

(2016) 06 PAT CK 0053

PATNA HIGH COURT

Case No: Civil Writ Jurisdiction Case No. 19519 of 2010

Hari Shankar Sah

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision: June 23, 2016

Acts Referred:

- Bihar Panchayat Elementary Teachers (Employment and Service Conditions) Rules, 2006 - Rule 18, 20
- Constitution of India, 1950 - Article 226

Citation: (2016) 3 BBCJ 511 : (2016) 4 BLJud 237 : (2016) 4 PLJR 173

Hon'ble Judges: Dr. Ravi Ranjan, J.

Bench: Single Bench

Advocate: M/s. Bipin Bihari Singh and Shyama Kant Singh, Advocates, for the Petitioners; M/s. Ajay Behari Sinha SC 19 and Neeraj Raj, AC to SC 10, for the State

Final Decision: Allowed

Judgement

Dr. Ravi Ranjan, J. (Oral)—Heard learned counsel for the petitioners and the State.

2. Petitioners seek quashing of Annexure-9 which is order dated 8.11.2010 passed by the District Teacher Employment Appellate Authority, Muzaffarpur by which appointment of the petitioners as Shiksha Mitra has been cancelled.

3. The petitioners claim to have been engaged as Shiksha Mitra on 30.5.2005, 5.1.2006 and 30.5.2006 respectively. Initially engagement was for 11 months which, for the petitioner no. 1, was extended further for 11 months vide Annexure-2 dated 30.5.2006. However, after expiry of 11 months period the State Government took a decision vide Annexure-5 to absorb the Panchayat Shiksha Mitra who were working at the relevant time as Panchayat Teacher when Bihar Panchayat Elementary Teacher (Employment and Service Conditions) Rules, 2006 (hereinafter referred to as "the Rules 2006") were incorporated made effective from 1.7.2006. Eventually the petitioners were also engaged as Panchayat Teachers with effect from 1.7.2006

which was not challenged immediately thereafter before any authority. The petitioners engagement as Panchayat Shiksha Mitra was never challenged by any one. However, after about 1 ♦ years of their absorption as Panchayat Shikshak, one Surya Mani Sah filed a petition before the District Magistrate, Muzaffarpur alleging illegality and irregularity committed in the appointment of petitioners as Shiksha Mitra. The District Magistrate, Muzaffarpur vide order dated 23.5.2009 (Annexure-7) took a decision to cancel the petitioners' appointment as Shiksha Mitra and eventually their absorption as Panchayat Teachers. The aforesaid order passed by the District Magistrate was challenged by the petitioner Jai Shankar Das by filing C.W.J.C. No. 11668 of 2009 which was disposed of vide order dated 7.11.2009 as contained in Annexure-8, quashing the memo no. 2142 dated 23.5.2009 (Annexure-7), however, granting liberty to the District Magistrate, Muzaffarpur that, if so advised, he may refer the matter to the District Teachers employment Appellate Authority, Muzaffarpur for proper adjudication. It appears that the District Magistrate had referred the same to the appellate authority which has passed the impugned order as contained in Annexure-9.

4. At the time of hearing of this application it was urged on behalf of the petitioners that their engagement as Panchayat Shiksha Mitra were never put to challenge within the time period prescribed under the Panchayat Shiksha Mitra employment guidelines. However, after 1 ♦ years after their absorption as Panchayat Teachers, their initial engagement as Panchayat Shiksha Mitra came to be challenged by one Surya Mani Sah before the District Magistrate who did not have any authority to entertain such application, therefore, his order was quashed vide Annexure-8. However, the aforesaid Surya Mani Sah did not approach the District Magistrate for reference of the matter to appellate authority, rather, the same was referred by the District Magistrate himself. The appellate authority has proceeded to decide the case without even impleading the aforesaid Surya Mani Sah in the matter.

