

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.575 of 2021

Mamta Kumari D/o Thakur Prasad Singh, W/o- Birendra Singh Resident of
Village- Fakarabad, P.O.- Sikanderpur, Panchayat Isiyan Block, P.S.-
Chainpur, District- Kaimur at Bhabua.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Additional Chief Secretary, Department of Education, Government of Bihar, Patna.
2. The Additional Chief Secretary Department of Education, Government of Bihar, Patna.
3. The Director Primary Education Government of Bihar, Patna.
4. The District Education Officer Kaimur at Bhabua.
5. The District Programme Officer (Establishment) Kaimur at Bhabua.
6. The Block Education Officer Chainpur, District- Kaimur at Bhabua.
7. The Panchayat Secretary Gram Panchayat Isiyan, Block- Chainpur, District- Kaimur at Bhabua.
8. The Headmaster Urdu Upgraded Middle School, Darwan, Chainpur, Kaimur at Bhabua.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Sanjay Kumar, Advocate Mr. Jay Prakash Singh, Advocate Mr. Kumar Harsh, Advocate
For the Respondent/s	:	Mr. Lalit Kishore (Ag)

CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
CAV JUDGMENT

Date :10-04-2024

Heard learned counsel for the petitioner and
learned counsel for the State.

2. The petitioner has prayed for following reliefs:

“For issuance of a writ in the nature of Mandamus or any other appropriate writ/order/direction for commanding and directing the respondent authorities to pay the salary of the petitioner from 11.03.2014 to 13.05.2019 and also to regularizes the services for the aforesaid period and to give benefit of continuity of service from the date of initial appointment as Panchayat Teacher from the date



02.12.2006 to 13.05.2019 and payment of all consequential benefits to her may be made.”

3. Learned counsel for the petitioner at bar submits that he is not pressing the present writ petition for the payment of salary for the period of 11.03.2014 to 13.05.2019, but he is only pressing to regularize the service for the aforesaid period and to give benefit of continuity of service from the date of initial appointment as Panchayat Teacher from the date 02.12.2006 to 13.05.2019.

4. The facts of the present case, in short, is that the petitioner was initially appointed as ‘Panchayat Teacher’ in pursuance of an advertisement published in 2006 for appointment against the post of Panchayat Teacher in Gram Panchayat Isiyan, Block Chainpur. There were 16 seats advertised out of which 4 seats for General (male), 4 seats for General (female), 1 seat for BC-II (male), 1 seat for BC-II (female), 1 for SC (male), 1 for SC (female), 2 for EBC (male) and 2 for EBC (female). Out of 16 seats, 8 seats were allotted for Female candidates according to which 4 seats for General (female), 1 seat for BC-II (female), 1 Seat for SC (female) and 2 for EBC (female). The petitioner had applied in the category of BC-II Female alongwith the documents needed, she had 59.22% of marks in her intermediate. The petitioner has found her place



in the merit list at the Serial No. 1 in her category (BC-II Female). The Counseling was held where the petitioner was present and she was selected, accordingly, and there was no any objection regarding the same and as such she was appointed against the post of Panchayat Teacher vide letter no. 13, dated 30.11.2006, and in pursuance thereof she had submitted her joining as 'Panchayat Teacher' on 02.12.2006 at Urdu Prathmik Makhtab Darwan, Panchayat-Isiyan, Block Chainpur, District-Kaimur at Bhabua.

5. Learned counsel for the petitioner submits that the petitioner had worked to the utmost satisfaction of all the authorities for almost one year and got salary for the same. There was no any objection with respect to the candidature of petitioner. He also submits that during the selection process one unsuccessful candidate had made complaint before the District Superintendent of Education that candidate having lesser marks have been appointed and on the basis of said complaint the District Superintendent of Education passed an order of fresh counseling on 14.09.2007 and, accordingly, the fresh counselling was held on 30.10.2007 and 05.11.2007 in which petitioner appeared and finally declared to be a successful candidate, thereafter, she again joined on 27.11.2007.



