

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.481 of 2017

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Sanjay Kumar Tiwari S/o Shri Rajnath Tiwary, Resident of Village-Bhusaula,
P.O.-Damodarpur, P.S. Block-Sahpur, District-Bhojpur

... .. Petitioner/s

Versus

1. The State Of Bihar through the Commissioner-cum-Secretary, Human Resources Development Department, Government of Bihar, Patna.
2. The District Magistrate, Bhojpur, Ara.
3. The Sub-Divisional Officer, Jagdishpur, District-Bhojpur,
4. The District Panchayat Raj Officer, District-Bhojpur, Ara.
5. The District Education Officer, District-Bhojpur, Ara.
6. The Block Development Officer, Block-Sahpur, District-Bhojpur, Ara.
7. The Block Education Officer, Block-Sahpur, District-Bhojpur, Ara.
8. The Panchayat Secretary, Panchayat Teachers Employment Unit Damodarpur, Block-Sahpur, District-Bhojpur, Ara.
9. Shri Upendra Yadav S/o Shri Ram Swaroop Yadav, Resident of Village + P.O.-Damodarpur, P.S.-Sahpur, District-Bhojpur, Ara.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 2716 of 2017

=====

Upendra Yadav Son of Ramrup Yadav, resident of village and Post office Damodarpur, Police Station and Anchal Shahpur, District - Bhojpur at Ara

... .. Petitioner/s

Versus

1. The State Of Bihar.
2. The Principal Secretary, Human Resources Development Department, Government of Bihar, New Secretariat Building, Bailey Road, Patna-800001.
3. The District Magistrate, Bhojpur at Ara.
4. The Sub Divisional officer, Jagdishpur, District Bhojpur at Ara.
5. The District Teachers Employment Appellate Tribunal, Bhojpur at Ara.
6. The District Superintendent of Education, Bhojpur at Ara.
7. The Block Education Extension Officer, Shahpur District Bhojpur at Ara.
8. The Block Development officer, Shahpur, District Bhojpur at Ara.
9. The Mukhia, Gram Panchayat Damodarpur, Anchal Shahpur, District Bhojpur at Ara.
10. The Panchayat Secretary, Grampanchayat Damodarpur, Anchal Shahpur,



District Bhojpur at Ara

11. Sanjay Kumar Tiwary, Son of Rajnath Tiwary, resident of village - Bhusaula, Post office Damodarpur, Police Station Shahpur, District - Bhojpur at Ara.

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 481 of 2017)

For the Petitioner/s	:	Mr.Pramod Kumar Sinha, Advocate
	:	Mr. Tarkeshwar Nath Thakur, Advocate
	:	Mr. Chetan Kumar, Advocate
For the Respondent/s	:	Mr.Subhash Chandra Mishra- SC 16
	:	Mr. Pramod Kumar Singh, AC to SC 16

(In Civil Writ Jurisdiction Case No. 2716 of 2017)

For the Petitioner/s	:	Mr.Rakesh Kumar Shrivastava, Advocate
For the Respondent/s	:	Smt. Shilpa Singh- GA 12
	:	Mr. Ram Vinay Prasad Singh, AC to GA 12

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL JUDGMENT

Date : 25-06-2024

Re : C.W.J.C. no. 481 of 2017

1. Heard learned counsel for the parties concerned.
2. The petitioner has prayed for quashing the order dated 25.11.2015 bearing Letter no. 1125, passed by the Sub-Divisional Officer, Jagdishpur, by which the services of the petitioner as Panchayat Shiksha Mitra/ Panchayat Teacher was directed to be cancelled on the ground that after inquiry, it has come to light that irregularity was committed in the appointment process of Panchayat Shiksha Mitra. The petitioner further prays for quashing of consequential letter dated 01.12.2016 bearing Memo no. 6139, letter dated 02.12.2016 bearing Memo no. 6141 and letter dated 02.12.2016 bearing Memo no. 6142, issued by District



Education Officer, Bhojpur at Ara.

