petitioner had approached is still awaiting to finally adjudicate upon the validity of the deponent's appointment as a Panchayat Siksha Mitra in the year 2003.

10. It is further submitted that the full Bench of this Court in the case of *Kalpana Rani Vs. The State of Bihar and others [2014 (2) P.L.J.R. 665]*, had categorically held that the District Teachers Appellate Authority constituted under Bihar Panchayat Elementary Teacher (Appointment and Service Condition) Rules, 2006 does not have the jurisdiction to decide any complaint made against the appointment of Panchayat Siksha Mitra.

11. Learned counsel for the respondent no.10 further



submits that the petitioner does not have any locus standi to maintain this writ petition before this Hon'ble Court since he was not an applicant for the post against which the respondent no.10 was appointed and furthermore, since the issue of validity of appointment of respondent no.10 is still pending before the District Teacher Appellate Authority and it is yet to record its finding on merit of the case, the writ petition deserves to be dismissed.

12. It is submitted that the petitioner himself has placed on record a report of Block Education Officer, Nagra, Saran dated 10.10.2017 according to which no forgery was committed by the respondent no.10 while submitting her application form. The petitioner has not approached this Court with clean hands and in order to prejudice this Court, he has produced the fabricated marksheet of the respondent no.10 and her fabricated application form which she filled up for the purposes of her appointment as Panchayat Siksha Mitra.

13. Admittedly, it is clear from perusal of Annexure-1 of the writ petition that where the respondent no.10 has allegedly signed and under her signature, she has also mentioned her designation as Panchayat Siksha Mitra though she was yet to be appointed. Similarly her marks-sheet of matriculation



examination enclosed as page-23 of the writ petition, showing 406 marks obtained by her in the matriculation examination is also a fabricated document created by the petitioner. The respondent no.10 has secured 400 marks only in the matriculation.

14. From the report of Block Education Officer dated 10.10.2017, it is evident that the Block Education Officer has clearly mentioned that the respondent no.10 had submitted her application form, according to which she had obtained only 400 marks and therefore, the allegation of petitioner that she has obtained her appointment on the basis of forged documents is entirely false.

15. It is submitted that the writ petitioner is implicating the respondent no.10 due to previous enmities, as he has been made accused in Chapra Mahila P.S. Case No.30 of 2016 dated 30.06.2016 for the offences u/s 498(A)/34 of the Indian Penal Code. A land dispute is also pending between the parties. The petitioner is the son of the brother-in-law of the respondent no.10. The two families living in a joint house are on litigating terms, therefore, the petitioner by forging the documents of respondent no.10 seeks her removal from service.



16. The matriculation marksheet of the respondent no.10 alleged to be obtained from the BSEB under RTI Act was also fabricated one and since the enquiry was conducted by Block Education Officer on the basis of documents produced by the petitioner, without obtaining the original documents from the Panchayat, the report of the Block Education Officer as contained in Annexure-4 of the writ petition cannot be relied upon by the petitioner. Contrary, to the aforesaid report, the petitioner has himself placed on record another report of Block Education Officer and from perusal of the said report based upon the original records of the appointment, it is evident that no wrong was committed by the respondent no.10 while filing her application for appointment. The said report clarifies that the marksheet, which the respondent no.10 had produced along with her application for appointment as Panchayat Siksha Mitra, as also in the application itself, where she had mentioned her total marks obtained in matriculation examination as 400 marks only which is 44.44% of the total marks.

17. It is lastly submitted that writ petition is fit to be dismissed on the ground of delay and laches. The respondent no.10 was appointed as Panchayat Siksha Mitra in the year



2003, her services were absorbed as a Panchayat Teacher w.e.f. 01.07.2006 but neither on the date of her appointment nor on the date of her absorption, any complaint was made by the petitioner rather it is only after filing of partition suit and a criminal case against the petitioner in the year, 2016, on the pretext of fabricated documents, wherein, he is challenging the appointment of the respondent no.10. Since, the appointment was made in the year, 2003 and the complaint filed before the District Teachers Appellate Authority in the year, 2016, so, the same is barred by rule of Limitation and therefore, the writ petition is fit to be dismissed.

18. Learned counsel for the petitioner has vehemently opposed the submission of learned counsel for the respondent no.10 that the petitioner has no locus standi to bring in light the action of respondent no.10. He has relied upon judgment of the Apex Court in ***AIR 2014 SC 246 (Central Electricity Supply Utility of Odisha v. Dhobei Sahoo and others with Bijaya Chandra Jena vs. Dhobei Sahoo & Ors.*** Paragraphs 17 and 18 of the judgment reads as under:-

“17. In Centre for PIL and another v. Union of India and another, a three-Judges Bench, after referring to the decision in R.K. Jain (supra), has ruled thus:-



“64. Even in R.K. Jain case, this Court observed vide para 73 that judicial review is concerned with whether the incumbent possessed qualifications for the appointment and the manner in which the appointment came to be made or whether the procedure adopted was fair, just and reasonable. We reiterate that the Government is not accountable to the courts for the choice made but the Government is accountable to the courts in respect of the lawfulness/legality of its decision when impugned under the judicial review jurisdiction.”

