

(2016) 01 PAT CK 0134

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 3764 of 2013

Sunita Kumari

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 14-01-2016

Acts Referred:

Bihar Panchayat Raj Act, 2006 — Section 146

Constitution of India, 1950 — Article 14, Article 16, Article 226, Article 243Q

Citation : (2016) 2 PLJR 374

Hon'ble Judges : Shivaji Pandey, J.

Bench : Single Bench

Advocate : Shashi Bhushan Kumar Manglam, Advocate, for the Appellant;
Sandip Singh, AC to GP9, for the Respondent

Final Decision : Dismissed

Judgement

Shivaji Pandey, J.—1. Heard learned counsel for the petitioner and learned counsel for the State.

2. This writ petition has been filed for quashing the order dated 14.12.2012 passed by the Presiding Officer of Bihar Panchayat Elementary Teacher Appellate Tribunal (respondent No. 5) issued under memo No. 689 dated 14.12.2012 by which the case of the petitioner has been rejected.

3. As per the case of the petitioner there was an advertisement for appointment of Shiksha Mitra in the year 2005. Petitioner and private respondent have led their claims for appointment of Shiksha Mitra. Sukh Suvidha Samiti of the Gram Panchayat has conducted the proceeding and drawn a list of eligible candidates for appointment consisting of 59 candidates comprising of all categories. After the expiry of last date for filing of application, category-wise merit list in the descending order was prepared. In the merit list of female candidates there were 23 candidates, short listed, the name of the petitioner figured at serial No. 8 and name of respondent No. 11 was figured at serial No. 9 as petitioner had 593 marks in her intermediate examination whereas respondent No. 11 had 589

marks. Sukh Suvidha Samiti of the Gram Panchayat has convened its meeting on 6.5.2005 in which list of 59 candidates was placed for consideration, the Committee rejected the application of 10 candidates out of 59 candidates on various reasons as mentioned in the proceeding. Thereafter a final merit list of rest 49 candidates was prepared. Though the name of the petitioner is at serial No. 8 and respondent No. 11 at serial No. 9 but the Sukh Suvidha Samit of Gram Panchayat ignored the rightful claim of the petitioner and took decision of appointment of Richa Kumari (respondent No. 11).

4. Allegation has been made that father of respondent was also member of the Committee and her father was also present in the meeting. As and when the petitioner could know the appointment of respondent No. 11, he immediately filed complaint before Block Development Officer, Bhagwanpur Hatt on 10.6.2005. As she did not receive any response reminders were filed on 30.2.2006, 14.3.2007, 22.5.2008 and 25.5.2009.

5. From the selected and appointed candidates many candidates did not turn up for joining and post of Shiksha Mitra remained vacant. For filling up the remaining vacancies, a meeting of Sukh Suvidha Samit of the Gram panchayat was convened on 21.12.2005 wherein a decision was taken for appointment of left over five vacancies which include two posts of unreserved female because Indu Devi died just after appointment and Shobha Pandey remained absent since long after her appointment.

6. As per claim of the petitioner Sukh Suvidha Samiti of the gram Panchayat has committed an illegality. Though general female candidates qualified for appointment were available in the merit list including the petitioner yet against two unreserved posts of female, Parbhawati Kumari Gupta and Usha Kumar, both extremely backward class candidates were appointed even through they have no better percentage of marks than the petitioner. Prabhawati Kumari Gupta had 493 marks and Usha Kumari had 520 marks in their respective intermediate examination.

7. When petitioner could not receive any response from the Block Development Officer, Bhagwanpur Hatt (respondent No. 8), she approached to the District Magistrate, Siwan (respondent No. 4) and filed an exhaustive representation on 10.4.2007 annexing all the relevant documents but there also she did not receive any response.

8. In the meantime, the State Government abolished the post of Shiksha Mityra substituted by Panchayat Teacher framed the rule in the matter of appointment, a new Rule in the name of Bihar Panchayat Elementary Teacher (Appointment and Service Condition) Rules, 2006 was issued by the Government of Bihar.

9. When the petitioner did not get proper response from any quarter, in terms of Bihar Panchayat Elementary Teacher (Appointment and Service Condition) Rule, 2006 filed an application before the District Teachers Appellate Tribunal raising all grievances that petitioner has better marks than to the person who were

appointed to the post of Panchayat Teacher claiming that she has wrongly been deprived of the same. At the same time she also contended that Richa Kumari (respondent No. 11) has resigned and that post remained vacant. Tribunal has refused to grant the relief to the petitioner in view of the enforcement of New Rule led to abolishment of post of the Shiksha Mitra and those who were working as Shiksha Mitra on the date of enforcement of 2006 Rule in terms of Rules 20(iii) they were deemed to have been converted to the post of Panchayat Teacher.

