

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5910 of 2019

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Amod Kumar Jha S/o Late Padmanand Jha resident of near Laxmi Mandir,
Kolhua, Ward No. 14, P.S. and P.O. Kursa Kanta, District Araria.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Human Resources Deptt. Govt. of Bihar, Patna.
3. The District Magistrate, Araria.
4. The District Education Officer Araria.
5. The District Superintendent of Education Araria.
6. The Panchayat Secretary, Gram Panchayat Kamaldaha P.S. Kursa Kanta, District- Araria.
7. The Mukhiya, Gram Panchayat Kamaldaha P.S. Kursa Kanta, District Araria.
8. Chandradev Yadav S/o Late Saraf Lal Yadav Resident of Village- Hatta Bakhri, P.O. and P.S. Kursa Kanta, District- Araria.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Manager Sah
For the Respondent/s : Mr. Prabhakar Jha (Gp27)

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

JUDGMENT AND ORDER

C.A.V.

Date : 28-02-2024

The petitioner being aggrieved by the order, dated 10.12.2018, passed by the learned State Appellate Authority in appeal case No. 362 of 2017, has filed the present writ application whereby the order, dated 24.09.2011, passed by the District Teachers employment Appellate Authority, Araria, in case No. 07 of 2008, has been set aside and respondent No. 8 has been directed to be reinstated as Panchayat Teacher in middle school Kolhua



Gram Panchayat Kamaldaha district Araria with consequential benefits.

2. The factual matrix of the case is that pursuant to the advertisement published in the year 2005, the process of appointment of Panchayat Shiksha Mitra (hereinafter referred to as P.S.M.) started in the Gram Panchayat Kamaldaha, under Kursa Kanta block, in Araria district. Eight vacant posts of P.S.M. were advertised for different schools, situated in the Gram Panchayat, out of which two posts were advertised under unreserved category, 2 posts were for UR-female, one for SC-male, one for SC-female, one for EBC-male and one for EBC-female. No post for BC category was advertised for appointment. The petitioner applied for appointment of Shiksha Mitra under general category whereas the respondent No. 8 had applied under BC category despite the fact that no post of BC category was advertised.

3. The Selection Committee, on the basis of merit panel prepared category-wise, issued appointment letter to the petitioner in general category, however, the appointment letter to respondent No. 8 was also issued having higher marks than the petitioner under BC category which would be evident from Annexure R8/3 of the counter affidavit.



4. Pursuant to the appointment letter, petitioner joined as Shiksha Mitra and completed the training, received a salary and admittedly was converted as a Panchayat Shikshak (Teacher) after coming into force Bihar Panchayat Elementary Teacher (Employment and Service Conditions) Rules, 2006 (herein after referred to as the “2006 Rules”), with effect from 01.07.2006.

5. The respondent no. 8 was not allowed to join as P.S.M. Aggrieved by the same, the petitioner filed a representation before the District Magistrate, Araria, which was forwarded to District Education Officer, Araria, vide letter No. 1995, dated 10.06.2005, for inquiry and proper action. The B.E.E.O, Kursa Kanta, submitted a report to the D.M., Araria, vide letter No. 188, dated 15.07.2005, stating therein that respondent No. 8 was appointed against BC category post, but as per roster, in the Gram Panchayat Kamaldaha, no seat was allocated to BC category and respondent no. 8 was issued appointment order against non-existent and unsanctioned post of B.C. category.

6. The respondent no. 8 came before this Court, in C.W.J.C. No. 14316 of 2006, for his appointment which was disposed, vide order, dated 01.06.2007, with a direction that the District Magistrate/District Superintendent of Education shall look into the matter and consider the same and issue appropriate order



and direction to the concerned Gram Panchayat to take action within eight weeks.

7. At this stage, B.D.O., Kursa Kanta, submitted an inquiry report, dated 27.08.2007, vide letter No. 437 before the Incharge Officer, District Development Unit, Araria, stating therein that Chandradev Yadav, respondent No. 8 has obtained 68.8 per cent marks in the intermediate exam, as such, he should have been appointed under unreserved male category but in his place Amod Kumar Jha (petitioner) was appointed, who has secured only 45% marks in the intermediate examination. Accordingly, the District Superintendent of Education gave a direction to the Employment Unit of the Gram Panchayat to cancel the appointment of the petitioner and appoint respondent no. 8 on the post of Panchayat Teacher, vide letter no. 1464, dated 19.09.2008. The Panchayat Secretary, thereafter, cancelled the appointment of the petitioner and in his place, respondent no. 8 was appointed.

