

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8215 of 2024

Ugan Jha @ Ugranath Jha Son of Jagat Narayan Jha, resident of village-
Nawasa (Kishanpur), P.O. Nawada, P.S. Bahera, District- Darbhanga.

... .. Petitioner/s

Versus

1. The State Election Commission (Panchayat) Sone Bhawan, Birchand Patel Path Patna through the State Election Commissioner.
2. The State Election Commissioner, The State Election Commission (Panchayat), Sone Bhawan, Birchand Patel Path, Patna.
3. The Officer-on- Special Duty, The State Election Commission (Panchayat), Sone Bhawan, Birchand Patel Path, Patna.
4. The District Election Officer(Panchayat)- cum- District Magistrate, Darbhanga, District - Darbhanga.
5. The District Panchayat Raj Officer, Darbhanga, District - Darbhanga.
6. The Block Development Officer, Benipur, District - Darbhanga.
7. Raushan Mishra son of Dayanand Mishra, Resident of village and P.O. Ramauli, P.S. Bahera, District- Darbhanga.
8. Ayachi Mithila Mahila College, Bahera, Benipura through its Secretary of Governing Body.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. S.B.K. Mangalam, Adv Mr. Awnish Kumar, Adv Mr. Kumar Gaurav, Adv Mr. Vikash Kumar Singh, Adv
For the Respondent/s	:	Mr. Government Pleader 17
For Election Commission	:	Mr. Ravi Ranjan, Adv
For Res. No. 7	:	Mr. Raushan Mishra (in person through V.C.)

CORAM: HONOURABLE MR. JUSTICE ALOK KUMAR SINHA
CAV JUDGMENT

Date : 04-07-2025

Heard the parties.

2. The present application has been filed by the
petitioner praying for the following reliefs: -

*(i) For issuance of an appropriate writ in
the nature of CERTIORARI for quashing the order*



dated 10.04.2024 passed by the Respondent no.2 in Case No.80 of 2021 (Raushan Mishra Vs. Ugan Jha @ Ugranath Jha) and communicated to all concerned under the signature of the Respondent no.3 and contained in his memo no.1793 dated 10.04.2024, whereby and where under the Respondent no.2 has been pleased to declare the petitioner disqualified to hold the post of Mukhiya of Gram Panchayat Raj, Ramauli under Benipur Block of Darbhanga District on the ground that on the date of his election, the petitioner was holding the office of profit since he was gainfully employed in an Institution receiving aid from the State Government.

(II) For a declaration that since before filing his nomination to contest 2021 Panchayat Election for the post of Mukhiya of Gram Panchayat Raj, Ramauli on 09.09.2021, the petitioner had already submitted his resignation on 05.09.2021 before Secretary of Governing Body of the College and his resignation was accepted by the Secretary of Governing Body of the College on 06.09.2021 in anticipation of its approval by the Governing Body of the College in exercise of his power under Clause-7 of Statute No.32 of the Bihar State Universities Act, 1976, the decision of the Secretary accepting the resignation of the petitioner on 06.09.2021 was approved by the Governing Body in its meeting dated 12.04.2022, there was no occasion for the Respondent no.2 to



declare the petitioner disqualified to hold the post.

(III) For issuance of an appropriate writ in the nature of MANDAMUS commanding and directing the Respondent Authorities for reinstatement of the petitioner to the post of Mukhiya of Gram Panchayat Raj, Ramauli under Benipur Block of Darbhanga District which he was holding immediately before the impugned order came to be passed by the Respondent no.2 declaring him disqualified to hold the post.

(IV) For issuance of any other appropriate writ/writs. order/orders, direction/directions for which the writ petitioner would be found entitled under the facts and circumstances of the case.

3. Learned counsel appearing for the petitioner submits that in order to file his nomination paper before the Returning Officer to contest the Panchayat Election 2021, the petitioner has tendered his resignation from the post of Typist in Ayachi Mithila Mahila College, Bahera, Benipur on 05.09.2021 (Annexure-P-2) and this resignation letter was addressed to the Secretary of the Governing Body and also to the Principal of the College. Considering the urgency of the matter, the Secretary of Governing Body of the College directed the Principal to place the petitioner's resignation before him in file. Learned counsel



further submits that perusal of the letter of resignation will reveal that the Principal of the College had also directed the Head Clerk of the College to put up the petitioner's resignation in file.