10. Learned counsel for the petitioner submits that as the dispute and litigation has been going on prior to the enforcement of the New Rule so the Tribunal is not justified in turning down the case of the petitioner and as such if appointment of those candidates are set aside automatically she would fall in the category to that place and she would become a Panchayat Teacher.

11. It is admitted fact that lis was with regard to appointment of Shiksha Mitra and no post of Shiksha mitra is available today. There is no machinery provided under the Rule to adjudicate the lis relating to Shiksha Mitra. Whatever machinery available is with respect to dispute in the present case relates to Panchayat Teacher. The petitioner in no manner may be appointed as Shiksha Mitra and dispute is with regard to appointment of Shiksha Mitra, not with respect to the appointment of Panchayat Teacher.

12. This issue has come for consideration before this Court in the case of Smt. Renu Kumari Pandey V. The State of Bihar & others, reported in , 2011(4) PLJR 297. The Division Bench has dealt with the effect of enforcement of the New Rule. Rule 20(iii) of the New Rule provides conversion of Shiksha Mitra as Panchayat Teacher and its effect with regard to candidates who were claiming to be appointed as Shiksha Mitra. It will be relevant to quote paragraph Nos. 17 and 18 of the aforesaid judgment:

"17. Coming to the second issue, we are of the opinion that the Rules are statutory in nature and have to be implemented in letter and spirit. Under Clause (i) of Rule 20 of the Rules all earlier resolutions, orders, directions issued in respect of employment of Panchayat Shiksha Mitra are repealed. Consequently, the posts of Panchayat Shiksha Mitra stood abolished. Thereafter, no person can be employed as Panchayat Shiksha Mitra; nor can there be a deemed employment as Panchayat Shiksha Mitra; nor can there be a deemed absorption in the service as Panchayat Shikshak by operation of Rule 20(iii) of the Rules. In our opinion, even in a case where a person has a legitimate grievance in respect of his or her non-selection as Panchayat Shiksha Mitra at the relevant time or non-continuance as Panchayat Shiksha Mitra, such person cannot be deemed to have been appointed as Panchayat Shiksha Mitra; nor can he/she be deemed to have been employed as Panchayat Shiksha Mitra as on 1st July 2006; nor can such person be deemed to have been absorbed in service as Panchayat Shikshak under the Rules.

18. We may also note here that though the State Government framed a complete scheme for employment of Panchayat Shiksha Mitra at Gram Panchayat level in furtherance of its goal of "Education for All", in none of the aforesaid Resolutions the Government had provided for an adjudicatory machinery. In other words, the State Government did not make any provision for redressal of grievance in respect of selection and employment of Panchayat Shiksha Mitra or their reemployment after the expiry of the contractual period. On perusal of the records of the above writ petitions, we find that in absence of such machinery, the aggrieved persons approached the authority whom such persons considered to be the competent/the convenient authority. In our opinion, in absence of powers expressly conferred upon any such authority the reports or the orders made by such authority are of no consequence. No relief can be granted on the basis of the finding recorded by such authority. We may also point out that Elementary Teachers Appellate Authority constituted under Rule 18 of the Rules, as amended by Bihar Panchayat Elementary Teacher (Employment and Service Conditions) (Amendment) Rules, 2008 is empowered to entertain, hear and decide the appeals arising out of the employment of elementary teachers under the Rules. The said appellate authority has no jurisdiction to entertain, hear or decide the disputes relating to the employment of Panchayat Shiksha Mitra under the then prevalent Resolutions, Circulars, Orders, Instructions."

13. The matter went to the Full Bench in *Kalpna Rani V. The State of Bihar & others*, reported in , 2014(2) PLJR 665. There this Court has taken note of the judgment of *Smt. Renu Kumari (supra)* and arrived to a conclusion that Court has rightly gone into the matter and there is nothing wrong in the said judgment. It will be relevant to quote paragraph Nos. 20 to 28 of the aforesaid judgment:

"20. On this issue, we do agree with Mr. Giri. However, Mr. Giri has not been able to point out that the interpretation of Rule 20 put forward by the Division Bench in the matter of *Smt. Renu Kumari Pandey (supra)* is incorrect in any manner or has a possible second view.

