

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10645 of 2019

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Keshav Ranjan Son of Sri Murli Manohar Singh Resident of Village - Kauria,
P.S. Madhuban, Distt- East Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar Through Principal Secretary, human Resource Development Department, Bihar, Patna.
2. The Principal Secretary, Human Resource Development Department, Govt. of Bihar, Patna.
3. The District Magistrate, East Champaran.
4. The District Education Officer Motihari, East Champaran.
5. The District Programme Officer, Eastablishment, Motihar, East Champaran.
6. The Block Development Officer Madhuban Block, East Champaran.
7. The Block Education Officer Madhuban block, East Champaran.
8. The Panchayat Secretary, Gram Panchayat Raj Kauria Madhuban Block, East Champaran.
9. The Mukhiya, Gram Panchayat Raj Kauria madhuban Block, East Champaran.
10. Mithilesh Kumar Singh Son of Sri Kapindra Singh Resident of village Kauriya, P.s. Madhuban, Distt- East Champaran.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Sanjeev Kumar Singh, Advocate
For the Respondent/s	:	Mr.Prabhakar Jha (GP 27)
	:	Mr. Umesh Narayan Dubey, AC to GP 27
For respondents no. 9 and 10	:	Mr. Sanjay Kr. Tiwari, Advocate
	:	Mr. Rajnish Shandilya, Advocate

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL JUDGMENT

Date : 22-01-2024

1. Heard learned counsel for the parties concerned.
2. The petitioner has challenged the order dated 07.03.2019, passed by the State Appellate Authority, Bihar, Patna in Appeal No. 598 of 2017, whereby the order dated



15.02.2011, passed by District Teachers Employment Appellate Authority, East Champaran, Motihari in case no. 648 of 2010 has been set aside and respondent no. 10 has been directed to be appointed.

3. The background facts of the case is that process of appointment of Panchayat Shiksha Mitra was initiated in the year 2005. 16 posts were advertised, out of which, 09 posts were for female and the rest 07 were for Male, divided as Unreserved-04, BC-01, MBC-01 and SC-01. The petitioner and respondent no. 10 are under general category. According to the petitioner, he was having higher weightage point than the respondent no. 10 and was also placed at serial no. 1 in the merit list and the respondent no. 10 was placed at serial no. 5. Despite the same, appointment letter was issued in favour of respondent no. 10 and claim of the petitioner was rejected on the ground that educational certificates were not annexed along with the application form by the petitioner.

4. The inquiry report was submitted by Block Development Officer dated 21.02.2007, pointing out irregularity in the appointment. Since no action was taken on the inquiry report, the petitioner moved before this Court in C.W.J.C. no. 11620 of 2007 and this Court vide order dated



10.02.2010, directed the petitioner to approach District Appellate Authority. The petitioner filed an appeal before the District Appellate Authority bearing case no. 648 of 2010 and the District Appellate Authority vide order dated 15.02.2011, find that false allegation of non-availability of the certificate of the petitioner has been made by the selection committee in connivance with the respondent no. 10 and respondent no. 10 was accommodated, who had much lesser marks than the petitioner. In compliance of the said order dated 15.02.2011, the selection committee in its meeting held on 20.02.2011, cancelled the appointment of the respondent no. 10 and appointed the petitioner.

5. The respondent no. 10 challenged the order passed by the District Appellate Authority dated 15.02.2011, before this Court in C.W.J.C. No. 4403 of 2011. In the meanwhile, petitioner joined on 24.11.2011 in Government Primary School, Kauria More which was accepted by the Headmaster. Thereafter, the Headmaster of the School, vide letter dated 13.01.2012, prevented the petitioner from working on the ground that a guideline has been sought from the department, as the petitioner was appointed after 01.07.2006 i.e. after abolition of post of Shiksha Mitra and conversion of



Shiksha Mitra as Panchayat Teacher. The petitioner filed a representation before the concerned authorities and District Education Officer and District Programme Officer directed the Headmaster to accept the joining of the petitioner and the petitioner was allowed to join in the School w.e.f. 01.05.2013.

6. The Headmaster of the School as well as respondent no. 10 filed separate writ petitions bearing C.W.J.C. no. 7992 of 2013 and C.W.J.C. no. 4403 of 2011 respectively, challenging the order dated 15.02.2011, passed by the District Appellate Authority. Both writ petitions were taken together and disposed by this Court vide order dated 06.11.2017, with liberty to them to move before the State Appellate Authority.

