

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1286 of 2019

In

Civil Writ Jurisdiction Case No.3428 of 2018

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Rita Kumari Wife of Kumar Rajendra Singh Resident of Village- Saneya,
P.O.- Bambhwar, P.S.- Piro, District- Bhojpur.

... .. Appellant

Versus

1. The State of Bihar.
2. The District Magistrate, Bhojpur.
3. The State Appellate Authority, Patna.
4. The Member, District Appellate Authority, Bhojpur.
5. The Block Education Officer, Block- Piro, District- Bhojpur.
6. The Panchayat Secretary, Jamuaon Gram Panchayat Piro, District- Bhojpur.
7. Mukhiya, Jamuaon Gram Panchayat, Piro, District Bhojpur.
8. Rima Kumari Wife of Rabindra Kumar Rai At and P.O.- Jamuoan, P.S.- Piro,
District- Bhojpur.

... .. Respondents

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Appearance :

For the Appellant/s	:	Mr. Dileep Kumar Jha, Adv. Mr. Parma Nand Singh, Adv.
For the State	:	Mr. Ashutosh Ranjan Pandey, AAG-15 Mr. S.S. Tiwary, AC to AAG-15
For Respondent no. 8		Mr. Amit Shrivastava, Sr. Adv. Mr. Girish Pandey, Adv. Mr. S.M. Sudhanshu, Adv.

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 30-07-2025

Dates and events of the present case are as



follows:-

Dates	Events
11.08.2004	Vide resolution no 1458, guidelines issued for appointment of panchayat shiksha Mitra on contractual basis with 50% reservation for female Candidates.
07.04.2005	Rules of recruitment issued in compliance of such guidelines.
2005	Both the appellant and respondent no 8 participated for the post of Shiksha Mitra, but respondent no 8 got selected because of wrong calculation of marks.
01.07.2006	By policy decision aforesaid post was abolished and Respondent no. 8 automatically became panchayat teacher.
18.12.2009	District authority directed to appoint the appellant on post of panchayat teacher instead of respondent no.8.
30.06.2011	The District Appellate Authority cancelled the appointment of appellant and finally respondent no. 8 got appointed.
2011	The appellant filed writ petition where he was directed to file appeal before State Appellate Authority and his appeal also got dismissed.
2018	The appellant filed CWJC No. 3428 of 2018 against appellate authority order which was dismissed on 02.09.2019, affirming the appellate authority order. Hence, this present L.P.A had been filed.



2. Matter was heard at length. On 08.04.2025

the following order was passed:-

Despite our previous orders issued from time to time and the officer has been summoned, there is no assistance.

2. Matter relates to selection and appointment to the post of Shiksha Mitra/Panchayat Shikshak. No doubt, the post is stated to have been abolished w.e.f. 01.07.2006 whereas the grievance of the petitioner is prior to the abolition of the post. The appellant's right should have been curtailed pursuant to the abolition of the post w.e.f. 01.07.2006. On the other hand, such of those persons who were working as Shiksha Mitra/Panchayat Shikshak as on 01.07.2006, they have been accommodated and even to this day, they are working, therefore, prima facie the appellant's right still subsisting. The State-respondents are not in a position to apprise this Court with reference to issuance of advertisement in the newspaper publication (vide circulation) in the State of Bihar and that apart, introduction of the post of Shiksha Mitra/Panchayat Shikshak, is it by executive order or by rules of recruitment notified under Article 309 of the Constitution? If it is prior to the present recruitment, in that event, from the initial selection and appointment to the post of Shiksha



Mitra/Panchayat Shikshak, roster point has been assigned. For example, prior to the present recruitment, if two earlier recruitments have taken place, in that event, what is the roster point on the previous recruitment and thereafter, roster point is required to be continued. These materials are not available. Further, we have noticed that all the selected and appointed candidates were seem to be from the Bhojpur District. Therefore, the concerned Authority is hereby directed to apprise this Court whether the post of Shiksha Mitra/Panchayat Shikshak was restricted to District wise recruitment or not? In this regard, Additional Chief Secretary, Education Department is hereby directed to depute an official from the secretariat who is well versed with the rules of recruitment read with the roster point and to apprise whether Articles 14 and 16 of the Constitution have been duly followed in the recruitment or not.

