

IN THE HIGH COURT OF JUDICATURE AT PATNA

Bhole Shankar Kumar

Versus

The State of Bihar & Ors.

Civil Writ Jurisdiction Case No. 17244 of 2015

02 August 2024

(Hon’ble Mr. Justice Anil Kumar Sinha)

Issue for Consideration

Whether the petitioner’s appointment as Panchayat Teacher, made through conversion from Panchayat Shiksha Mitra under the 2006 Rules, could be interfered with.

Headnotes

Removal of the petitioner by the Panchayat Secretary and the Employment Unit by misinterpreting the order of this Court, passed in CWJC No. 22411 of 2011 is not sustainable and is liable to be set aside.The Panchayat Secretary by distorting and concealing the fact regarding stay of the operation of the order passed by the Tribunal, implemented the order of the Tribunal and appointed the respondent no. 10 in order to favour him. (Para 27)

Respondent no. 10 was not appointed as Panchayat Shiksha Mitra before 01.07.2006. As such, he has no right to claim employment or deemed employment as Panchayat Shiksha Mitra or has a right to be absorbed as Panchayat Teacher by operation of Rule 20 (iii) of the 2006 Rules. Removal of the petitioner as Panchayat Teacher and appointment of respondent no. 10 in the garb of implementation of the order passed by the Tribunal is completely illegal, arbitrary, mala fide and unsustainable in law. (Para 28, 29)

Case Law Cited

Renu Kumari Pandey v. State of Bihar, 2011 (4) PLJR 297 (DB); Kalpana Rani v. State of Bihar, 2014 (2) PLJR 665

List of Acts

Bihar Panchayat Teachers (Employment and Service Conditions) Rules, 2006

List of Keywords

Panchayat Shiksha Mitra; Panchayat Teacher; Retrospective Cancellation; Judicial Stay; Misrepresentation before Court; Roster Violation; Employment Unit; Backward Class Quota; Tribunal Quashing; Reinstatement Without Back Wages

Case Arising From

Order of District Appellate Authority in Case No. 149 of 2010 and Memo No. 210 dated 30.11.2013

Appearances for Parties

For the Petitioner: Mr. Krishna Kant Singh, Advocate

For the Respondents: Mr. Abbas Haidar, SC 6, Mr. Ranjay Kumar Singh, Mr. Nityanand Mishra, Mr. Alok Abhinav, Advocate

Headnotes Prepared by Reporter: Amit Kumar Mallick, Adv.

Judgment/Order of the Hon’ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17244 of 2015

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Bhole Shankar Kumar Son of Sri Yugal Das, r/o vill. Pakhnaha Jeetwar, P.S. Meenapur, District- Muzaffarpur.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Education Department, Government of Bihar, Patna.
3. The District Magistrate, Muzaffarpur.
4. The District Education Officer, Muzaffarpur.
5. The District Programme Officer, Establishment Muzaffarpur.
6. The Block Development Officer, Meenapur Block, District- Muzaffarpur.
7. The Block Education Officer, Meenapur Block, Muzaffarpur.
8. The Mukhiya, Panchayat Rajwara Bharti, Block- Meenapur, District- Muzaffarpur.
9. Panchayat Secretary, Panchayat Rajwara Bharti, Block- Meenapur, District- Muzaffarpur.
10. Shri Ram Dinesh Sahani, Son of Shri Deo Lal Sahani, resident of Village- Madhuwan Kanti, P.O. Jamin Matiya, P.S. Meenapur, District- Muzaffarpur .

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Krishna Kant Singh
For the Respondent/s	:	Mr. Abbas Haidar, SC 6
		Mr. Ranjay Kumar Singh
For respondent no. 9	:	Mr. Nityanand Mishra
For respondent no. 10	:	Mr. Alok Abhinav

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

JUDGMENT AND ORDER

C.A.V.

Date : 02-08-2024

The petitioner has prayed for a direction to the respondent authorities to allow the petitioner to continue on the post of Panchayat Teacher on which he was working and to hold that the appointment of the petitioner converted from Panchayat



Shiksha Mitra to Panchayat Teacher cannot be interfered in view of the Full Bench decision of this Court, in the case of **Kalpana Rani v. The State of Bihar**, reported in **2014 (2) PLJR 665**. The petitioner has further prayed for holding the appointment of respondent no. 10 on the post of Panchayat Shiksha Mitra/Panchayat Teacher after coming into force of Bihar Panchayat Teachers (Employment and Service Conditions) Rules, 2006 (herein after referred to as the '2006 Rules') as illegal and *void ab initio*. Further prayer of the petitioner is for quashing of the decision of the Selection Committee, dated 25.11.2013 and also for quashing the order issued by the Panchayat Secretary, vide letter no. 210, dated 30.11.2013, whereby the petitioner was communicated that Selection Committee has taken a decision that the appointment of the petitioner cannot be done.