3. The brief facts of the case is that pursuant to an Advertisement for appointment as Panchayat Shiksha Mitra in the year 2004-2005 under Damodarpur Panchayat, Block-Shahpur, District- Bhojpur at Ara, petitioner applied for appointment against the said post under Un-reserved category. The petitioner's name figured at serial no. 3 in the selection list and was appointed as Panchayat Shiksha Mitra. The respondent no. 9 namely Upendra Yadav filed an appeal before the District Teachers Employment Appellate Authority, Bhojpur at Ara bearing Appeal Case no. 9 of 2011, which was dismissed on the ground that after coming into force of ***Bihar Panchayat Primary Teachers (Employment and Service Conditions) Rules, 2006*** (hereinafter referred to as "2006 Rules"), post of Panchayat Shiksha Mitra stands abolished and no direction can be issued for appointment against the said post. However, liberty was given to respondent no. 9 that if he wishes, he can file an application before the District Education Officer, Bhojpur, who may inquire into the process of appointment.

4. Respondent no. 9 filed an application before respondent no. 3 i.e. Sub-Divisional Officer, Jagdishpur



instead of District Education Officer, Bhojpur. The respondent no. 3 conducted the inquiry and passed the impugned order dated 25.11.2015 and sent it vide letter no. 1125 to District Magistrate, Bhojpur at Ara stating therein that irregularity was committed by the then Panchayat Secretary in the appointment of Panchayat Shiksha Mitra and the petitioner was wrongly appointed on the said post of Panchayat Shiksha Mitra. It has further been recommended to cancel the appointment of petitioner and to take necessary steps to appoint respondent no. 9, who had requisite qualification for being appointed as Panchayat Shiksha Mitra. Accordingly, respondent no. 5 i.e. District Education Officer, District-Bhojpur at Ara, vide his Memo no. 6139 dated 01.12.2016 directed the Panchayat Secretary, Damodarpur Panchayat to cancel the appointment of the petitioner, forthwith.

5. Learned counsel for the petitioner submits that the order passed by the S.D.O., Jagdishpur, Bhojpur is without jurisdiction and is *per se* illegal and is in violation of the mandate of **2006 Rules**. After coming into force of **2006 Rules** w.e.f. 01.07.2006, any issue pertaining to the appointment of Panchayat Shiksha Mitra cannot be opened or inquired into in light of Full Bench Judgement of this Court in



the case of ***Kalpana Rani v. The State of Bihar, 2014(2) PLJR 665.***

6. On the other hand, learned counsel for respondent no. 9 submits that upon inquiry conducted by the S.D.O., Jagdishpur, Bihar, it has been found that the Mukhia and the Panchayat Secretary prepared a false merit list and knowingly appointed petitioner, despite respondent no. 9 was having higher weightage marks and subsequently, in the light of the inquiry report submitted by the S.D.O., Jagdishpur, District Education Officer, Bhojpur at Ara directed the Panchayat Secretary to cancel the appointment of petitioner. She relies upon a judgment reported in ***2019(2) PLJR 275 (The State of Bihar and others v. Sawalia Rai and other).***

Re : C.W.J.C. No. 2716 of 2017

7. The facts of this case is same to that of C.W.J.C. No. 481 of 2017 and respondent no. 9 in C.W.J.C. No. 481 of 2017 is the writ petitioner herein. The petitioner has prayed for his appointment on the post of Shiksha Mitra on the ground that appointment of respondent no. 11 (petitioner in C.W.J.C. No. 481 of 2017) has been cancelled.

8. Learned counsel for the petitioner has submitted



that upon inquiry, the S.D.O. Jagdishpur, Bhojpur at Ara has come to the finding that a false merit list has been prepared knowingly and respondent no. 11 was appointed despite the petitioner having higher weightage marks. The fraud has been committed by the selection authority at the time of appointment of Panchayat Shiksha Mitra.

9. I have heard learned counsel for the parties and have gone through the materials on record. In C.W.J.C. No. 2716 of 2017, petitioner is claiming his right for appointment as Panchayat Shiksha Mitra. From the facts, it emerges that respondent no. 11 of C.W.J.C. No. 2716 of 2017 (petitioner of C.W.J.C. No. 481 of 2017) was appointed as Shiksha Mitra in the year 2005. He received honorarium and was also absorbed as Panchayat Shikshak (Panchayat Teacher), after coming into force of **2006 Rules** w.e.f. 01.07.2006 and was receiving his salary as Panchayat Teacher. The challenge made by respondent no. 9 of C.W.J.C. No. 481 of 2017 namely Sri Upendra Yadav, before the District Appellate Authority, Bhojpur at Ara in Appeal Case No. 9 of 2011 was rejected on the ground that after coming into force of **Bihar Panchayat Primary Teachers (Employment and Service Conditions) Rules, 2006**, post of Panchayat Shiksha Mitra stands



