

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13340 of 2016

Pradeep Kumar Jha Son of Vivekanand Jha, Resident of Village and Post Office- Habidih, Police Station- Baheri, District- Darbhanga.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Director, Primary Education, Department of Education, Government of Bihar, Patna.
3. The Collector-cum-District Magistrate, Darbhanga.
4. The District Education Officer, Darbhanga.
5. The District Programme Officer Establishment, Darbhanga.
6. The Block Development Officer, Baheri Block, Darbhanga.
7. The Block Education Extension Officer, Baheri Block, Darbhanga.
8. The Mukhiya, Gram Panchayat Raj Habidih Middle, Baheri Block, District- Darbhanga.
9. Shambhu Prasad Singh, Son of Ram Sewak Singh, Resident of Village and Post Office- Matharahi, Police Station- Baheri, District- Darbhanga.
10. Mukesh Kumar Rai, Son of Sri Surendra Nath, Resident of Village and Post Office- Habidih, Police Station- Baheri, District- Darbhanga.
11. Ajay Kumar Rai, Son of Hemachandra Rai, Resident of Village and Post Office- Habidih, Police Station- Baheri, District- Darbhanga.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Shambhu Nath Jha
For the Respondent/s : Mr. S.P. Singh- Ga

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

- 2 09-05-2024 1. The petitioner has prayed for reinstatement of his services after quashing the letter no. 19, dated 26.07.2005, (Annexure 2) passed by the Mukhiya of Gram Panchayat Raj, Habidih Middle, Baheri block, Darbhanga, by which the petitioner's appointment was cancelled.



2. The petitioner has further prayed for quashing of the letter as contained in memo no. 2665 dated 21.10.2011 (Annexure 15) issued by the B.D.O., Baheri, to the D.M., Darbhanga.

3. The writ petition arises out of the appointment of Shiksha Mitra in the Gram Panchayat Raj, Habidih (Middle), Block Baheri, District Darbhanga.

4. The case of the petitioner, in brief, is that he was appointed as Shiksha Mitra by the concerned Panchayat Samiti *vide* memo no. 16, dated 21.05.2005, issued by the Mukhiya of Gram Panchayat. According to the petitioner Mukhiya of concerned Panchayat without issuing any show cause or without providing any opportunity to the petitioner, terminated his services as Shiksha Mitra stating therein that due to some mistake, the appointment of the petitioner was made in the general category whereas, the candidate with higher marks in the general category merit list was left out.

5. In the light of the letter no. 287, dated 11.06.2006, issued by Block Education Extension Officer (BEEO), the selection of the petitioner was cancelled and one Shambhu Prasad Singh was appointed in his place.



6. The petitioner, being aggrieved by the letter of termination, dated 26.07.2005, moved before the District Magistrate, Darbhanga, alleging that the B.E.E.O., Baheri, has demanded illegal gratification and irregularities were committed in the appointment of Shiksha Mitra as the petitioner was validly appointed but has been removed from service in malafide and arbitrary manner.

7. Learned counsel for the petitioner submits that his case was not considered by the District Magistrate and therefore, he filed C.W.J.C. No. 3013 of 2006 before this court which was disposed *vide* order, dated 25.05.2007, along with C.W.J.C. No. 1462 of 2005 and another analogous cases, with liberty to the petitioners to file representation before the concerned District Magistrate and the same were to be disposed by a reasoned order. Further, the District Magistrate was directed that while disposing the representation, he shall look into the aspect of the allegation of wrong selection and issue appropriate orders / direction to the concerned Gram Panchayat which will take action accordingly. The petitioner filed representation before the District Magistrate, Darbhanga,



on 24.12.2007 which was numbered as Miscellaneous Case No. 100 / 2007-08. The matter was endorsed to B.D.O., Baheri. Learned counsel submits that the same was done in terms as per Rule 18 of the 2006 Rules. Thereafter, the B.D.O., after hearing the parties, referred the report to the District Magistrate, Darbhanga, for further orders observing that the appointment of Shiksha Mitra in the Habidih Panchayat Middle School of baheri block at unreserved seat was not as per rule. The B.D.O., Baheri, as per the direction of the collector issued a letter, dated 25.11.2008, recommending for cancellation of the selection of Panchayat Teachers made in 12 blocks.

8. The district magistrate thereafter, heard the matter and disposed of the Mis. case No. 100 / 2007 – 08 *vide* order, dated 28.02.2009, dismissing the claim of the petitioner holding that the selected candidates are having higher marks than the petitioner.