3. Copy of this order shall be made available to State counsel in order to forward the same to the Additional Chief Secretary, Education Department, State of Bihar, Patna.

4. Re-list this matter on 06.05.2025.

3. On 06.05.2025 the following order was passed:-

1.

2. Today, Deputy Secretary Education



Department – Ajay Satish Bhengra, is present and respondents have filed counter affidavit on behalf of second respondent while enclosing number of documents i.e. Rules of recruitment issued on 11.08.2004 and guidelines dated 07.04.2005.

3. Appellant and contesting respondent namely, Rita Kumari and Rima Kumari (8th respondent) were candidates for the recruitment to the post of 'Shiksha Mitra'. Pursuant to the process of recruitment on 31.05.2005. It is necessary to reproduce guidelines for award of marks and marks awarded to the candidates and they are as under:-

“बिहार सरकार, मानव संसाधन विकास विभाग, पंयात शिक्षा मित्र (अनुबंध पर नियोजन) मार्गदर्शिका (संसोधित), सचिव, प्राथमिक एवं वयस्क शिक्षा विभाग, बिहार, पटना, संकल्प संख्या: 1458, दिनांक : 11.8.2004

अनुसूची "क"

प्रशिक्षित व्यक्तियों की मेधा सूची तैयार करने हेतु दिये जाने वाले अधिभार (वेटेज) की अनुसूची

क्रमांक	योग्यता	30 % से 60 % तक	60 % से उपर 75 % तक	75 % से उपर
1.	इन्टर	10	15	20
2.	स्नातक	4	7	9
3.	स्नातकोत्तर	5	8	10
*4.	प्रशिक्षित	5	8	10
**5.	शारीरिक प्रशिक्षित	5	8	10

नोट:- समान वेटेज होने पर उच्चतर योग्यताधारी व्यक्ति का स्थान उपर होगा।

* मान्यता प्राप्त संस्थान से
डिप्लोमा-इन-एडुकेशन/बी0एड0 प्रशिक्षित



**** मान्यता प्राप्त संस्थान से सर्टिफिकेट इन फिजिकल एडुकेशन / बैचलर ऑफ फिजिकल एडुकेशन प्रशिक्षित ।**
ग्राम पंचायत जमुआँव, प्रखण्ड – पीरो (भोजपुर) बिहार

पंचायत शिक्षा मित्र नियोजन वर्ष 2005 के सभी कोटि महिला अभ्यर्थियों की मेधानुसार सूचि

क्रम सं.	अभ्यर्थी का नाम	पिता/पति का नाम	पूरा पता	जन्म तिथि	शैक्षणिक अधिभार					कोटि	अभियुक्ति
					इन्टर	स्नातक	स्नातकोत्तर	प्रशिक्षित	अधिभार योग		
1.	शोभा कुमारी	श्री राजीव कुमार	जमुआँव	15.02.1976	10	4	5		19	सामान्य	चयनित
2.	रीमा कुमारी	रवीन्द्र कुमार राय	जमुआँव	01.05.1977	15	4			19	सामान्य	चयनित
3.	नीजू कुमारी	महेश प्रसाद राय	जमुआँव	02.01.1984	15	4			19	सामान्य	चयनित
4.	रीता देवी	राजेन्द्र कुमार राय	सनेयां	01.04.1976	15				15	पिछड़ा वर्ग	
5.	प्रेमलता देवी	जयप्रकाश सिंह	सनेया	15.02.1972	10	4			14	पिछड़ा वर्ग	
6.	अनीता कुमारी	अरुण कुमार	जमुआँव	16.11.1983	10	4			14	पिछड़ा वर्ग	
7.	मधु कुमारी देवी	सोनू कुमार राय	जमुआँव	11.12.1972	10				10	सामान्य	
8.	सुनीता कुमारी	बिरेन्द्र सिंह	सनेया	15.03.1985	10				10	पिछड़ा वर्ग	
9.	गिरिजा कुमारी	सियाराम प्रसाद	जमुआँव	11.03.1972	10				10	अतिपिछड़ा वर्ग	चयनित
10.	सीमा देवी	श्री धनमन प्रसाद	जमुआँव	16.08.1975	10				10	अनुसूचित जाति	चयनित
11.	सीखा कुमारी	नन्द किशोर राय	जमुआँव	04.02.1973	10				10	सामान्य	
12.	पुनम लता	राजेन्द्र कुमार राय	जमुआँव	13.10.1981						सामान्य	
13.	अर्चण कुमारी	अनील सिंह	जमुआँव	30.02.1986	10				10	पिछड़ा वर्ग	