2. Learned Counsel for the petitioner submits that in the year 2004-05, the vacancies for appointment on the post of Panchayat Shiksha Mitra in the Panchayat Raj Rajwara Bharti, under Meenapur Block, in the district of Muzaffarpur, was advertised and pursuant thereto, the petitioner applied for appointment as Panchayat Shiksha Mitra. The petitioner was selected along with seven other candidates as Panchayat Shiksha Mitra in the year 2005, vide letter, dated 27.05.2005. The



petitioner joined the post of Panchayat Shiksha Mitra and after completion of 11 months, his services, as Panchayat Shiksha Mitra, was renewed further from 01.06.2006 to 30.05.2007.

3. In the mean while, the 2006 Rules came into existence with effect from 01.07.2006 and by virtue of the 2006 Rules, the Panchayat Shiksha Mitra was converted into Panchayat Teacher and accordingly the petitioner became Panchayat Teacher after 01.07.2006.

4. While the petitioner was working and discharging his duties as Panchayat Teacher, respondent no. 10 filed a complaint before the District Magistrate, Muzaffarpur, alleging therein that he was selected as Panchayat Shiksha Mitra, but the respondent authorities did not appoint him on the said post. The District Magistrate, Muzaffarpur, vide his order, dated 26.12.2007 cancelled the entire selection without hearing the petitioner, although the District Magistrate, after coming into force of the 2006 Rules, had no jurisdiction to pass such orders.

5. The complaint filed by the respondent no. 10 was not directly against the petitioner as he was having no grievance against the petitioner and the respondent no. 10 had merely stated that although he was selected as Panchayat Shiksha Mitra in the year 2005, he was not given appointment letter. Further, this



complaint was not filed earlier in the year 2005-06 and after conversion of the post of Panchayat Shiksha Mitra into Panchayat Teacher in the year 2007, this complaint has been filed for the first time.

6. The respondent no. 10 filed a case before the District Appellate Authority, Muzaffarpur, bearing Case No. 149 of 2010 and the Tribunal, vide order, dated 15.07.2011, in a mechanical manner, held that the petitioner was wrongly appointed in place of respondent no. 10.

7. The petitioner challenged the order, dated 15.07.2011, passed by the Tribunal before this Court, in CWJC No. 22411 of 2011, in which while issuing notice to the private respondent, this Court, vide its order, dated 16.12.2011, stayed the operation of the order of the Tribunal till further orders.

8. The notice issued by this Court in the aforesaid writ application was received by respondent no. 10 on 20.01.2012 and after coming to know that the operation of the order of the Tribunal has been stayed by this Court, the respondent no. 10, by concealing the said order, filed a writ application, bearing CWJC No. 10787 of 2012 on 25.06.2012, for implementation of the order, dated 15.07.2011, passed by the Tribunal in Case No. 149 of 2010. A co-ordinate Bench of this Court, vide its order, dated



27.06.2012, directed the respondents to file counter affidavit and also to state as to why the order of the Tribunal has not been implemented.

9. Instead of informing this Court that the order of the Tribunal has been stayed by this Court, due to which the order of the Tribunal was not being implemented, the Panchayat Secretary, in connivance with respondent no. 10, proceeded further and implemented the order of the Tribunal in violation of the interim order of stay by this Court and appointed respondent no. 10, vide order, dated 30.06.2012. The Panchayat Secretary issued appointment letter to the respondent no. 10 on 30.06.2012, which is in complete violation of the orders passed by this Court and the decision of the Division Bench, in the case of **Renu Kumari Pandey v. The State of Bihar and Others**, reported in **2011 (4) PLJR 297 (DB)** and Full Bench decision of this Court, in the case of **Kalpana Rani** (supra).

10. Learned Counsel further submits that when the petitioner was not allowed to perform his duties, he filed a contempt petition, bearing MJC No. 5103 of 2013. The writ application was heard and this Court, vide order, dated 04.09.2013, quashed the order of the Tribunal, dated 15.07.2011, with liberty to the Employment Unit to pass appropriate order in the light of the



present order. This Court also held that subsequent order passed pursuant to the order of the Tribunal with respect to the petitioner also stands quashed.

