

(2008) 02 PAT CK 0153
In the Patna High Court
Case No : LPA No. 940 of 2007

Kishori Prasad

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 12-02-2008

Acts Referred:

Citation : (2008) 2 PLJR 458

Hon'ble Judges : Rajesh Balia, C.J;Barin Ghosh, J

Bench : Division Bench

Advocate : S. Azeem and Shanker Kumar, for the Appellant; Sanjay Kumar No. 2 for the State, for the Respondent

Judgement

1. Heard learned counsel for the parties. The appeal is directed against the order of the learned Single Judge dated 3.10.2007. It appears from the order under appeal that the learned counsel for the petitioner was not present and in the presence of the learned counsel for the respondents, on his submission, the writ petition has been dismissed on merit instead of dismissing the writ petition for want of prosecution which could have enabled the appellant to pursue the remedy of restoration and seeking hearing on merit.

2. We have also earlier made it clear and we again make it clear that where the learned counsel for the petitioner is not present, the ordinary course is either to postpone the hearing or to dismiss it for want of prosecution but in no circumstances it is to be decided on merit. The same view has also been taken by the Hon''ble Supreme Court in number of matters.

3. Looking to facts and circumstances, we propose to decide the case on merit with the consent of the parties.

4. The petitioner has been appointed on 12.5.2003 as a Panchayat Shiksha Mitra in the Primary School, Makarpur. He was holding a certificate of Higher Secondary which was the eligibility qualification required then. Thereafter, vide Government circular dated 21.4.2005 the qualification for Shiksha Mitra was

raised to Intermediate. Thus while the future appointment of candidates below Matric was prohibited and the persons already appointed on the basis of their qualifications of Matriculation were provided 33 months" time to acquire the higher qualification prescribed for their further continuance in service. It was envisaged that existing Shiksha Mitras, who are. not Intermediate shall obtain such qualification within 33 months, failing which services of such Shiksha Mitras were liable to be terminated. Those who acquired such qualifications were to continue in service.

5. Undisputedly, on the date when the petitioner"s services were terminated vide Annexure-8 dated 21.7.2005, 33 months" time had not expired since his date of appointment but only 27 months had expired. Before expiry of 33 months from the date of his appointment, the petitioner had already acquired the qualification of Intermediate as per the certificate issued on 22.9.2005. Apparently on this undisputed fact, the petitioner"s services could not be terminated by Annexure-8 and said order cannot be sustained. Accordingly, the appeal is allowed and the judgment and order under appeal dated 3.10.2007 is set aside. The impugned order, Annexure-8, dated 20.7.2005 is quashed. The petitioner-appellant is directed to be reinstated in continuity in service from the date when he was terminated. This will entail all consequential benefits.