

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3685 of 2020

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Jai Prakash Sharma, Son of Rajendra Sharma, Resident of Village Sherpur,
Police Station Harnaut, District Nalanda at Biharsharif.

... .. Petitioner/s

Versus

1. The State of Bihar through Additional Chief Secretary, Department of Education, Bihar, Patna.
2. The Additional Chief Secretary, Department of Education, Bihar, Patna.
3. The Director, Primary Education, Bihar, Patna.
4. The District Education Officer, Nalanda at Biharsharif.
5. The District Programme Officer, Establishment, Nalanda at Biharsharif.
6. The Block Education Extension Officer, Harnaut, District Nalanda at Biharsharif.
7. The Gram Panchayat Raj, Nehusa, P.S. Harnaut, District Nalanda at Biharsharif.
8. The Panchayat Secretary, Gram Panchayat Raj, Nehusa, P.S. Harnaut, District Nalanda at Biharsharif.
9. The Mukhiya, Gram Panchayat, Nehusa, P.S. Harnaut, District Nalanda at Biharsharif.
10. Jyoti Rani Wife of Dharamvir Prasad Resident of Village- Sonsa, P.S.- Rahui, District- Nalanda at Biharsharif.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Sanjay Kumar, Advocate
For the Respondent/s : Mr.Madhaw Pd. Yadaw (GP23)
Mr.Rajesh Kr. Sinha, AC to GP 23

For the Respondent No.10: Mr.Sanjay Prasad, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

6 12-12-2024 The petitioner was appointed as Panchayat Shiksha Mitra in the year 2003. Indisputably, at the time of his appointment, the petitioner did not have the requisite academic qualification of Intermediate pass. He joined service as Shiksha



Mitra on contractual basis initially for a period of 11 months with a clause to enhance the said period for 11 months more on two occasions, total being 33 months. It is also not disputed that the petitioner worked up to the year 2005. Thereafter, his service was terminated on the ground that he does not have requisite qualification of Intermediate degree. As per the 2002 Rules, the petitioner was obliged to obtain and produce the said degree within 33 months of his appointment. It is the case of the petitioner that he privately took admission in Devghar Vidyapeeth in the year 2004 for obtaining Sahitya Bhushan degree which is equivalent to Intermediate. The examination was held in 2005 and he obtained his certificate acquiring Intermediate degree in second division in the year 2008.

2. It is contended on behalf of the petitioner that in the meantime, the private respondent having Intermediate degree was appointed in the year 2005 as Shiksha Mitra in the vacant post of the petitioner. Subsequently, in 2008, she became Prakhanda Teacher in the said school. Further case of the petitioner is that though petitioner joined his service after obtaining Intermediate degree on 25th of September, 2008 and the school authority received his service till January, 2020, he was not paid any salary for which he was entitled. The petitioner



also claimed that employment of the private respondent in the vacant post of the petitioner in the year 2008 was illegal and bad.

3. It is needless to say that the scheme of appointment of Shiksha Mitra in Panchayat School was envisaged by the State Government in order to comply with the constitutional guidelines and the scheme of Sarva Shiksha Abhiyan. The scheme framed under Government Resolutions on 21st of June, 2002 and modified on 11th of August, 2004 and 7th of April, 2005 and explained on 21st of April, 2005 has been succinctly described and discussed, in the judgment of Smt. Renu Kumari Pandey, the observation of which was recorded by the subsequent Full Bench decision in ***Kalpana Rani v. State of Bihar & Ors.*** reported in ***2014 2 PLJR 665***.

4. It is already stated that the resolution of 2002 was modified by resolution dated 11th of August, 2004, to the extent provided, inter alia:

“..... (iii) *In the event in any Panchayat women candidates having Intermediate qualification are not available, women candidates having Matriculation or equivalent qualification may be employed on condition that such candidate will acquire the Intermediate or equivalent qualification within three years. The District Magistrate was required to make proposal in respect of such candidates to*



the State Government and the State Government would obtain relaxation under Regulation 5 of National Council for Teacher Education (Determination of minimum qualification for recruitment of teachers in schools) Regulation, 2001 from National Council for Teacher Education.”

5. Thus, 2002 scheme which was subsequently modified by the 2004 gave the right only to the women authority to acquire Intermediate degree when in the absence of any suitable candidate having Intermediate degree, a woman candidate with matriculation degree is appointed as Shiksha Mitra. A male candidate does not have such right of obtaining Intermediate degree after his joining under 2002 scheme.

6. When the initial joining of the petitioner appears to be in violation of the Government scheme, subsequent acquisition of Intermediate degree does not make him entitle to claim reinstatement in the school as Prakhanda Teacher.

7. Furthermore, the initial appointment of the petitioner was contractual for 11 months. When the petitioner was not in service, the private respondent was initially appointed as Shiksha Mitra and then promoted to Prakhanda Teacher, having had qualification for such absorption.

8. I have already noted that subsequent acquisition of Intermediate degree by a male candidate cannot be said to be



relevant consideration for his continuation in service or reinstatement. The said right was only granted to the women in order to achieve the requirement of the fundamental right enshrined in Article 15 (3) of the Constitution of the India.

9. In view of the above discussion, I do not find any ground to hold that the right of the petitioner was crystallized on acquisition of higher degree equivalent to Intermediate in the year 2005 or 2008.

10. At the same time, I am not unmindful to note that the petitioner is made out a specific case that the school authority accepted his service from 2008 to 2020 without any break but he was not paid a single farthing during the said period. The service of a person cannot be taken by an authority without payment of salary.

11. Therefore, the instant writ petition is disposed of directing the concerned authority, i.e., Respondent Nos. 3, 4, 5, 6 and 8 to consider as to whether the service of the petitioner was taken as Shiksha Mitra from 2008 to January, 2020 and in such case, the petitioner shall get the salary/honorarium for the said period.

12. The above-mentioned issue shall be decided within 90 days from the date of communication of this order.



13. With the above order, the instant writ petition is disposed of.

(Bibek Chaudhuri, J)

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