11. The Panchayat Secretary, instead of passing the order for continuation of the petitioner on the post of Panchayat Teacher and for removal of the respondent no. 10, distorted the entire facts and in connivance with the respondent no. 10, got a decision, dated 25.11.2013, of the Employment Unit that selection of the petitioner cannot be made and did not pass any order pertaining to the continuation of the respondent no. 10. It has also been submitted that both, the respondent no. 10 and the petitioner, belong to the same category, i.e. Backward Class category. The decision of the Selection Committee was communicated to the petitioner by the Panchayat Secretary, dated 30.11.2013, vide letter no. 210, stating that the employment of the petitioner cannot be allowed to continue.

12. The petitioner intervened in CWJC No. 10787 of 2012 filed by respondent no. 10, which was allowed and this Court, vide order, dated 14.08.2014, held that in view of the order passed by this Court in CWJC No. 22411 of 2011, the application with respect to the implementation of the order of the Tribunal so far as it relates to the petitioner has become infructuous.



13. Learned Counsel further submits that the Panchayat Secretary, in connivance with the respondent no. 10, manipulated and distorted the entire facts and the respondent no. 10 is being allowed to continue on the post of Panchayat Teacher in complete violation of the orders passed by this Court, in **Renu Kumari Pandey** (Supra) and **Kalpana Rani** (supra). The Employment Unit was not competent to hold that the petitioner was not entitled to continue on the post of Panchayat Teacher as no such power was vested with the Employment Unit. The Panchayat Secretary misinterpreted the orders of this Court passed in CWJC No. 22411 of 2011 and denied the claim of the petitioner in illegal manner. The continuation of the respondent no. 10 and keeping the petitioner out of the service is completely illegal and violative of the orders of this Court.

14. On the other hand, learned Counsel for the respondent no. 10 submits that the respondent no. 10 filed applications on 06.05.2005 and 07.06.2005 before the concerned authorities for taking action for irregularities committed by Employment Unit during selection of Panchayat Shiksha Mitra. The appointment of the petitioner was made against the candidate belonging to Backward Class Category though the petitioner does not come under the Backward Class Category and he falls under



Extremely Backward Class Category, having his caste 'Tatwa' and as per roster, there is no vacant post of Extremely Backward Class Category. He further submits that the respondent no. 10 has completed the Elementary Teachers' Evaluation Examination, 2016, FLN and ICT Training.

15. Learned Counsel for the State submits that the Selection Committee in pursuance of the orders of this Court took a decision not to allow the petitioner to continue as Panchayat Teacher and the respondent no. 10 was appointed pursuant to the orders passed by the Tribunal, dated 15.07.2011, in Case No. 149 of 2010.

16. I have heard learned Counsel for the parties concerned and have gone through the materials available on record.

17. The petitioner was appointed as Panchayat Shiksha Mitra prior to coming into force of the 2006 Rules. After coming into force of the 2006 Rules with effect from 01.07.2006, admittedly, the petitioner was converted as Panchayat Teacher. The respondent no. 10 filed Case No. 149 of 2010 before the Tribunal, which, by its order, dated 15.07.2011, held that in place of respondent no. 10, the petitioner has wrongly been appointed. The petitioner challenged the said order of the Tribunal before this



Court in CWJC No. 22411 of 2011 in which while issuing notice to respondent no. 10, the operation of the order, dated 15.07.2011, passed by the Tribunal was stayed. Notice issued by this Court was received by respondent no. 10 on 20.01.2012. It appears that despite having received the notice and knowledge about the stay order of the Tribunal, the respondent no. 10 filed a writ application, bearing CWJC No. 10787 of 2012, before this Court concealing the aforesaid facts, for implementation of the order of the Tribunal, dated 15.07.2011, passed in Case No. 149 of 2010.

18. A co-ordinate Bench of this Court, vide order, dated 27.06.2012 passed in CWJC No. 10787 of 2012, directed the respondents to file counter affidavit as to why the order of the Tribunal has not been implemented. At this stage, the Panchayat Secretary, instead of informing the Court that the order of the Tribunal has been stayed by this Court in CWJC No. 22411 of 2011, implemented the order of the Tribunal, dated 15.07.2011, by appointing the respondent no. 10 vide order, dated 30.06.2012. On 30.06.2012, the order of the Tribunal was not in operation in view of the stay order, dated 16.12.2011 passed by this Court in CWJC No. 22411 of 2011. The Panchayat Secretary in order to favour respondent no. 10 intentionally did not inform this Court regarding the stay of the order passed by the Tribunal in the writ application



filed by the petitioner and implemented the order of the Tribunal by appointing respondent no. 10.

19. It transpires that ultimately this Court, in CWJC No. 22411 of 2011, passed the final order on 04.09.2013, holding that order of the Tribunal directing cancellation of the petitioner's appointment cannot sustain in law and accordingly quashed the order of the Tribunal with liberty to the Employment Unit to pass appropriate order in the light of the present order expeditiously.

