

(2013) 07 PAT CK 0075
In the Patna High Court
Case No : CWJC No. 4782 of 2011

Dayanand Yadav and Another	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 26-07-2013

Acts Referred:

Citation : (2013) 4 PLJR 66

Hon'ble Judges : Shailesh Kr. Sinha, J

Bench : Single Bench

Advocate : Alok Kumar Singh, for the Appellant; Shail Kumari, for the Respondent

Judgement

Shailesh Kr. Sinha, J.—Heard learned counsel for the petitioner, State as also the respondent No. 6. Petitioners are aggrieved by the order dated 10th of February, 2011 passed by the District Teachers Employment Appellate Authority, Madhepura in Appeal No. 108 of 2009 whereby the appointment of the petitioners as Panchayat Teacher was held illegal and accordingly, their appointments have been cancelled.

2. It is submitted on behalf of the petitioners that appointment of the petitioners as Panchayat Teacher is cancelled purely on the ground that before coming into force of Bihar Panchayat Primary Teachers (Employment and Service Conditions) Rules, 2006 with effect from 1.7.2006, petitioners who were engaged as Shiksha Mitra on contract for 11 months in the year 2003 and later on, their engagement was renewed after expiry of the tenure period. It is further submitted that on coming into force of the above rule as on 1.7.2006, petitioners on account of the legal fiction became the Panchayat Teacher under the aforesaid rule and as such, any irregularity in the engagement of Shiksha Mitra cannot become a subject matter of consideration by the District Teachers Employment Appellate Authority who acquires the jurisdiction under Rule 18 of the aforesaid Rules after its amendment on 25th of August, 2008. In sum and substance, the submission is that respondent-appellate authority has no jurisdiction or authority in law to

consider the irregularities with respect to the engagement of the Shiksha Mitra prior to coming into force the aforesaid statutory rule. Reliance is placed on a decision of this court in the case of Smt. Renu Kumari Pandey Vs. The State of Bihar and Others, as also the decision in the case of Saroj Kumar and Others Vs. The State of Bihar and Others, . It is further submitted that against the decision of the Division Bench, the matter was placed before the Apex Court vide SLP No. 3303 of 2011 which was not interfered, however, with a liberty to the petitioner of the above SLP to approach the High Court for review of the order which may be considered in accordance with law. The review application was filed which was rejected vide order dated 17th of October, 2012 passed in Civil Review No. 123 of 2012.

3. Learned counsel for the State submits that before passing of the order by the Apex Court in the aforesaid Special Leave Petition, the Division Bench of this court in L.P.A. No. 1596 of 2011 vide order dated 28th of 2011 referred the matter for consideration by Full Bench on the issue as to whether Shiksha Mitra removed prior to coming into force of the Rules, 2006 can be directed to be appointed as Shiksha Mitra or not.

4. Considering the submission of the parties, it appears that in the case reported in Smt. Renu Kumari Pandey Vs. The State of Bihar and Others, , as also the Single Bench judgment of this court in the case of Saroj Kumar and Others Vs. The State of Bihar and Others, the issue as to whether irregularities, if any, committed in engaging the Shiksha Mitra would be a subject matter of consideration by the appellate authority constituted under Rule 18 of the aforesaid Rules was considered. This court held that the appellate authority cannot exercise his jurisdiction with respect to the irregularities, if any in the enrollment of the persons who were earlier engaged as Shiksha Mitra and the matter cannot be reopened after they acquired status of Panchayat Teacher and as such, any omission or commission on the part of these petitioner can (sic--not?) be subject matter of consideration by the appellate authority under Rule 18 of the aforesaid rules.

5. In view of the reasons and discussions made above, I am of the opinion that the impugned order dated 10th of February, 2011 cannot be sustained in law. It is accordingly, quashed. The competent authority shall issue appropriate order in light of the present order expeditiously, preferably within a period of two months on receipt/production of certified copy of the present order for reinstatement. With respect to emoluments for the period, the petitioner remained out of service on account of their termination, appropriate order be also passed. The writ application stands allowed.