18. From the aforesaid exposition of law, it is clear as noon day that the jurisdiction of the High Court while issuing a writ of quo warranto is a limited one and can only be issued when the person holding the public office lacks the eligibility criteria or when the appointment is contrary to the statutory rules. That apart, the concept of locus standi which is strictly applicable to service jurisprudence for the purpose of canvassing the legality or correctness of the action should not be allowed to have any entry, for such allowance is likely to exceed the limits of quo warranto which is impermissible. The basic purpose of a writ of quo warranto is to confer jurisdiction on the constitutional courts to see that a public office is not held by usurper without any legal authority. While dealing with the writ of quo warranto another aspect has to be



kept in view. Sometimes a contention is raised pertaining to doctrine of delay and laches in filing of a writ of quo warranto. There is a difference pertaining to personal interest or individual interest on one hand and an interest by a citizen as a relator to the court on the other. The principle of doctrine of delay and laches should not be allowed any play because the person holds the public office as a usurper and such continuance is to be prevented by the court. The Court is required to see that the larger public interest and the basic concept pertaining to good governance are not thrown to the winds.”

19. Reliance has also been placed upon the judgment of the Apex Court passed in the case of ***Rajesh Awasthi versus Nand Lal Jaiswal and others (2013) 1 SCC 501*** at para-19, which reads as under:-

“19. A writ of quo warranto will lie when the appointment is made contrary to the statutory provisions. This Court in Mor Modern Coop. Transport Society Ltd. v. Govt. of Haryana held that a writ of quo warranto can be issued when appointment is contrary to the statutory provisions. In B. Srinivasa Reddy, this Court has reiterated the legal position that the jurisdiction of the High Court to issue a writ of quo warranto is limited to one which can only be issued if the



appointment is contrary to the statutory rules. The said position has been reiterated by this Court in Hari Bansh Lal wherein this Court has held that for the issuance of writ of quo warranto, the High Court has to satisfy itself that the appointment is contrary to the statutory rules.”

20. Learned counsel for the petitioner further submits that the respondent relying upon the Full Bench decision of this Court in **Kalpana Rani (supra)** will not go in favour of the respondent. This matter was already dealt by this Court in LPA No.1068 of 2017 dated 14.12.2018 at paragraphs-24 and 25, which is reiterated herein below:-

“24. Nevertheless, another important feature that has been raised by the contesting respondents is that this Court has categorically held on several occasions that the appointments of Shiksha Mitras cancelled after their absorption as Panchayat Teacher could not be sustained, as the Appellate Authority did not have the power to examine the legality of also as Shiksha Mitras as it is empowered to decide the appeal arising out of employment of teachers under the rules. This aspect of the matter was vehemently argued by the respondents. In this context, learned counsel for the respondents has referred to a decision reported in 2016 (4) P.L.J.R. 173 (Hari Shankar Sah & Ors. vs. State of Bihar & Ors.) wherein



*the same principle was decided. However, though reinstatement had been ordered, the same was without any back-wages. A similar issue arose in a Full Bench decision of this Court in the case of **Kalpana Rani vs. State of Bihar [2014 (4) P.L.J.R. 665]** wherein Rule 18 to 20 of the Bihar Panchayat Elementary Teachers (Employment and Service Conditions) Rules, 2006 was under consideration and the Full Bench of this Court held that on or after the 1st of July, 2006, when rules were enforced, the cadre of Panchayat Shiksha Mitra stood abolished and, therefore, no appointments could be made to the post of Shiksha Mitra. In the said case, it was held that a belated challenge to the appointments of the private respondents and claim for absorption as Panchayat Teacher could not be entertained, irrespective of the appointment of private-respondents as Shiksha Mitra. It was further held that the services of Shiksha Mitra absorbed as Panchayat Teacher under Rule 23 cannot be terminated in any manner or for any reason other than the one prescribed under Rules. The District Magistrate was not an authority competent to decide the grievance in respect of Shiksha Mitra or to resolve dispute relating to appointment, termination etc. of Panchayat Teacher. This principle was considered by the learned Single Judge while deciding the writ application and it was held that the removal of the private*



respondents was wholly illegal.

25. Having considered all facts and circumstances, we are fully conscious of the law as has been settled by the Full Bench in the case of Kalpana Rani (supra) and it has also been brought to our notice that the matter went up to the Apex Court and the S.L.P. preferred against the aforementioned Full Bench judgment has been dismissed. Thus, there is no dispute with regard to the settled proposition of law as is being argued by the respondent 1st set herein, but in the given facts and circumstances, the said judgment cannot come to the rescue of the contesting respondents as the element of fraud is patent and manifests all through the chequered history of this litigation. Yet petitioners had continued in service till objections were raised. Such objections have been substantiated by subsequent reports particularly the Letter No.3355 of 2011 dated 10.6.2011 issued by the Bihar School Examination Board (Senior Secondary), Budh Marg, Patna (Annexure-A1 series).”

21. Considering the rival submissions of the parties and on perusal of the record, it is admitted fact that petitioner got some some document relating to the appointment of the respondent no.10 on the basis of RTI Act, in which, the marks



of the respondent no.10 was mentioned as 406, which is not correct and the respondent no.10 has filed the counter-affidavit enclosing the document showing that the respondent's appointment is on the basis of 400 marks obtained i.e. 44.44%.

22. In this fact and circumstance, this disputed fact cannot be decided by this Court which is filed under Article 226 of the Constitution of India.

23. The writ application is accordingly dismissed.

24. Petitioner is at liberty to take legal action in accordance with law.

(Anjani Kumar Sharan, J)

pallavi/-

AFR/NAFR	NAFR
CAV DATE	29.08.2024
Uploading Date	03.09.2024
Transmission Date	N.A.