20. Once the order of the Tribunal declaring the cancellation of the petitioner's appointment has been held illegal and not sustainable by this Court, the Employment Unit or the Panchayat Secretary had no option but to reinstate the petitioner as Panchayat Teacher, the post he was holding at the time of passing of the order of the Tribunal and continue to hold the same by virtue of the interim order, dated 16.12.2011 passed in CWJC No. 22411 of 2011. The Panchayat Secretary misinterpreted the final order of this Court, dated 04.09.2013 passed in favour of the petitioner and instead of reinstating the petitioner, through the resolution of the Selection Committee, dated 25.11.2013, held that roster point was not followed in the appointment of the petitioner and as per the order of the District Magistrate, Muzaffarpur, dated 26.12.2007 and the order of the Tribunal, dated 15.07.2011, the



petitioner cannot be appointed/reinstated as Panchayat Teacher. The decision in this regard was communicated to the petitioner by the Panchayat Secretary by letter, dated 30.11.2013.

21. Upon close scrutiny of the decision of the Employment Unit, dated 25.11.2013, it is clear that the Panchayat Secretary and the Employment Unit by overreaching the final order, dated 04.09.2013, passed by this Court in CWJC No. 22411 of 2011, acted like a super body and declared the decision of the Tribunal, dated 15.07.2011, as valid; whereas the order, dated 15.07.2011 passed by the Tribunal was already quashed by this Court vide order, dated 04.09.2013, passed by this Court in CWJC No. 22411 of 2011.

22. The decision of the Panchayat Secretary and the Employment Unit overriding the order of this Court is unknown to the rule of law and is contumacious.

23. Furthermore, after coming into force of the 2006 Rules with effect from 01.07.2006, the appointment of Panchayat Shiksha Mitra cannot be interfered into and cancelled retrospectively in view of the decision of the Division Bench, in the case of **Renu Kumari Pandey** (supra) and the Full Bench decision of this Court, in the case of **Kalpana Rani** (supra).



24. Even in a case where a person has a legitimate grievance in respect of his or her non-selection as Panchayat Shiksha Mitra at 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.

25. It is not in dispute that the petitioner was appointed as Panchayat Shiksha Mitra prior to coming into force of the 2006 Rules on 01.07.2006 and after conversion he was working as Panchayat Teacher. The complaint of respondent no. 10 that there was irregularity at the time of appointment of Panchayat Shiksha Mitra and he was left out cannot be agitated by him after conversion of the post of Panchayat Shiksha Mitra into Panchayat Teacher with effect from 01.07.2006.

26. The Full Bench of this Court, in **Kalpana Rani** (supra) has held 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 Patna High Court LPA No.1569 of 2010 dt. 15-05-2014 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.”

27. I have given my anxious consideration upon the facts and law discussed herein above and come to the finding that removal of the petitioner by the Panchayat Secretary and the Employment Unit by misinterpreting the order of this Court, dated 04.09.2013, passed in CWJC No. 22411 of 2011 is not sustainable and is liable to be set aside. The Panchayat Secretary by distorting and concealing the fact regarding stay of the operation of the order passed by the Tribunal, implemented the order of the Tribunal on 30.06.2012 and appointed the respondent no. 10 in order to favour him.

28. The respondent no. 10 was not appointed as Panchayat Shiksha Mitra before 01.07.2006. As such, he has no right to claim employment or deemed employment as Panchayat



Shiksha Mitra or has a right to be absorbed as Panchayat Teacher by operation of Rule 20 (iii) of the 2006 Rules.

29. Considering the same, I come to the conclusion that the removal of the petitioner as Panchayat Teacher and appointment of respondent no. 10 in the garb of implementation of the order passed by the Tribunal is completely illegal, arbitrary, mala fide and unsustainable in law.

30. Accordingly, the order/resolution of the Selection Committee, dated 25.11.2013 and the Memo No. 210, dated 30.11.2013, issued under the signature of the Panchayat Secretary are set aside. The appointment of the respondent no. 10 as Panchayat Teacher is also set aside.

31. The respondent authorities are directed to reinstate the petitioner as Panchayat Teacher on the post vacated by respondent no. 10 within a period of two months from today without any back wages.

32. It is made clear that if the petitioner does not complete the teachers' training, arranged by the respondents or otherwise, within the stipulated time fixed by the concerned respondents, the authorities shall be at liberty to take appropriate action against the petitioner as per law.



33. In the result, this writ application is allowed to the extent mentioned herein above.

34. There shall be no order as to costs.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

AFR/NAFR	AFR
CAV DATE	18-07-2024
Uploading Date	02-08-2024
Transmission Date	N/A