पंचायत सचिव
ग्राम पंचायत जमुआँव
प्रखण्ड— पीरो (भोजपुर)”

4. While preparing comparative merit chart, there is a wrong calculation in



favour of respondent no. 8 – Rima Kumari to the extent that her weightage calculation was required to be calculated @60% Intermediate-10 marks. On the other hand, she has been awarded 15 marks. Whereas, appellant – Rita Kumari has secured more than 60% therefore, she is entitled to 15 marks, to this effect, there is an error in calculation and awarding marks to the contesting respondent – Rima Kumari as is evident from the Annexure-1 to the writ petition at serial no. 03 and 13. Candidates are entitled for marks for Intermediate and Graduation. Due to wrong calculation, appellant – Rita Kumari has not been selected and appointed therefore, she has invoked remedy before this Court. In the meanwhile, State Government has taken a policy decision insofar as abolition of the post of '*Shiksha Mitra*' with effect from 01.07.2006 and it was subject matter of litigation before this Court in a Full Bench decision in the case of **Kalpana Rani vs. State of Bihar** reported in **2014(2) PLJR 665** in which it is held that '*Shiksha Mitra*' is ceases to be existing in the eye of law in view of the policy decision of the State Government that it was abolished with effect from 01.07.2006.

5. The learned Single Judge has



taken note of the aforementioned Full Bench decision and proceeded to dismiss the appellant's writ petition without examining the merits of the case. Merits of the case is required to be taken into consideration in the present case for the reasons that contesting respondent who was selected and appointed prior to abolition of '*Shiksha Mitra*' she has been accommodated as a teacher. Therefore, the claim of appellant subsist insofar as claiming on merits of the case. Abolition of the post of '*Shiksha Mitra*' on 01.07.2006 is not attracted in the present case, therefore, the learned Single Judge has committed error in dismissing the appellant's CWJC No. 3428 of 2018 while quoting Full Bench decision. It is undisputed that appellant is more merited than the 8th respondent with reference to award of weightage marks to Intermediate and Graduation in terms of the guidelines.

6. At this stage, in order to provide one more opportunity to the 8th respondent, relist this matter on 13.05.2025.

7. Personal appearance of Deputy Secretary Education Department is dispensed with until further orders.

4. Core issue involved in the present lis is during



pendency of the litigation if the subject matter of post is abolished, in that event litigant is entitled to adjudicate his case on merits or not? Abolition of the post of Shiksha Mitra/Panchayat Shikshak was subject matter of litigation in Full Bench and this Court upheld abolition. Where as the present matter relates to selection and appointment prior to such abolition and it is relating to merits of the case of the appellant insofar as selection and appointment to the post of Shiksha Mitra/Panchayat Shikshak. Therefore, Full Bench decision ***Kalpana Rani vs. State of Bihar*** reported in ***2014 (2) PLJR 665*** has no application to the case in hand. It is required to be taken note of the date of abolition of the post of Shiksha Mitra/Panchayat Shikshak read with the Full Bench decision. On the other hand, we have to decide the present lis on merits insofar as selection and appointment of appellant/Rita Kumari and 8th respondent/ Rima Kumari. In other words, abolition of the post read with its affirmation by the Full Bench decision has no bearing on the case in hand. In other words, merits of the case insofar as selection and appointment to the post of Shiksha Mitra/Panchayat Shikshak prior to abolition of the post is required to be examined. It would lead to discrimination among the appellant-Rita Kumari and 8th respondent-Rima Kumari. In