9. The petitioner being aggrieved by the order passed by the District Magistrate, preferred C.W.J.C. No 5209 of 2009 before this Court which was dismissed *vide* order, dated 24.04.2009, observing therein that this Court, in C.W.J.C. No. 3013 of 2006, granted the petitioner liberty



to file representation which has now been considered and the report of the Statutory Authority, Block Development Officer, has been submitted on 26.07.2008.

10. The petitioner, against the said order, preferred L.P.A. No. 773 of 2009 which was also dismissed on 04.11.2009. In compliance of the said order, dated 04.11.2009, a letter bearing memo no. 2665, dated 21.10.2011, was issued by the B.D.O., Baheri, to the District Magistrate, Darbhanga, stating that the original certificates of the private respondents were matched with the relevant records and it was found correct and also the merit marks of those three persons were found higher than that of the petitioner.

11. Learned counsel for the petitioner further submits that altogether, 45 candidates applied for the post of Shiksha Mitra out of which only 21 candidates were only taken into consideration while others were not considered as either they were matriculate or due to non-submission of the certificates regarding their educational qualification or due to being overage.

12. During scrutiny, the committee found that the petitioner was having more than 60% marks whereas, respondent no. 9 was having 71% marks, respondent no.



10 was having 60% marks and respondent no. 11 was having 53% of marks in intermediate examination. Though, persons, having higher marks than the petitioner, had applied for the selection as Shiksha Mitra but along with the application, they have not furnished their educational certificates which was essential eligibility document and therefore, the candidature of those persons having been rejected by the selection committee and not considered further.

13. He lastly contents that the Block Development Officer, Baheri, is the competent authority as per rule and he after full-fledged inquiry and verification of all relevant records as well as after hearing the parties, passed the order, dated 26.07.2008. But it is very surprising that the District Magistrate, Darbhanga, has treated the order of the Block Development Officer as an inquiry report.

14. The petitioner has relied upon the judgment reported in Braj Kishor Sahni v. State of Bihar, 2015 (1) PLJR 572.

15. On the other hand, learned counsel for the respondents argued that the petitioner has raised the same



grievance in the present writ application which was rejected in the previous writ petition and L.P.A. He further submits that as per the Full Bench judgment, the claim of the petitioner for appointment as Shiksha Mitra may not be considered by this court. The petitioner without approaching the District Teachers Appellate Authority has filed the present writ application though this Court, while disposing the M.J.C. bearing M.J.C. No. 3402 of 2014, filed by the petitioner, granted him liberty to approach the District Teachers Appellate Authority if he still has some grievance.

16. I have heard learned counsel for the parties. The petitioner has raised the grievance for appointment as Shiksha Mitra. The post of Panchayat Shiksha Mitra stood abolished on 01.07.2006 after coming into force of the Bihar Panchayat Primary Teachers (Appointment and Service Conditions) Rules, 2006. No person can be employed, claim employment/deemed employment as Panchayat Shiksha Mitra/Panchayat Teacher retrospectively as held by a Division Bench of this Court in the judgment passed in the case of **Smt. Renu Kumari Pandey & Ors. v. The State of Bihar & Ors.** reported



in 2011 (4) PLJR 297 (DB). The aforesaid Division Bench judgment has been affirmed by the Full Bench of this Court in the case of **Kalpana Rani v. The State of Bihar & Ors. reported in 2014(2) PLJR 665 (FB)** whereby it has been held in paragraph no. 118 as follows:-

"118. Having thus given my anxious consideration, I am of the view that after 1.7.2006, 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 7 correctly decided the law and is, accordingly, overruled."

17. In the present case, admittedly, the grievance of the



petitioner is regarding his non-appointment/termination as Panchayat Shiksha Mitra. As on 01.07.2006, at the time of conversion of Panchayat Shiksha Mitra as Panchayat Teacher, the petitioner was not serving as Panchayat Shiksha Mitra and also did not receive any salary as Panchayat Shiksha Mitra during his period of appointment. Accordingly, the petitioner has no right to claim employment/deemed employment as Panchayat Shiksha Mitra or has right to be absorbed in service as Panchayat Teacher by operation of Rule 20 (iii) of the Bihar Panchayat Primary Teachers (Appointment and Service Conditions) Rules, 2006. The judgment relied upon by the petitioner is not applicable in the facts of the present case. The objection of the respondent authorities regarding the petitioner having approached this Court instead of approaching the District Teachers Appellate Authority for redressal of his grievances is not being considered favourably for the reason that in view of Full Bench judgment, the issue of appointment/conversion of the absorption of Shiksha Mitra cannot be raised after coming into force 2006 Rules, accordingly, relegating the petitioner to the District Teachers Appellate Authority will unnecessarily create multiplicity of litigation.



18. In the result, this writ application is devoid of any merit and is dismissed.

(Anil Kumar Sinha, J)

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