
(2014) 07 PAT CK 0009

In the Patna High Court

Case No : LPA No. 923 of 2013 in CWJC No. 3475 of 2010 and I.A. Nos. 5355-5356 of 2013 and 39432 of 2014 in LPA No. 923 of 2013

Maresh Thakur

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 01-07-2014

Acts Referred:

Citation : (2014) 4 PLJR 339

Hon'ble Judges : Rekha M. Doshit, C.J;Ashwani Kumar Singh, J

Bench : Division Bench

Advocate : Rajeev Kumar Singh, Advocate for the Appellant; Shankar Kumar Thakur, Advocate for the Respondent

Judgement

Rekha M. Doshit, C.J.

I.A. No. 5355 of 2013

1. Delay of eleven days occurred in preferring the Letters Patent Appeal is condoned. Interlocutory Application stands disposed of.

LPA No. 923 of 2013

2. Feeling aggrieved by the order dated 2nd April, 2013 made by the learned Single Judge in CWJC No. 3475 of 2010, the writ petitioners have preferred this Appeal under Clause 10 of the Letters Patent.

3. In 2005, the appellants were appointed as Panchayat Shiksha Mitra under the Gram panchayat Raj Sapdaha, Block-Bounsi, District-Banka. While serving as Panchayat Shiksha Mitra, on and with effect from 1st July, 2006, they were absorbed as Panchayat Teachers by operation of Rule 20(iii) of the Bihar Panchayat Elementary Teachers (Employment and Service Conditions) Rules, 2006. While the appellants were serving as Panchayat Teachers, in view of the judgment of this Court in the matter of Kishori Prasad Vs. The State of Bihar and Others, and consequent Government resolution dated 4th July, 2008, the

respondent Nos. 8 to 11 earlier appointed as Panchayat Shiksha Mitra but not continued as such after 2005 were appointed as Panchayat Teacher. In the process, the appellants were displaced. The challenge before the learned Single Judge has failed. Therefore, this Appeal.

4. The matter at issue has been finally decided by a Full Bench of this Court in the matter of Kalpana Rani and Prashant Kumar Vs. The State of Bihar and Others, . The above referred judgment in the matter of Kishori Prasad v. State of Bihar has been held to be per in curium and is expressly overruled. The above referred resolution dated 4th July, 2008 has also been held to be ultra vires Rule 20 of the aforesaid Rules of 2006 in the matter of Smt. Renu Kumari Pandey Vs. The State of Bihar and Others, .

5. In view of the aforesaid binding judgments, this Appeal is allowed. The impugned order dated 2nd April, 2013 made by the learned Single Judge in CWJC No. 3475 of 2010 is set aside. CWJC No. 3475 of 2010 is allowed.

6. The respondent Nos. 3, 6 and 7 are directed to reinstate the appellants as Panchayat Teachers as early as possible but not later than 31st July, 2014. In the event the respondents fail to reinstate the appellants as Panchayat Teachers by 31st July, 2014, the appellants will be entitled to recover salary/wages as Panchayat Teacher commencing from 1st August, 2014. The period from 7th July, 2009 the appellants were discharged from service till the date they are reinstated in service as Panchayat Teachers will be treated as period on duty for the purpose of continuity in service. The appellants will however, not be entitled to the actual salary for the said period.

7. In view of the above referred binding judgments, we hold that the action of the respondents in appointing the respondent Nos. 8 to 11 as Panchayat Teachers is bad and illegal and is contrary to aforesaid Rules of 2006. The said respondents neither have a right to appointment; nor do they have a right to continue as Panchayat Teachers.

8. Interlocutory Applications stand disposed of. Registry will serve copy of this order to the respondent Nos. 3, 6 and 7 forthwith.