5. However, sole ground is being raised on behalf of the petitioners is that after absorption as Panchayat Teacher they would be governed by the Rules framed for that purpose. A Division Bench of this Court in **Renu Kumari Pandey v. State of Bihar 2011 (4) PLJR 297** has held that the aforesaid Rules are statutory in nature and have to be maintained in letter and spirit. Under Clause (i) of Rule 20 of the Rules all earlier resolutions, Orders, directions issued in respect of employment of Panchayat Shiksha Mitra stood repealed. Consequently, the posts of Panchayat Shiksha Mitra also stood abolished. Thus, it is contended that there was no occasion for examination of illegality of initial engagement of petitioners as Shiksha Mitra prior to their absorption as Panchayat Teachers inasmuch as the Division Bench has further held that appellate authority constituted under Rule 18 of the Rules is empowered to entertain, hear and decide the appeals arising out of the employment of elementary teachers under the Rules. The said appellate authority has no jurisdiction to entertain, hear or decide the dispute relating to the employment of Panchayat Shiksha Mitra under the then prevalent Resolutions,

Circulars, orders, Instruction. The relevant passages from the decision of the Division Bench reported in Renu Kumari Pandey (supra) are quoted below for better appreciation :

"17. Coming to the second issue, we are of the opinion that the Rules are statutory in nature and have to be implemented in letter and spirit. Under Clause (i) of Rule 20 of the Rules all earlier resolutions, orders, directions issued in respect of employment of Panchayat Shiksha Mitra are repealed. Consequently, the posts of Panchayat Shiksha Mitra stood abolished. Thereafter, no person can be employed as Panchayat Shiksha Mitra ; nor can there be a deemed employment as Panchayat Shiksha Mitra ; nor can there be a deemed absorption in the service as Panchayat Shikshak by operation of Rule 20(iii) of the Rules. In our opinion, even in a case where a person has a legitimate grievance in respect of his or her 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 ; nor can he/she be deemed to have been employed as Panchayat Shiksha Mitra as on 1st July 2006 ; nor can such person be deemed to have been absorbed in service as Panchayat Shikshak under the Rules.

18. We may also note here that though the State Government framed a complete scheme for employment of Panchayat Shiksha Mitra at Gram Panchayat level in furtherance of its goal of "Education for All", in none of the aforesaid Resolutions the Government had provided for an adjudicatory machinery. In other words, the State Government did not make any provision for redressal of grievance in respect of selection and employment of Panchayat Shiksha Mitra or their reemployment after the expiry of the contractual period. On perusal of the records of the above writ petitions, we find that in absence of such machinery, the aggrieved persons approached the authority whom such persons considered to be the competent/the convenient authority. In our opinion, in absence of powers expressly conferred upon any such authority the reports or the orders made by such authority are of no consequence. No relief can be granted on the basis of the finding recorded by such authority. We may also point out that Elementary Teachers Appellate Authority constituted under Rule 18 of the Rules, as amended by Bihar Panchayat Elementary Teacher (Employment and Service Conditions) (Amendment) Rules, 2008 is empowered to entertain, hear and decide the appeals arising out of the employment of elementary teachers under the Rules. The said appellate authority has no jurisdiction to entertain, hear or decide the disputes relating to the employment of Panchayat Shiksha Mitra under the then prevalent Resolutions, Circulars, Orders, Instructions."

6. The aforesaid decision of the Division Bench was considered and upheld by the Full Bench of this Court in **Kalpna Rani v. State of Bihar 2014 (2) PLJR 665**.

7. After perusal of the aforesaid it is apparent that the appellate authority did not have power to examine the legality of the appointment of the petitioners as

Panchayat Shiksha Mitra as it does not have power to do so as has been held by the Division Bench.

8. Accordingly, in my view, the order passed by the appellate authority as contained in Annexure-9, being without jurisdiction, has to be struck down. Accordingly the same is quashed and set aside.

9. In the counter affidavit filed on behalf of the respondent no. 3, it has categorically been stated that after cancellation of appointment of the petitioners no body has been appointed on the relevant post. Accordingly, the petitioners would have to be reinstated on their post on which they were working. Though their services as Panchayat Teacher would deem to have continued without any break in view of passing of order by the District Teacher Employment Appellate Authority but that would only be notionally as they would not entitled for back wages for the period they remained ousted from the service and did not work during that period.

10. Accordingly, this writ application stands allowed.