21. The Scheme framed under Government Resolutions dated 21st June 2002 and modified on 11th August 2004 and 7th April 2005; and explained on 21st April 2005 has been considered and discussed in the above referred judgment of *Smt. Renu Kumari Pandey* in extenso. The relevant paragraphs are reproduced hereunder for convenience:--

"4. The State of Bihar in discharge of its constitutional responsibility and under its policy of "Education for All", under its Resolution dated 21st June 2002 framed the scheme for contractual employment of Panchayat Shiksha Mitra under the Gram Panchayats for primary education in the State of Bihar. The said scheme was later modified by the Government Resolutions dated 11th August 2004 and 7th April 2005.

5. Under its Resolution dated 21st June 2002, the Government of Bihar framed a scheme for selection and employment of Panchayat Shiksha Mitra under the

Gram Panchayats in the State of Bihar. The salient features of the said scheme as are relevant for the present set of writ petitions were:--

(i) The District Superintendent of Education was empowered to determine, with the approval of the District Magistrate, the strength of the Panchayat Shiksha Mitra in every district, the extent of reservation and the distribution of posts amongst the Gram Panchayats.

(ii) For employment as Panchayat Shiksha Mitra, a candidate shall be a resident of the Panchayat and shall possess a minimum qualification of passing of matriculation or equivalent examination from a recognized Board with minimum 45% marks.

(iii) The employment would be contractual on monthly honorarium of Rs. 1500.00. The contractual period would be 11 months excluding the summer vacation.

(iv) In case of satisfactory service the employment may be extended for a further period of 11 months.

(v) No Panchayat Shiksha Mitra would be employed for more than $11 \times 3 = 33$ months.

(vi) The selection would be made in order of merit on the basis of the marks obtained at matriculation examination. In case of equal marks, the trained candidate, the candidate having higher marks or a woman candidate would be given preference in that order.

6. The said Resolution of 2002 was modified by Resolution dated 11th August 2004. The said Resolution modified the scheme to the extent it provided, inter alia, :--

(i) As far as possible a minimum 50% reservation for women. In case women candidates with prescribed qualification were not available the requirement may be relaxed.

(ii) The candidate must have passed Intermediate examination or an equivalent examination with at least 45% marks.

(iii) In the event in any Panchayat women candidates having Intermediate qualification are not available, women candidates having Matriculation or equivalent qualification may be employed on condition that such candidate will acquire the Intermediate or equivalent qualification within three years. The District Magistrate was required to make proposal in respect of such candidates to the State Government and the State Government would obtain relaxation under Regulation 5 of National Council for Teacher Education (Determination of minimum qualification for recruitment of teachers in schools) Regulation, 2001 from National Council for Teacher Education.

(iv) The selection for employment as Panchayat Shiksha Mitra would be made on

the basis of the marks obtained at Intermediate or equivalent examination, higher educational qualification, training and physical training in accordance with the table under Schedule "Ka".

7. Under the Government Resolution dated 7th April 2005, paragraph 8 of the aforesaid Resolution of 2004 was modified. Paragraph 8 provided for:

- (i) Contractual employment for monthly honorarium of Rs. 1500/-.
- (ii) Termination of contract of employment.
- (iii) Reemployment after expiry of the term of employment;
- (iv) The Panchayat Shiksha Mitra may be employed for maximum three times each for 11 months" period.
- (v) The said Resolution also provided that the trained persons having Diploma in Education or B.Ed. shall be given preference.
- (vi) The comparative merit would be decided in accordance³ with the schedules "Ka" and "Kha" thereunder.
- (vii) In absence of the trained candidates the vacancies be filled-in by operating the merit list "kha" (untrained candidates).

Schedule "Ka"

The weightage to be given for preparation of merit list of trained persons.

Schedule "Kha"

The weightage to be given for preparation of merit list of untrained persons.

8. The note below the aforesaid paragraph 7 provided that the weightage being equal; persons with higher qualification be placed higher in the merit list.

9. Certain issues relating to the employment of Panchayat Shiksha Mitra arising under the aforesaid Resolution dated 11th August 2004 were clarified under Government Resolution dated 21st April 2005. Clause 7 of the said Resolution provided that the tenure of the Matriculate Panchayat Shiksha Mitra shall not be extended."