4. Learned counsel appearing for the petitioner further submits that since the petitioner was required to file his nomination paper on or before 09.09.2021, the Head Clerk of the College had forwarded the petitioner's resignation to the Secretary of the Governing Body and the Principal of the College on 06.09.2021. On 06.09.2021 itself, the Principal of the College, is said to have forwarded the petitioner's resignation letter to the Secretary of the Governing Body of the College and after receipt of the recommendation of the Principal, the Secretary of the Governing Body of the College accepted the resignation of the petitioner on 06.09.2021 itself in anticipation of its approval by the Governing Body in its next meeting vide letter no. 358/21 dated 06.09.2021 (Annexure-P-3). It is contended that this decision was taken by the Secretary of the Governing Body of the College in exercise of his power under Clause 7 of the Statute No. 32 which as per the petitioner authorizes the Secretary of the Governing Body to take emergent decision on any issue subject to its approval by the



Governing Body in the next meeting.

5. It is further contended by the petitioner that the aforesaid decision of the Secretary of the Governing Body of the College, accepting the petitioner's resignation from the post of Typist on 06.09.2021 was communicated to the petitioner by the Principal of the College vide his letter no. 359/21 dated 07.09.2021 (Annexure-P-4). It is further contended that it is only after acceptance of petitioner's resignation by the Secretary of the Governing Body of the College in question on 06.09.2021, that the petitioner had filed his nomination to contest for the post of Mukhiya of Gram Panchayat Raj, Ramauli on 08.09.2021 and, therefore, as per the learned counsel for the petitioner, on the date when the petitioner had filed his nomination before the Returning Officer or on the date of scrutiny of his nomination paper, no objection was raised about the petitioner's candidature from any quarter on any ground whatsoever and since there was no objection against the candidature of the petitioner, the Returning Officer accepted the nomination paper of the petitioner after scrutiny and the petitioner was allowed to contest the election. It is further submitted that even during the course of election, no objection was raised against the petitioner's candidature from any quarter.



The election was, therefore, held and after counting of votes, the petitioner was elected as Mukhiya of Gram Panchayat Raj, Ramauli by the Returning Officer.

6. It is further submitted by learned counsel for the petitioner that it is only after declaration of the result in favour of the petitioner declaring the petitioner to be duly elected on the post of Mukhiya of Gram Panchayat Raj, Ramauli that a complaint under Section 136(2) of the Bihar Panchayat Raj Act, 2006 was filed by the respondent no. 7 i.e. Raushan Mishra before the State Election Commission praying therein to declare the petitioner disqualified to hold the post of Mukhiya of Gram Panchayat Raj, Ramauli on the ground that on the date of his election, the petitioner was in service of Ayachi Mithila Mahila College, Bahera, Benipur which, as per Respondent No. 7, was a State Government aided institution. In nutshell, the complaint against the petitioner was that he should be disqualified under Section 136(1)(d) of the Bihar Panchayat Raj Act, 2006.

7. On the basis of complaint filed by the respondent no. 7 before the respondent-State Election Commissioner (respondent no. 2), Case No. 80 of 2021 was instituted. After service of notice, the petitioner appeared and filed his counter affidavit bringing all the materials on record including his letter



of appointment, his letter of resignation, letter of Principal dated 07.09.2021 informing the petitioner regarding acceptance of his resignation by the Secretary of the Governing Body. Copy of the counter affidavit filed by the petitioner before the respondent-Commission has been brought on record as Annexure-P-6. The learned counsel for the petitioner further submits that a second counter affidavit was also filed by the petitioner before the respondent-Commission which has been annexed in the present writ application as Annexure-P-7. It is further submitted that post facto approval was also granted by the Governing Body of the College in its meeting held on 12.04.2022 to the decision of the Secretary, accepting the resignation of the petitioner.

8. Learned counsel for the petitioner further submits that despite the fact that the petitioner was not in service of the College on the date when the petitioner had filed the nomination or even on the date of scrutiny, because as per the petitioner, his resignation had already been accepted by the Secretary of the Governing Body on 06.09.2021 in anticipation of its approval by the Governing Body, the respondent-Commission passed the judgment and order dated 10.04.2024 (Annexure-P-12) by which the respondent no. 3 has been pleased to disqualify the petitioner from holding the post of Mukhiya of Gram Panchayat



Raj, Ramauli in exercise of his power under Section 136(2) of the Bihar Panchayat Raj Act, 2006. Aggrieved by this judgment and order dated 10.04.2024 (Annexure-P-12), the petitioner has filed the present writ application challenging the same.

