
(2008) 11 PAT CK 0027
In the Patna High Court
Case No : CWJC No. 3572 of 2007

Sujata Devi @ Sujata Kumari

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 19-11-2008

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2009) 2 PLJR 862

Hon'ble Judges : Mihir Kr. Jha, J

Bench : Single Bench

Advocate : Chitranjan Sinha and Umesh Kumar Mishra, for the Appellant;
Ranjan Kumar Dubey, Shailendra Kr. Dwivedi for the Respondent No. 11 and S.C.
21 for the State, for the Respondent

Final Decision : Allowed

Judgement

Mihir Kr. Jha, J.—In this writ application the petitioner has assailed the order dated 6.2.2007 passed by the Mukhiya of Gram Panchayat Raj Daraili Mathiya, in Darauli Anchal in the District of Siwan seeking to terminate the services of the petitioner on the post of Panchayat Teacher. The petitioner has also prayed for consequential relief to reinstate in service. The facts which would be necessary to be noticed in this regard are that the petitioner, a graduate, pursuant to the policy of the State Government as with regard to engagement of Panchayat Shiksha Mitra had offered her candidature for being engaged as a Panchayat Shiksha Mitra in G.P.R. Daraili Mathiya and her selection and appointment was also made in the prescribed manner as was communicated by the Mukhiya of the Gram Panchayat vide his letter dated 15.6.2005. The further case of the petitioner is that she was continued on the basis of her said engagement/appointment without any hindrance but all of a sudden her services were terminated on the ground that she did not possess 45% marks in her Intermediate Examination on the date of her engagement/appointment i.e. 15.6.2005. The petitioner has alleged that all this has happened only because

the Mukhiya wanted a vacancy on the post of Panchayat Shikshak to be created as the Government by taking a policy decision had introduced Bihar Panchayat Prarambhik Shikshak (Niyojan Awam Sewa Sarta) Niyamawali, 2006 (hereinafter referred to as the "Rules") dated 1.7.2006 which under Rule 20(ii) had envisaged that the Panchayat Shiksha Mitra already engaged as on 1.7.2006 will be deemed to be employed as a Panchayat Shikshak under the Rules. In this context the petitioner has specifically asserted that as on 1.7.2006 she was continuing as a Panchayat Shikshak Mitra and therefore, by virtue of the aforementioned Rule 20(iii) of the Rules she became a Panchayat Shikshak and thus could not have been removed by the Mukhiya in an arbitrary manner.

2. Mr. Chitranjan Sinha, learned senior counsel appearing on behalf of the petitioner, has made a number of submissions but then this Court would notice only one of such contentions which goes to the root of the matter. Mr. Sinha has stated that the petitioner was not given any show cause notice/opportunity of hearing as has been asserted by her in paragraph 40 of the writ application.

3. It has to be noted that though a counter affidavit has been filed on behalf of respondent No. 11, the Mukhiya, who had terminated the services of the petitioner by the impugned order, there is no specific denial to the aforesaid statement of the petitioner in paragraph 40 of the writ application. As a matter of fact paragraph 40 of the writ application has been dealt in paragraph 11 of the counter affidavit which has answered paragraphs 33 to 41 collectively. In this context it would be thus necessary to refer to the pleadings in paragraph 40 of the writ application which reads as follows:-

"That it is stated and humbly submitted that the principle of natural justice i.e. show cause or opportunity of hearing has not been provided in terminating the service of the petitioner, which is basic requirement for terminating a Govt. employees (Panchayat Teacher)."

4. Such a clear statement with regard to violation of principle of natural justice, as noted above, have been answered by the respondent-Mukhiya in paragraph 11 of the counter affidavit in the following manner:-

"That the statement as made in Paras 33 to 41 are only to mislead the attention of this Hon"ble Court from real issue. This writ application is fit to be dismissed with a direction to concerning authorities to look into the matter in accordance with law and initiate a criminal proceeding in accordance with law."

5. It is, thus, clear that the services of the petitioner were terminated without giving any show cause/opportunity of hearing.