18. We may also note here that though the State Government framed a complete scheme for employment of Panchayat Shiksha Mitra at Gram Panchayat level in furtherance of its goal of "Education for All", in none of the aforesaid Resolutions the Government had provided for an adjudicatory machinery. In other words, the State Government did not make any provision for redressal of grievance in respect of selection and employment of Panchayat Shiksha Mitra or their reemployment after the expiry of the contractual period. On perusal of the records of the above writ petitions, we find that in absence of such machinery, the aggrieved persons approached the authority whom such persons considered to be the competent/the convenient authority. In our opinion, in absence of

powers expressly conferred upon any such authority the reports or the orders made by such authority are of no consequence. No relief can be granted on the basis of the finding recorded by such authority. We may also point out that Elementary Teachers Appellate Authority constituted under Rule 18 of the Rules, as amended by Bihar Panchayat Elementary Teacher (Employment and Service Conditions) (Amendment) Rules, 2008 is empowered to entertain, hear and decide the appeals arising out of the employment of elementary teachers under the Rules. The said appellate authority has no jurisdiction to entertain, hear or decide the disputes relating to the employment of Panchayat Shiksha Mitra under the then prevalent Resolutions, Circulars, Orders, Instructions."

22. The aforesaid Scheme came to an end with enactment of the 2006 Rules which came into operation on 1st July 2006. The scope and ambit of the Rules of 2006, particularly Rule 20 thereof have been discussed in the above referred matter of Smt. Renu Kumari Pandey. The relevant paragraphs are reproduced for convenience:

"10. The Government of Bihar, in exercise of power conferred by Article 243Q of the Constitution and by Section 146 of the Bihar Panchayat Raj Act, 2006 framed the Bihar Panchayat Elementary Teacher (Employment and Service Conditions) Rules, 2006 (hereinafter referred to as "the Rules"). Under Rule 3 of the Rules, the elementary teachers are grouped into two categories; (a) the Block Teacher (Prakhand Shikshak) at Block level and; (b) the Panchayat Teacher (Panchayat Shikshak) at Gram Panchayat level.

11. Rule 2 of the Rules defines "Primary School" to mean Government and nationalized schools imparting education up to Vth standard. "Middle School" is defined to mean Government and nationalized schools imparting education for VIIth and VIIIth standard. "Elementary School" is defined to mean Government and nationalized primary and middle schools. Rule 8 thereof provides for eligibility for appointment as Block Teacher and Panchayat Teacher. Rule 9 thereof provides for procedure for constitution of selection committee and for selection and appointment of Block Teachers and Panchayat Teachers. Rule 18 thereof provides for appeals arising out of the selection made under the Rules.

12. Rule 20 of the Rules provides for repeal and saving. Clause (i) thereof provides, inter alia, for repeal of all Rules, Resolutions, Orders and Instructions issued in respect of employment of Panchayat Shiksha Mitra. Clause (ii) thereof provides for saving of selection and service conditions of the Panchayat Shiksha Mitra employed under the Rules, Resolutions, Orders or Instructions prevalent prior to the date of the repeal. Clause (iii) thereof provides for absorption of Panchayat Shiksha Mitra appointed or employed under the then prevalent Rules, Resolutions, Circulars, Orders and Instructions as Panchayat Shikshak under the Rules. In other words, the Panchayat Shiksha Mitra appointed under the then prevalent Rules, Resolutions, Circulars, Orders, Instructions and employed as Panchayat Shiksha Mitra as on 1st July 2006 are absorbed as Panchayat Shikshak under the Rules. It is the aforesaid Clause (iii) which is the subject

matter of reference before us.

16. Clause (iii) of Rule 20 of the Rules reflects the policy decision of the State Government. We are of the considered opinion that no legal provision can be held to be arbitrary or discriminatory or ultra vires Articles 14 and 16 of the Constitution on hypothetical set of facts. We, therefore, hold that Clause (iii) of Rule 20 of the said Rules is neither arbitrary nor discriminatory nor it is violative of Articles 14 and 16 of the Constitution.

17. Coming to the second issue, we are of the opinion that the Rules are statutory in nature and have to be implemented in letter and spirit. Under Clause (i) of Rule 20 of the Rules all earlier resolutions, orders, directions issued in respect of employment of Panchayat Shiksha Mitra are repealed. Consequently, the posts of Panchayat Shiksha Mitra stood abolished. Thereafter, no person can be employed as Panchayat Shiksha Mitra; nor can there be a deemed employment as Panchayat Shiksha Mitra; nor can there be a deemed absorption in the service as Panchayat Shikshak by operation of Rule 20(iii) of the Rules. In our opinion, even in a case where a person has a legitimate grievance in respect of his or her non-selection as Panchayat Shiksha Mitra at the relevant time or non-continuance as Panchayat Shiksha Mitra, such person cannot be deemed to have been appointed as Panchayat Shiksha Mitra; nor can he/she be deemed to have been employed as Panchayat Shiksha Mitra as on 1st July 2006; nor can such person be deemed to have been absorbed in service as Panchayat Shikshak under the Rules."