9. Per contra, learned counsel appearing for the respondent-State Election Commission submits that mere acceptance of the resignation by the Secretary in anticipation of its approval by the Governing Body of the College does not mean that the resignation tendered by the petitioner finally stood accepted on 06.09.2021 severing his status of being an employee in service of the College in question. Learned counsel for the respondent-State Election Commission further submits that in the 'Manual of Universities Laws (Bihar and Jharkhand)' as per Clause 7(d) of Rule 32, it has been clearly provided that the Secretary of the Governing Body will be responsible for taking such action on behalf of the Governing Body as he may be authorized to take or which may become necessary in view of any decision of the Governing Body.

10. Learned counsel for the respondent-Commission further submitted that in terms of the aforesaid Rule/Clause, it was incumbent upon the petitioner to produce material before the respondent-Commission to show that the Secretary of the



Governing Body had been authorized to accept resignation on behalf of the Governing Body, but no such authorization letter was produced, clearly meaning thereby that the Secretary of the Governing Body of the College in question was not legally authorized to accept the resignation of the petitioner on behalf of the Governing Body. Consequently, the acceptance of the resignation of the petitioner by the Secretary of the Governing Body on 06.09.2021 was not proper and did not amount to severance of employer-employee relationship between the petitioner and the College in question, an aided institution of the State Government. The learned counsel, therefore, defended the judgment and order dated 10.04.2024 passed by the respondent-State Election Commission and prayed for dismissing the writ application.

11. Learned counsel appearing for respondent no. 7 adopted the argument made by the learned counsel for respondent-Commission and prayed for rejecting the writ application.

12. During course of argument, learned counsel for the petitioner also submitted that along with complaint which was filed by respondent no. 7 before the respondent-Commission, no unimpeachable evidence was produced in



support of the allegations levelled in the complaint and hence as per learned counsel for the petitioner, complaint could not have been entertained under Section 136(2) of Bihar Panchayat Raj Act, 2006 in light of the law laid down by the Full Bench decision of this Court in **Rajni Kumari Vs. State Election Commission & Ors** reported in **2019 (4) PLJR 673**.

13. In the complaint which was filed by the respondent no. 7 before the respondent-Commission, it was stated that on the date when the petitioner had filed the nomination i.e. 08.09.2021; the date when the scrutiny was done and the date when the election was held on 29.09.2021, the petitioner was holding an office of profit as he was in service of Ayachi Mithila Mahila College, Bahera, Benipur which was a State Government aided institution. In support of this specific contention, the respondent no. 7 had enclosed a copy of employee list of Ayachi Mithila Mahila College, Bahera, Benipur which was enclosed as Annexure-3 to the complaint petition, which clearly showed that the petitioner was an employee in service of the College in question, which was an aided institution of the State Government. This document was enclosed with the complaint as an unimpeachable material and, therefore, it will not be inappropriate to hold that by producing



the employee list containing the name of the petitioner (which was never disputed by the petitioner) as unimpeachable material, respondent no. 7 had discharged his burden of proof and thereafter, the onus to prove to the contrary had shifted on the petitioner. The petitioner could not produce any material to support his contention that the Secretary of the Governing Body was duly authorized to accept the resignation on behalf of the Governing Body and having failed to do so, the respondent-Commission was left with no choice than to hold that the petitioner, on the date of his nomination/scrutiny/election was holding an office of profit as he was in service of the College in question, which was an aided institution of the State Government. It is also pertinent to observe that while appearing before the respondent-Commission, at no point of time, the petitioner ever questioned the status of the College of being State Government aided institution.

14. Under the aforesaid facts and circumstances and for the reasons stated above, this Court does not find any legal infirmity in the judgment and order dated 10.04.2024 passed by the respondent no. 2 in Case No. 80 of 2021, communicated to all concerned under the signature of respondent no. 3 contained in his Memo No. 1793 dated 10.04.2024 and hence, the same is



upheld. Consequently, the prayer made in the writ application is rejected and the writ application is dismissed.

15. All pending I.As, if any, will be deemed to have been disposed of.

(Alok Kumar Sinha, J)

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AFR/NAFR	AFR
CAV DATE	01.07.2025.
Uploading Date	04.07.2025.
Transmission Date	