6. Learned counsel for the petitioner further submits one unsuccessful candidate filed the writ petition being C.W.J.C. No. 13410 of 2008 before this Hon'ble Court challenging the selection of the petitioner and others in which the petitioner was not made as party respondent. The aforesaid writ petition was ultimately withdrawn with a liberty to file an appeal before District Teacher Employment appellate Tribunal. The District Teacher Employment Appellate Tribunal, Kaimur at Bhabua, all of sudden passed an order on 06.09.2011 by which appointment of petitioner as Panchayat Teacher was held to be bad in law and, consequently, cancelled the appointment of the petitioner behind her back with a direction to appoint the appellant in her place in Appeal No. 235/2010. He further submits that, thereafter, petitioner has moved before this Hon'ble Court by filing writ application bearing C.W.J.C. No. 19760 of 2011 (Mamta Kumari Vrs The State Of Bihar and others) for quashing of order dated 06.09.2011 passed by the District Teacher Employment Appellate Tribunal. This Hon'ble Court after hearing the parties, quashed the order dated 06.09.2011 by its order dated 25.07.2013 and remitted back to the District Teacher Employment Appellate Tribunal, Kaimur for passing a fresh order in accordance with law (Annexure-2 to



the writ petition).

7. Learned counsel for the petitioner further submits that in pursuance of the order/judgment dated 25.07.2013 passed in C.W.J.C No. 19760 of 2011, the petitioner filed application with a copy of the judgment before the District Teacher Employment Appellate Tribunal, Bhabhua, on 21.08.2013. The Tribunal registered a formal case as Appeal No. 08 of 2013. The District Teacher Employment Appellate Tribunal, Kaimur, on 19.02.2014, again passed the order against the petitioner. The petitioner called in questioning the order dated 19.02.2014 by filing CWJC No. 5371 of 2014 before this Hon'ble court in which this Hon'ble court vide his order dated 06.11.2017 directed the petitioner to file an appeal before the State Appellate Authority. Thereafter, the petitioner filed appeal No. 18/2018 before the State Appellate Authority where the matter was heard on different dates and ultimately the appeal of the petitioner was allowed vide order dated 04.12.2018.

8. Learned counsel for the petitioner further submits that the case of the petitioner was once again came before the District Appellate Authority where from a positive order was passed in favour of the petitioner on 27.03.2019. Pursuant to the order dated 27.03.2019, the District Programme



officer (Establishment) Kamiur at Bhabua, issued a letter no 1947 dated 15.11.2019 to the Block Education officer, Chainpur (Kamiur), whereby it has been communicated that in terms the order dated 27.03.2019 the employment unite Gram Panchayat, Isiya, has issued joining letter to the petitioner and as such the petitioner has joined on 13.05.2019, thereafter, a direction was given to ensure the payment of salary to the petitioner as she had been paid salary regularly. The petitioner has already joined the service and getting monthly salary regularly but the petitioner has not been given the benefit of the salary for period she was wrongly removed from the post of teacher nor she is being given the benefit of continuity in service. The petitioner has filed representation before the District Programme Officer(Establishment) Kaimur, on 02.06.2020 in which she requested to pay the salary for the period she was wrongly thrown out from the service. She has also requested to give the benefit of continuity in service.

9. Learned counsel for the petitioner further submits that it is relevant to state here that it was illegal act of the employment committee by which the petitioner was removed from the post. She has not misrepresented at the time of appointment nor played any sort of fraud with the



employment committee therefore in such circumstances, the petitioner is fit to be compensated by issuance of an order of payment of back wages/salary and also to provide the benefit of continuity in service. He further submits that the impugned action of the respondent authority is illegal, arbitrary and in teeth of the principles of natural justice and fair plays.

10. Learned counsel for the petitioner also relies upon the judgment of Hon'ble Apex passed in Civil Appeal Nos. 201-202 of 2020 (Arising out of SLP (C) Nos. 30469-30470 of 2015) in which the Hon'ble Apex Court held in para-9 as under:

“ Ex facie, the Labour Court having awarded reinstatement to the appellant, continuity of service would follow as a matter of law. The award of the Labour Court dated 27 February 2008 does not specifically deny continuity of service. Hence the observation of the High Court to the effect that the Labour Court had denied continuity of service is erroneous and would accordingly stand corrected in terms of what has been observed herein-above. The appellant would be entitled to continuity of service.”

11. He also relied upon the Judgment of Hon'ble Apex Court passed in the case of **Gurpreet Singh vs. State of Punjab and Ors.** reported in (2002) 9 SCC 492, in which it is held in para-3 as under:

“Having heard learned counsel for the parties and on examining the materials on record, we fail to understand how the continuity of service could be denied once the plaintiff is directed to be reinstated in service on setting aside the order of termination. It is not a case of fresh appointment, but it is a case of reinstatement. That being the position, direction of the High Court that the plaintiff



will not get continuity of service cannot be sustained and we set aside that part of the impugned order. So far as the arrears of salary is concerned, we see no infirmity with the direction which was given by the lower appellate court taking into account the facts and circumstances including the fact that the suit was filed after a considerable length of time. That part of the decree denying the arrears of salary stands affirmed and this appeal stands allowed in part to the extent indicated above."

