

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.714 of 2019

In
Civil Writ Jurisdiction Case No.10606 of 2019

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Sudhir Kumar Tiwari Son of Shri Parmeshwar Tiwari Resident of Village- Jagatpur Tarwara, Post Office- Telachha, Police Station- Janta Bazar, District- Saran (Chapra).

... .. Appellant/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Education Department, Government of Bihar, Patna.
3. The Director, Primary Education, Education Department, Government of Bihar, Patna.
4. The District Magistrate, Saran at Chapra.
5. The District Education Officer, Saran at Chapra.
6. The District Programme Officer (Establishment), Saran at Chapra.
7. The Block Education Officer, Lahladpur, District- Gaya.
8. The Mukhiya of Gram Panchayat Raj Purushottimpur, Block- Lahladpur, District- Saran.
9. The Panchayat Secretary of Gram Panchayat Raj Purushottimpur, Block- Lahladpur, District- Saran.
10. Shri Rajesh Kumar Pandey, Son of Shri Vishwanath Pandey, Resident of Village and Post Office- Dhamsar, Police Station- Janta Bazar, District- Saran, at present posted and working as Prakhanda Teacher in Govt. Middle School Telachha, Block- Lahladpur, District- Saran.
11. Shri Ramesh Kumar Sah, Son of Shri Krishna Nath Sah, Resident of Village and Post Office- Dhamsar, Police Station- Janta Bazar, District- Saran, at present posted and working as Prakhanda Teacher in Govt. Middle School Telachha, Block- Lahladpur, District- Saran.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Amresh Kumar Sinha, Advocate.

Mr. Vibhuti Ranjan, Advocate

For the Respondent/s : Mr. Shashi Shekhar Tiwary, AC to AAG-13

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**CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE RAJIV ROY**

**ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJIV ROY)**

Date : 25-08-2022

The appellant has preferred this appeal in challenging the order dated 10.05.2019 in CWJC No.10606 of 2019 by which the Hon'ble Single Judge (Hon'ble Mr. Justice Mohit Kumar Shah) dismissed the writ petition holding that in view of the Full Bench decision in *Kalpana Rani v. The State of Bihar & Ors.* reported in **2014 (2) PLJR 665** as also since the post of Panchayat Shiksha Mitra already abolished with effect from 01.07.2006, no one can be appointed on the said post in terms of Bihar Panchayat Elementary Teachers (Employment and Service) Rules, 2006.

2. The matrix of facts giving rise to the present appeal is/are as follows.

3. The appellant passed his matriculation exam from Bihar School Examination Board Patna (*henceforth for short 'the Board'*), securing 509 marks out of 700 (Ist Division) and in terms of the Government Resolution No.1079 dated 20.06.2002 issued by the Primary and Adult Education Department, Bihar, Patna (*henceforth for short 'the Department'*), applied for his



selection in the year 2005 in Gram Panchayat Raj, Purushottimpur, Block-Lahladpur, District-Saran.

4. In the said selection process, one Rajesh Kumar Pandey and others were selected. In the meantime, the Bihar Panchayat Elementary Teachers (Employment and Service) Rules, 2006 came into existence by which the post of Panchayat Shiksha Mitra was abolished with effect from 01.07.2006 and newly created post of Panchayat Shikshak came into existence.

5. The appellant-petitioner in his own averments in the writ petition, woke up from deep slumber in the year 2015 by seeking information under RTI Act on 17.06.2015. Later he came to know that those appointed (Rajesh Kumar Pandey & Ors.) had secured lesser marks than him and accordingly he started pursuing his judicial remedy.

6. He approached the District Teachers Employment Appellate Authority, Saran (*henceforth for short* 'the Authority') by filing Appeal No.2017 and it was dismissed on 26.09.2018 on the ground that it has no jurisdiction relating to non-existant of Panchayat Shiksha Mitras Post.

7. The appellant-petitioner challenged the same before the learned State Appellate Authority which too came to be dismissed on 27.02.2019 in Appeal No.689/2018 on the ground



that in view of the law laid down by the Hon'ble High Court in case of **Kalpana Rani** (*supra*), the authorities cannot entertain the said appeal.