7. The respondent no. 10 filed Appeal No. 598 of 2017, before the State Appellate Authority against the order dated 15.02.2011, passed by the District Appellate Authority. The State Appellate Authority, vide order dated 07.03.2019, allowed the appeal filed by respondent no. 10 and set aside the order passed by the District Appellate Authority on the ground that appointment of respondent no. 10 cannot be cancelled after 01.07.2006 in the light of the judgment of Division Bench of this Court, rendered in ***Smt. Renu Kumari***



Pandey and others v. The State of Bihar and others, reported in ***2011 (4) PLJR 297***.

8. Learned counsel for the petitioner submits that the petitioner was having better marks and was placed higher in the merit list than the respondent no. 10 but respondent no. 10 obtained appointment by playing fraud, which has come in the order of the District Appellate Authority also. The fraud vitiates all subsequent action and any benefit accruing on the basis of fraud is liable to be cancelled. It is further submitted that a false allegation has been made against the petitioner that the petitioner had not annexed relevant educational certificates along with his application form and due to that, the petitioner has been denied appointment as Panchayat Shiksha Mitra, whereas the very acceptance of application form itself would reveal that certificates were annexed with the application form. Lastly, he submits that appellate authority is competent to decide the complaints made against the appointment of Shiksha Mitra.

9. Learned counsel relies on Memo no. 681 dated 14.05.2009 of Human Resource Development Department and paper publication dated 17.04.2010 by Human Resource Development Department, wherein direction was issued to all



the members of the appellate authority to decide the complaints made against the appointments of Shiksha Mitra. He relies upon the order passed by this Court in ***L.P.A. No. 773 of 2014 (Sudhir Kumar v. The State of Bihar and others)***, in which, it has been held that once the appointment of a Shiksha Mitra is found to be fraud, his appointment cannot be sustained.

10. *Per contra*, learned counsel appearing for respondent no. 10 argued that the matter relates to appointment of Shiksha Mitra held in the year 2005. The State Appellate Authority vide its reasoned and speaking order, rejected the claim of the petitioner in consonance with the judgment of Division Bench of this Court in ***Smt. Renu Kumari Pandey and others v. The State of Bihar and others***, reported in ***2011 (4) PLJR 297*** and Full Bench judgment of this Court in the case of ***Kalpana Rani v. The State of Bihar and others***, reported in ***2014(2) PLJR 665*** holding that after abolition of the post of Shiksha Mitra as on 01.07.2006, the scheme related to appointment of Panchayat Shiksha Mitra cannot be entertained.

11. I have heard learned counsel for the parties and given my anxious consideration on the facts and law



discussed hereinabove. The writ petitioner is claiming his right for appointment as Panchayat Shiksha Mitra. From the fact, it emerges that respondent no. 10 was appointed as Shiksha Mitra in the year, 2005, ignoring the claim of the petitioner. The post of Shiksha Mitra has been converted into Panchayat Teacher, after coming into force the Employment Rules, 2006 w.e.f. 01.07.2006. The petitioner was not appointed and/ or was working as Panchayat Shiksha Mitra as on 01.07.2006. The post of Panchayat Shiksha Mitra stood abolished on 01.07.2006. After 01.07.2006, the appointment of Panchayat Shiksha Mitra cannot be interfered into and cancelled, retrospectively. Since the post of Panchayat Shiksha Mitra stood abolished on 01.07.2006, no person can be employed, claim employment/ deemed employment as Panchayat Shiksha Mitra/ Panchayat Teacher retrospectively. Even in the case, where a person has legitimate grievance in respect of his non-selection as Panchayat Shiksha Mitra at the relevant time or non-continuance as Panchayat Shiksha Mitra, such person cannot be deemed to have been appointed as Panchayat Shiksha Mitra as on 1st July, 2006.

12. The aforesaid finding is supported by Division Bench judgment as well as Full Bench judgment, reported in



Smt. Renu Kumari (supra) and **Kalpana Rani (supra)**, respectively. Paragraph no. 118 of **Kalpana Rani (supra)** is reproduced hereinbelow :-

“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.”

13. In the present case, the admitted fact is that the petitioner was not employed as Panchayat Shiksha Mitra and at the time of conversion of Panchayat Shiksha Mitra as



Panchayat Teacher, the respondent no. 10 was holding the post of Panchayat Shiksha Mitra on 01.07.2006 and was converted as Panchayat Teacher. Accordingly, the petitioner has no right to claim employment/ deemed employment as Panchayat Shiksha Mitra or has no right to be absorbed in service as Panchayat Teacher by operation of ***Rule 20(iii) of the Employment Rules.***

14. Considering the aforesaid conspectus of facts and law, I do not find any infirmity in the judgment/ order dated 07.03.2019, passed by the State Appellate Authority, Bihar, Patna. In the result, this writ application is dismissed.

(Anil Kumar Sinha, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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