

(2012) 03 PAT CK 0147

In the Patna High Court

Case No : LPA No. 1882 of 2011 in CWJC No. 13232 of 2007

Awadh Bihari Rai

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 05-03-2012

Acts Referred:

Citation : (2013) 3 PLJR 506

Hon'ble Judges : R.M. Doshit, C.J;Birendra Pd. Verma, J

Bench : Division Bench

Advocate : Tuhin Shankar Shashikant Kumar, for the Appellant; Alok Ranjan for the State, Kalyan Shankar, Bindhyachal Rai for the Respondent No. 6, Rajendra Prasad Singh and Onkar Kumar for the Respondent No. 8, for the Respondent

Judgement

R.M. Doshit, C.J.—With the consent of the learned advocates, the Appeal is heard and decided today. Feeling aggrieved by the judgment and order dated 28th January, 2011 passed by the learned single Judge in above CWJC No. 13232 of 2007, the appellant a former Mukhia of Gram Panchayat, Samardiha, Karghar, Rohtas has preferred this Appeal under Clause 10 of the Letters Patent.

2. It appears that the respondent No. 8, the writ petitioner, was appointed as the Panchayat Shiksha Mitra in the Gram Panchayat, Samardiha on 21st May, 2005 for the period of eleven months. On expiry of the term of her appointment in April 2006 she was not re-appointed or her appointment as Panchayat Shiksha Mitra was not renewed.

3. Feeling aggrieved, she filed above CWJC No. 13232 of 2007 for a direction that she be paid salary since April 2006 and she be not disturbed from discharging her duties. The petitioner alleged that the Mukhia of the Gram Panchayat had mala fide intention in not renewing her appointment. The learned single Judge has observed that although the District Superintendent of Education had informed the Mukhia of the Gram Panchayat, he did not appear before the Court. In absence of any contest by the Mukhia, the learned single Judge has allowed the writ petition. The learned single Judge has presumed that the writ

petitioner had continued as Panchayat Shiksha Mitra and that by operation of Rule 20(iii) of the Bihar Panchayat Elementary Teachers (Appointment & Service Conditions) Rules, 2006; she was serving as a Panchayat Teacher. In view of the said presumption, the learned single Judge has issued direction against the Mukhia and the Panchayat Secretary to make payment of arrears of honorarium to the petitioner from April 2006 to June 2006 and the prescribed salary of Panchayat Teacher since July 2006.

4. Feeling aggrieved, the appellant, the then Mukhia of the Gram Panchayat has preferred this Appeal under Clause 10 of the Letters Patent.

5. Learned Advocate Mr. Tuhin Shankar has appeared for the appellant. He has submitted that the impugned order has been made against the appellant ex parte. He has further submitted that since April 2006 the petitioner had not been continued in service as Panchayat Shiksha Mitra nor did she become Panchayat Teacher by operation of Rule 20(iii) of the Bihar Panchayat Elementary Teachers (Appointment & Service Conditions) Rules, 2006.

6. On perusal of the record it is apparent that the Court had not issued notice upon any of the respondents. The respondent Nos. 1 to 5, the State of Bihar and its authorities, appeared on advance service. The respondent Nos. 6 and 7, the Mukhia and the Secretary of the Gram Panchayat, were not issued notice. In absence of the respondent Nos. 6 and 7, the writ petition could not have been proceeded more particularly against the Mukhia as there was a specific allegation of mala fide made against the Mukhia.

7. Mr. Rajendra Prasad Singh has appeared for the writ petitioner, the respondent No. 8. He has submitted that the appellant has no locus standi to prefer this Appeal.

8. We see no substance in the submission of Mr. Singh. There is a specific allegation of mala fide against the then Mukhia of the Gram Panchayat. He had a right to contest the petition. The order having been made against him, he has the locus standi to prefer this Appeal.

9. As we have held, the impugned judgment and order have been passed by the learned single Judge ex parte against the respondent Nos. 6 and 7. The impugned judgment is, therefore, not sustainable.

10. In view of the above discussion, the Appeal is allowed. The impugned judgment and order dated 28th January, 2011 passed by the learned single Judge in CWJC No. 13232 of 2007 is set aside. CWJC No. 13232 of 2007 is revived and remitted to the learned single Judge for hearing and decision afresh after hearing all the parties.

11. The appellant, the then Mukhia of the Gram Panchayat, Samardiha, Karghar, Rohtas is impleaded as party respondent No. 8 in the writ petition. The cause title will be accordingly amended. Learned Advocate Mr. Tuhin Shankar has appeared for the appellant. He has submitted that notice to the appellant-

respondent No. 8 may not be issued in the writ petition. The appellant will appear before the learned single Judge and file his counter affidavit within three weeks from today.