8. Now, it was the turn of the petitioner to approach this Court, in C.W.J.C. No. 15252 of 2008, and the writ petition was disposed, vide order, dated 16.08.2010, with a direction to the petitioner to file an appeal before the Appellate Authority. The petitioner moved before the District Appellate Authority, Araria, in



Case No. 07 of 2008, and the District Appellate Authority, Araria, by its order, dated 24.09.2011, set aside the order of appointment of responded no. 8 and reinstated the petitioner as Panchayat Teacher.

9. The respondent no. 8, being aggrieved by the order of the District Appellate Authority, Araria, moved before this Court, in C.W.J.C. No. 18397 of 2011, which was disposed of vide order, dated 25.07.2017, with a liberty to the respondent No. 8 to prefer an appeal before the State Appellate Authority.

10. An Appeal Case No. 362 of 2017 was filed by respondent no. 8 before the State Appellate Authority and the State Appellate Authority allowed the appeal of respondent no. 8 and set aside the order dated 14.09.2011, passed by the District Appellate Authority.

11. Learned counsel for the petitioner argued that respondent No. 8 was appointed on non-existent post, under BC category, on the basis of his application submitted under the BC category. The report of the B.E.E.O., dated 15.07.2005, shows that the petitioner made an application under BC category for appointment; whereas the post of BC category was not advertised as per the reservation roster applicable in the concerned Gram Panchayat. He further submits that admittedly, the petitioner was



appointed as P.S.M. whereas responded No. 8 was never appointed as P.S.M. The petitioner successfully completed his tenure of 11 months as P.S.M. in the same middle school and his contract was renewed from 12.05.2006 to 11.04.2007 and thereafter, coming into force of the 2006 Rules, with effect from 01.07.2006, the petitioner was absorbed as Panchayat Teacher with effect from 01.07.2006. The respondent no. 8 not being in the service as P.S.M. as on 01.07.2006, he was not entitled to be appointed/absorbed as Panchayat Teacher. The order passed by the State Appellate Authority is in the teeth of Full Bench decision of this Court, in the case of **Kalpana Rani v. The State of Bihar**, reported in **2014 (2) PLJR 665**.

12. On the other hand, learned counsel for the respondent no. 8 argued that respondent no. 8 had applied under BC category and not for the post of BC category and a selection was to be done as per the merit and, admittedly, respondent no. 8 was placed at second in the merit list with 19 weightage points and, therefore, was entitled to be appointed on the second post of the unreserved category.

13. The State Appellate Authority has allowed the case of respondent no. 8, on the basis of the fact that this Court directed the petitioner to move before the State Appellate Authority and the



competent authority passed the order, as such, the impugned order does not suffer from any infirmity.

14. The State Appellate Authority has also considered the decision of the Division Bench of this Court rendered in L.P.A. No. 782 of 2016, dated 10.12.2008, and has held that the petitioner was wrongly appointed in unreserved category and the appellant/Respondent No. 8 in BC category as P.S.M.

15. I have heard learned counsel for the parties and have gone through the materials and documents available on record including the orders passed by the appellate authorities. This fact is not in dispute that no post of BC category was advertised as per the roster for appointment in the particular Gram Panchayat. The fact that petitioner was appointed as P.S.M. on 11.05.2005 and the respondent no. 8 was not allowed to join as P.S.M. on the report of the B.E.E.O. dated 15.07.2005 which says that respondent no. 8 was appointed against BC category post but as per roster, in the Gram Panchayat, Kamal Daha, no seat was allocated to BC category is also not disputed. It is also an admitted position that as on 01.07.2006 i.e., at the time of coming into force of 2006 Rules, the petitioner was converted/absorbed as Panchayat Teacher whereas the responding no. 8 was never absorbed as Panchayat Shikshak. The respondent no. 8 was appointed on the basis of



another report, dated 27.08.2007, stating that since the respondent no. 8 has obtained more marks in the intermediate examination, he should have been appointed under unreserved category and the petitioner, having obtained lesser marks than respondent no. 8, was wrongly appointed.

16. The materials on record i.e., report of the B.E.E.O., dated 15.07.2005, clearly indicates that respondent no. 8 had applied for BC category despite no post having been available for that category, as such, the issuance of appointment letter, to respondent no 8, was not valid and accordingly, respondent no. 8 was not appointed as P.S.M. Merely assessment of merit of respondent no. 8, by the Panchayat Employment Unit, without having any post advertised and on the basis of application submitted by respondent no. 8, under BC category, cannot defeat the right of the petitioner under his own category.