12. A counter affidavit has been filed on behalf of the respondents in which it is stated that the District Teacher Appellate Authority, Kaimur, vide order dated 06.09.2011 has cancelled the appointment of petitioner and directed the Employment unit to appoint the appellant in her place but the Hon'ble Court quashed the order dated 06.09.2011 by the order dated 25.07.2013 in C.W.J.C. No. 19760 of 2011 and matter remitted back for fresh consideration, (Annexure-2 of the writ petition).

13. He further submits that the District Appellate Authority, Kaimur, again passed the order on 19.02.2014 in Appeal No. 8 of 2013 against the petitioner. The petitioner was terminated vide letter No. 03 dated 11.03.2014. The petitioner preferred C.W.J.C. No. 5371 of 2014 against the order dated 19.02.2014 which was finally disposed of vide order dated 06.11.2017 with liberty to file appeal before State Appellate Authority, Bihar. In pursuance of aforesaid liberty, the petitioner filed Appeal No. 18 of 2018 before State Appellate Authority,



Bihar, which was disposed off on 04.12.2018 and impugned order dated 19.02.2014 has been set aside and matter remanded to District Appellate Authority, Kaimur, to pass a fresh order. Accordingly, the District Appellate Authority, Kaimur has passed fresh order on 27.03.2019 in Case No. 27/2019. Pursuant to order dated 27.03.2019 passed by the District Appellate Authority Kaimur, the Panchayat Employment unit issued joining letter vide letter No. 20 dated 11.05.2019 and the petitioner joined on 13.05.2019. From the face of records, it is stated that the petitioner was terminated vide letter No. 03 dated 11.03.2014 by the Panchayat Employment unit and she joined on 13.05.2019. Therefore, the petitioner was not working from 11.03.2014 to 12.05.2019.

14. He further submits that so far due salary from 11.03.2014 to 13.05.2019 is concerned it is stated that the Panchayat Teacher is not Government Service. In view of Judgment dated 05.05.2017 passed in LPA No. 1467 of 2014, reported in **2017(4) PLJR- 792**, the petitioner is not entitled for payment of remuneration from 11.03.2014 to 13.05.2019.

15. Heard learned counsel for the parties and perusal of the records and the fact that learned counsel for the petitioner already submits that he is not pressing the present writ



petition for the payment of salary for the period of 11.03.2014 to 13.05.2019, but he is only pressing to regularize the service for the aforesaid period and to give benefit of continuity of service from the date of initial appointment as 'Panchayat Teacher' from the date 02.12.2006 to 13.05.2019.

16. Considering the facts laid down in a Judgment of this Court passed in L.P.A. No. 1467 of 2014, it is admitted fact that a panchayat teacher, who under certain controversial circumstances came to be removed. She fought her legal battle, managed to come back in the system and "reinstated" on the post of panchayat teacher but that did not satisfy her desire and demand for regularize the service for the aforesaid period. The panchayat teachers are not government servant. There is a contractual hiring and they are not paid wages or salary but a fixed honorarium every month for the period of work done by them. It is a case of contract for service and not of service. If this is the status of a panchayat teacher then the expectation, which the petitioner has to be treated at par with a government servant and extend the principles which have been decided by various courts in matter of away of payment of back wages or salary in the event of dismissal being set aside as illegal, does not apply *mutatis mutandis* in cases of a panchayat teacher.



Since the petitioner by virtue of being a panchayat teacher, is working on a fixed honorarium, he/she is entitled for that amount, provided work is performed by such a candidate. The Court has already noticed above that it is a contract for service, therefore, there is no question of continuity of service. It is not a case that the petitioner has been terminated by Panchayat Samiti, but the Panchayat Samiti has terminated the petitioner from service only on the basis of the order of the District Appellate Authority.

17. Considering the submissions advanced on behalf of learned counsel for the parties and the fact that the petitioner was appointed on the post of ‘Panchayat Teacher’ which is a contractual post, I am not inclined to grant the relief prayed by the petitioner, accordingly, the present writ petition stands dismissed.

(Anjani Kumar Sharan, J)

anand/-

AFR/NAFR	NAFR
CAV DATE	20.03.2024
Uploading Date	11.04.2024
Transmission Date	NA