other words, as on the date of abolition of the post of Shiksha Mitra/Panchayat Shikshak 8th respondent/ Rima Kumari was in service. She had been accommodated against a teacher post under Rules. We have taken note of comparative merits of the appellant-Rita Kumari and 8th respondent-Rima Kumari and analyzed and drawn an inference that 8th respondent Rima Kumari is lesser merited than the appellant Rita Kumari as discussed in our order dated 06.05.2025 quoted supra.

5. Learned senior counsel Mr. Ashutosh Ranjan Pandey submitted that Full Bench decision in the case of **Kalpana Rani vs. State of Bihar** reported in **2014(2) PLJR 665** is binding on the Division Bench. If there is any disagreement with the Full Bench decision by the Division Bench, in that event, matter is required to be referred to Larger Bench. In the present case, question of difference or disagreeing with the Full Bench decision is not the issue. On the other hand, issue is on merits among the appellant-Rita Kumari and 8th respondent-Rima Kumari insofar as selection and appointment to the post of Shiksha Mitra/Panchayat Shikshak before abolition and its affirmation. Abolition and its affirmation on judicial side has no bearing insofar as the subject matter of the present lis depends upon the fact that who is merited and who is



not merited insofar as selection and appointment to the post of Shiksha Mitra/Panchayat Shikshak. We would not have taken the burden of deciding the matter on merits, if the effect of abolition results in 8th respondent-Rima Kumari's termination. On the other hand, she has been accommodated against a teacher post under Rules, resultantly appellant has every right to claim over the post of Shiksha Mitra/Panchayat Shikshak up to the date of abolition of the post and its affirmation by the Full Bench decision in the case of **Kalpana Rani** cited (supra). Further, appellant has right to seek selection and appointment to the post of Shiksha Mitra/Panchayat Shikshak. Thereafter she is entitled to be accommodated against a teacher post on par with 8th respondent Rima Kumari under the relevant rules as there is no fault on the part of Appellant and she is more merited than 8th Respondent. In the light of these facts and circumstances, the Full Bench decision in the case of **Kalpana Rani** cited (supra) has no application to the facts of the case. Hence, appellant has made out a case so as to interfere with the order of the learned Single Judge dated 02.09.2019 and it is set aside. Resultantly, CWJC No. 3428 of 2018 filed by the Appellant is allowed.

6. Concerned authority is hereby directed to formally



appoint the appellant-Rita Kumari to the post of Shiksha Mitra/Panchayat Shikshak with retrospective date, the date on which 8th respondent-Rima Kumari was appointed. Thereafter a formal order shall be passed accommodating the appellant-Rita Kumari to the post of teacher on account of abolition of the post and extend all service benefits. However, appellant-Rita Kumari is not entitled to any monetary benefits during the intervening period and she is entitled to notional service benefits. It shall be extended within a period of six months. However, it is made clear that if she is not appointed within a period of two months from today, she is entitled to arrears of pay w.e.f. 01.10.2025 till appointment is made.

7. Accordingly, the present Letters Patent Appeal allowed.

8. At this stage, learned Advocate General for the State submitted that 8th respondent-Rima Kumari has not been adjusted against a teacher post randomly. On the other hand, under certain rules such of those persons who have rendered service in Shiksha Mitra/Panchayat Shikshak, their services have been absorbed. In that event appellant-Rita Kumari is entitled to have the benefit of absorption in those rules from retrospectively for the reasons that due to errors committed by



the official Respondents in not selecting and appointing more merited candidate like Appellant herein. In other words, whatever the benefit extended to the 8th respondent- Rima Kumari from the date of her selection and appointment as on this day, the appellant is entitled notional benefits and the same shall be extended.

9. Pending I.A.'s, if any, stands disposed of.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

shahzad/-alok

AFR/NAFR	NAFR
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