abolished and no direction can be issued for appointment against the post of Panchayat Shiksha Mitra. On the basis of liberty granted by the District Appellate Authority, the petitioner of C.W.J.C. No. 2716 of 2017 moved an application before the S.D.O. Jagdishpur, Bhojpur at Ara complaining against the appointment of writ petitioner of C.W.J.C. No. 481 of 2017 Sanjay Kumar Tiwary. The S.D.O. entered into the dispute regarding appointment of Panchayat Shiksha Mitra and submitted an inquiry report with recommendation dated 25.11.2015, that respondent no. 9 of C.W.J.C. No. 481 of 2017 was having higher weightage marks than the petitioner, as such, there was irregularity in the process of appointment by the Panchayat Secretary.

10. The post of Panchayat Shiksha Mitra stood abolished on 01.07.2006 after coming into force of **2006 Rules**. No person can be employed/ claim employment/ deemed employment as Panchayat Shiksha Mitra, retrospectively, as held by learned Division Bench of this Court in the case of **Smt. Renu Kumari Pandey & others v. The State of Bihar and others**, reported in **2011 (4) PLJR 297 (DB)**. The Division Bench judgment has been affirmed by the Full Bench in the case of **Kalpana Rani v. The State of**



Bihar and others, reported in ***2014(2) PLJR 665***, wherein it has been held in paragraph no. 118 as follows :-

“118. Having thus given my anxious consideration, I am of the view that after 1.7.006, no person, who was earlier an 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 1.7.2006 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.”

11. In the present case, admittedly, respondent no. 9 of C.W.J.C. No. 481 of 2017 and petitioner of C.W.J.C. No. 2716 of 2017 was not working as Panchayat Shiksha Mitra as on 01.07.2006 i.e. at the time of conversion of



Panchayat Shiksha Mitra as Panchayat Teacher. Applying the principal laid down by the Full Bench of this Court, it is difficult to hold that merely because respondent no. 9 of C.W.J.C. No. 481 of 2017 was having higher marks but was not appointed as Panchayat Shiksha Mitra prior to 01.07.2006, he is entitled to be appointed as Panchayat Shiksha Mitra on the basis of his merit position after conversion of Panchayat Shiksha Mitra as Panchayat Teacher.

12. The Full Bench Judgment applied in full force in the present case and merely by virtue of having higher marks than the petitioner Sanjay Kumar Tiwary, the respondent no. 9 is not entitled for appointment as Panchayat Shiksha Mitra and/ or Panchayat Teacher. The petitioner of C.W.J.C. No. 2716 of 2017 and respondent no. 9 of C.W.J.C. No. 481 of 2017 has relied upon a Division Bench judgment of this Court in the case of *The State of Bihar and others v. Sawalia Rai and others*, reported in *2019(2) PLJR 275*. In the aforesaid case, writ petitioners had obtained appointment on the basis of forged/ fake marksheets, as such, the Division Bench held that there is no dispute with regard to the principle of law, as has been settled by the Full Bench in the case of *Kalpana Rani (supra)* 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.

13. In the present case, there is no allegation that the petitioner Sanjay Kumar Tiwary obtained appointment on the basis of fake/ forged documents. Respondent no. 9 is claiming appointment as Panchayat Shiksha Mitra 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 present case and the appointment of petitioner cannot be questioned, after his absorption as Panchayat Teacher as on 01.07.2006. Accordingly, the respondent no. 9 of C.W.J.C. No. 481 of 2017 and petitioner of C.W.J.C. No. 2716 of 2017 has no right to claim employment/ deemed employment as Panchayat Shiksha Mitra nor has right to be absorbed in services of Panchayat Teacher by operation of ***Rule 20(iii) of Rules, 2006.***

14. In the result, the first writ petition i.e. C.W.J.C. No. 481 of 2017 is allowed, the impugned order dated 25.11.2015 and the consequential letters bearing letter no. 1125 dated 01.12.2016 bearing Memo no. 6139, letter dated 02.12.2016 bearing Memo no. 6141 and letter dated



02.12.2016 bearing Memo no. 6142, issued by District Education Officer, Bhojpur at Ara are set aside. However, the second writ petition i.e. C.W.J.C. No. 2716 of 2017, having no merit, is dismissed.

(Anil Kumar Sinha, J)

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AFR/NAFR	AFR
CAV DATE	NA
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