6. Counsel for the respondent, however, had contended that as the appointment of the petitioner was itself illegal inasmuch as she did not possess 45% marks on the date of her appointment, even though the show cause was given to the petitioner, her appointment could not have been justified and in that view of the matter, the order passed by the Mukhiya terminating the services of the

petitioner cannot be held to be bad. Reference in this connection has been made to the Full Bench judgment of this Court in the case of Rita Mishra & Ors. vs. The Director, Primary Education, Bihar & Ors., reported in 1987 PLJR 1090.

7. In the opinion of this Court such submission on behalf of the counsel for the State does not seem to be correct because first of all in Full Bench judgment in Rita Mishra's case (supra) it did not lay down a terse law that an appointment sought to be invalidated on the ground of its being illegal can be terminated without a show cause notice and/or affording an opportunity of hearing. As a matter of fact in the Full Bench case of Rita Mishra (supra) this Court was considering the impact of a fraudulent appointment based on a forged appointment letter which was never issued. It was in that context that the Full Bench while examining the claim of payment of salary of such persons whose appointment itself was tainted with malafide and in fact was a procured appointment at the behest of the writ petitioner of that case had gone to hold that such appointment would not create any right much less any right claiming for payment of salary. As a matter of fact in the dissenting judgment in that very Full Bench case with the majority view it was pointed out by Hon'ble Mr. Justice L.M. Sharma (as his Lordships then was) that since an order terminating the services even though clothed as termination simpliciter would attach a stigma and therefore, the principle of natural justice had to be followed. The minority view recorded by his Lordships has since been the law of land laid down in a subsequent judgment of the Apex Court in the case of Basudeo Tiwary vs. Sido Kanhu University & Ors. reported in 1999(1) PLJR (SC)30, wherein the Apex Court has laid down that non-arbitrariness is an essential facet of Article 14 of the Constitution of India and sphere of public employment against an employee must be fair, just and reasonable which are the components of fair treatment and requirement of the rule of audi alteram partem. The Apex Court in fact in Basudeo Tiwary's case (supra) having noticed the provisions of Section 35 of the Bihar State Universities Act had gone to lay down that the conferment of absolute power to terminate the services of employee is an antithesis of just, fair and reasonable treatment and a provision made to the effect which would amount to omission to impose requirement of hearing would not take away and/or exclude the right of hearing.

8. Having thus held that the impugned order is in violation of the principles of natural justice this Court would not like to record any finding on the aspect as to whether the appointment of the petitioner at its initial stage was invalid on the ground that she is not possessing 45% marks in her intermediate examination because under 2006 Rules it has been clearly mentioned that such Panchayat Shiksha Mitra, who were continuing in service as on 1.7.2006 would be deemed to have been appointed as teachers under the Rules. It is the case of the petitioner that she being a graduate had also improved her qualification by securing more than 45% marks in the subsequent examination undertaken by her for bettering her marks. All these, however, would not be now relevant for the purposes of this writ application because during its pendency the State

Government itself has taken a decision vide order dated 4.7.2008 contained in Memo No. 2517 (Annexure-17 and its corrigendum) which has been brought on record by a supplementary affidavit filed by the petitioner, whereby and whereunder, it has been held that even matriculate who has been selected as Panchayat Shiksha Mitra securing less than 45% marks in the intermediate examination will be continued in service and thus whose services have been terminated on the ground that they had secured less than 45% marks in the intermediate examination will be reinstated in service. The said policy decision, in fact, would also cover the case of the writ petitioner, inasmuch as, she too had been appointed and was continuing in service as Panchayat Shiksha Mitra and is entitled for being reinstated in service in terms of the aforementioned policy decision.

9. There would be of course no question of her reinstatement in service because her such order of termination had already been stayed by this Court by order dated 8.5.2007 and now when the State Government itself has decided to give benefit of reinstatement to any and every such Panchayat Shiksha Mitra who were appointed in service even having less than 45% marks in the intermediate examination, its benefit has to be and must be given to the petitioner. Thus for the reasons mentioned above, this application is allowed. The impugned order is set aside. In view of stay granted earlier by this Court the petitioner will be deemed to have continued in service without any break from 6.2.2007 and she will be also entitled for payment of her full salary for the period from 6.2.2007 onwards which must be paid within a period of three months from the date of receipt/production of a copy of this order.