17. In the matter of appointment of P.S.M./Panchayat Shikshak, roster points are applied and on the basis of the roster, the post under various categories are advertised for appointment in each panchayat. The merit of the candidates are assessed on the basis of the marks obtained by them in intermediate examination, category-wise. Since no post for BC category was advertised and the respondent no. 8 applied for BC category, as such, merely



because the respondent no. 8 was having higher marks in intermediate, cannot be appointed and the Employment Unit, in the year 2005, rightly did not allow the respondent no. 8 to join as P.S.M.

18. Second aspect, of the matter, is that the case of **Renu Kumari Pandey and Others v. The State of Bihar and Others** reported in **2011(4) PLJR 297**, has been confirmed by a Full Bench of this Court, in the case of **Kalpana Rani** (supra), wherein, it has been held in paragraph 118 which are as follows:

“118. Having thus given my anxious consideration, I am of the view that after 1.7.2006, no person, who was earlier an Patna High Court LPA No.1569 of 2010 dt. 15-05-2014 aspirant for the post of Panchayat Shiksha Mitra, can be appointed only because his or her name figured in the panel of Panchayat Shiksha Mitra. The post of Panchayat Shiksha Mitra has been abolished with effect from 01.07.2006 and after abolition of the post, no one can be appointed on the post of Panchayat Teacher on the basis of his mere empanelment of Panchayat Shiksha Mitra. The view taken in the judgment of the Division Bench in the case of Smt. Renu Kumari Pandey (supra) is a good law. I will have no hesitation in holding that the earlier Division Bench judgment in the case of Kishori Prasad (supra), for the reasons indicated above, has not correctly decided the law and is, accordingly, overruled.”



19. The respondent no. 8 is claiming his right for appointment as P.S.M. or his non-continuance as P.S.M. From the facts, it emerges that the petitioner was appointed as Shiksha Mitra in 2005 itself, received honorarium and was also absorbed as P.S.M. after coming into force of 2006 Rules , with effect from 01.07.2006 and also received his salary as Panchayat Teacher.

20. Applying the principle laid down by the Full Bench of this Hon'ble court, it is difficult to hold that merely because respondent no. 8 was having higher marks, in the intermediate examination, and was not appointed/joined as P.S.M., prior to 01.07.2006, he is entitled to be appointed as Panchayat Shikshak on the basis of his merit position after conversion of Shiksha Mitra as Panchayat Shikshak. The Full Bench judgment applies in full force in the facts of the present case and merely by virtue of having higher marks than the petitioner, the respondent no. 8 is not entitled for appointment as Panchayat Shikshak. The Division Bench judgment of 10.12.2018, relied upon by the State Appellate Authority, is not applicable in the facts of the present case.

21. While taking note of the Full Bench judgment in **Kalpana Rani** (supra) another Division Bench of this Court has held in the case of **The State of Bihar and Others v. Sawalia Rai and others**, reported in 2019 (2) PLJR 275 that there is no



dispute with regard to the proposition of law as has been settled by the Full Bench but has carved out an exception that the element of fraud is patent and manifest and a judicial discretion can be exercised on the ground of established fraud.

22. In the present case, there is no allegation of fraud in the selection/appointment of petitioner. Learned State Appellate Authority, while setting aside the appointment of the petitioner as P.S.M., has directed for appointment of the respondent no. 8 merely on the basis of having secured more marks than the petitioner. This aspect cannot be examined as per the Full Bench judgment. Thus, in my opinion, the Full Bench judgment is applicable in the facts of the case and the appointment of petitioner cannot be questioned after his absorption as Panchayat Shikshak (Teacher) on 01.07.2006.

23. In the conspectus of facts discussed hereinabove and the fact that no post for BC category was advertised and the petitioner applied under the BC category, I am of the considered opinion that order passed by the State Appellate Authority is not sustainable in law and the authority has erred in directing the reinstatement of respondent no. 8 in place of the petitioner.

24. In the result, this writ application is allowed and the order, dated 10.12.2018, passed by the learned State Appellate



Authority in Appeal Case No. 362 of 2017, is set aside.
Consequently, the reinstatement of respondent no. 8 is also set aside. The respondent/authority is directed to reinstate the petitioner on the post held by him after removing the respondent no. 8 immediately without any back-wages.

(Anil Kumar Sinha, J)

HarshPandey/-

AFR/NAFR	AFR
CAV DATE	08.12.2023
Uploading Date	01.03.2024
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