8. Still aggrieved, the writ petition was filed vide C.W.J.C. No.10606 of 2019. The Hon'ble Single Judge took up the matter on 10.05.2019 and after hearing the parties held as follows:

“3. I have heard the learned counsel for the parties and I find that the present case in hand, is squarely covered by the Full Bench decision rendered in the case of Kalpana Rani (*supra*), paragraphs no. 26, 30, 106, 114 and 118, whereof are reproduced hereinbelow :-

“26. In the matter before us also the appellant Kalpana Rani was never appointed as Panchayat Shiksha Mitra either in 2003 or at any time until 1st July, 2006. After 1st July, 2006, the appellant could not set up right to employment as Panchayat Shiksha Mitra or right to be absorbed as Panchayat Teacher. The belated challenge to the appointment of the respondent nos. 9 and 10 and the claim for absorption as Panchayat Teacher raised by the appellee after 1st July, 2006 was clearly an afterthought. Such a claim cannot be entertained. Irrespective of the validity of the appointment of respondent nos. 9 and 10 as Panchayat Shiksha Mitra, the appellant has no right to be appointed as Panchayat Shiksha Mitra or to be absorbed as Panchayat Teacher.

30. For the aforesaid reasons, Appeal is dismissed with cost. The cost is quantified at Rs. 10,000/-. The amount of cost will be deposited in the Government Treasury at Samastipur



within eight weeks from today. In the event, the appellant fails to deposit the amount of cost as directed, the District Collector, Samastipur will recover the same as arrears of land revenue. Interim relief stands vacated.

106. A question, therefore, would arise as to whether in term of the repeal of the executive instruction of Panchayat Shiksha Mitra in terms of Rule 20(i) of 2006 Rules, could any dispute be adjudicated for appointment on the post of Panchayat Shiksha Mitra? The answer to this must be in negative, inasmuch as, if the entire provision for Panchayat Shiksha Mitra was itself repealed, there could not have been any appointment on the abolished post of Panchayat Shiksha Mitra. It is this aspect of the matter which has been dealt elaborately in the earlier Division Bench judgment in the case of Smt. Renu Kumari Pandey (supra) and I do not find any error in the same.

114. In view of the settled law as discussed above, I will have no difficulty in coming to a conclusion that the appellant, on the basis of her so-called empanelment on the post of Panchayat Shiksha Mitra in the year 2003 (after repeal of the entire scheme of Panchayat Shiksha Mitra with effect from 1.7.2006), could have either brought a dispute by filing her complaint in Janta Darbar on 14.09.2006 or could have sought any direction for her appointment on the post of Panchayat Shiksha Mitra. That was in fact simply impermissible in view of Rule 20(i) of the 2006 Rules.

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 correctly decided the law and is, accordingly, overruled.”

4. Having regard to the aforesaid judgment rendered by the Full Bench in the case of **Kalpana Rani (supra)** since the post of Panchayat Shiksha Mitra has already been abolished w.e.f. 01.07.2006, no one can be appointed on the said post and moreover, no dispute can be adjudicated with regard to the same, in terms of Bihar Panchayat Elementary Teachers (Employment and Service) Rules, 2006. Thus, there is no merit in the present writ petition apart the same being also barred by the principles of delay and laches, hence is dismissed.”

9. The present appeal has been preferred by the appellant-petitioner being aggrieved by the said order dated 10.05.2019 passed by the Hon’ble Single Judge.

10. Heard counsel for the parties.



11. Admitted position is that the appellant-petitioner participated in a selection process relating to 'Panchayat Shiksha Mitra' in the year 2005. The selection process was over, candidates selected, while the appellant-petitioner slept over the matter. On 01.07.2006, the Bihar Panchayat Elementary Teachers (Employment and Service) Rules, 2006 (*henceforth for short* 'the Rules') came into existence, with effect from 01.07.2006, the post of 'Panchayat Shiksha Mitra' was abolished.

12. It was only in the year 2015 that the appellant-petitioner realized that he was wrongly denied the post of 'Panchayat Shiksha Mitra' in 2005 and then he chose to pursue the remedy. However, by that time, lots of water had flown down the Ganges and not only the same was hopelessly time barred, in view of the decision given by the Full Bench of Patna High Court in **Kalpana Rani vs. The State of Bihar & Ors.** (*supra*), there was certainly no chance for the appellant-petitioner to catch the bus.

13. Apex Court in the case of ***P.S.Sadasivaswamy Vs. The State of Tamil Nadu*** reported in ***AIR 1974 SC 2271*** held that selection and appointment matters were to be agitated by aggrieved person within a reasonable period of six months from the date of cause of action. In the present case appellant-petitioner invoked remedy after about a decade.



14. We have gone through the order of the learned Single Judge and do not find any error in it. The appeal preferred by the appellant-petitioner fails and is dismissed both on the count of delay and laches as also the Full Bench decision in **Kalpana Rani** (*supra*).

15. No costs.

(P. B. Bajanthri, J)

(Rajiv Roy, J)

Prakash Narayan /-

AFR/NAFR	AFR
CAV DATE	NA
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