23. Having considered the scope and ambit of the Scheme for appointment of Panchayat Shiksha Mitra and the Rules of 2006, the Bench held:--

"21. All these petitions arise from the claim made by the respective writ petitioners for employment as Panchayat Shiksha Mitra under the then prevalent scheme for selection and employment of Panchayat Shiksha Mitra under the Gram Panchayats. None of them was employed as Panchayat Shiksha Mitra as on 1st July 2006. As we have held that from the date of the Rules (1st July 2006) such persons have no right to claim employment or deemed employment as Panchayat Shiksha Mitra or a right to be absorbed as Panchayat Shikshak by operation of Rule 20(iii) of the Rules, the reliefs prayed for by the writ petitioners cannot be granted."

24. Nothing said in the above referred matter of Smt. Renu Kumari Pandey is questioned before us. Nothing has been brought before us which persuades me to take a different view of the Scheme and the Rules of 2006. The Hon''ble Supreme Court has, in the matter of Balakrushna Behera & Anr v. Satya Prakash Dash [, 2007 (4) PLJR (SC) 209], held that by mere selection a candidate does not acquire indefeasible right to appointment to a post which can be enforced in a petition filed under Article 226 of the Constitution. The Hon''ble Court has also held that the Court cannot direct the State Government by writ of mandamus to appoint a person against a post which has been abolished by the State

Government.

25. Another Division Bench headed by Justice Smt. T. Meena Kumari had the similar view in the matter of Umesh Chandra Shiva v. The State of Bihar & Ors. [, 2012 (1) PLJR 585]. It reads, ".....the Rules namely Bihar Prarambhik Shikshak Nioyojan and Shikshak Niamawali Adhiniyam-2006, does not permit selection earlier made for the post of Panchayat Shiksha Mitra to be either saved or retained for any purpose, inasmuch as, Rule-18 and 20 read in tandem would make it absolutely clear that all circulars and guidelines relating to selection and appointment on the post of Panchayat Shikshak were repealed as a whole and therefore, once the saving clause also was limited to reserving the rights of already appointed Shiksha Mitra either in respect of their salary or service condition, it has to be necessarily held that the earlier selection and preparation of panel in which Umesh Chandra Shiva had been found to be best among the backward candidate was limited for the post of Panchayat Shiksha Mitra and on that basis, he cannot be appointed on the post of Panchayat Shikshak after 01.07.2006 in view of the aforementioned 2006 Rules."

26. In the matter before us also the appellant Kalpana Rani was never appointed as Panchayat Shiksha Mitra either in 2003 or at any time until 1st July 2006. After 1st July 2006, the appellant could not set up right to employment as Panchayat Shiksha Mitra or right to be absorbed as Panchayat Teacher. The belated challenge to the appointment of the respondent Nos. 9 and 10 and the claim for absorption as Panchayat Teacher raised by the appellant after 1st July 2006 was clearly an after thought. Such a claim cannot be entertained. Irrespective of the validity of the appointment of respondent Nos. 9 and 10 as Panchayat Shiksha Mitra, the appellant has no right to be appointed as Panchayat Shiksha Mitra or to be absorbed as Panchayat Teacher.

27. We may note that the Scheme framed under Government Resolution dated 21st June 2002 was modified under Government Resolution dated 11th August 2004. Under the modified Scheme the eligibility was enhanced from Matric or equivalent qualification to that of Intermediate or equivalent qualification with minimum of 45% marks. 50% of the posts were reserved for female candidates. In case qualified female candidates in adequate number were not available, the concerned authorities were permitted to select female untrained candidates or the female candidates with lesser qualification of Matriculation or equivalent qualification on condition that they acquired the requisite qualification within three years. For that purpose the permission be obtained from the National Council for Teachers Education to relax the standard of eligibility. This concession was made for female candidates alone. A similar concession was not extended to the male candidates {paragraph-5(ga)}.

28. While allowing the said benefit of improvement of qualification to one Kishori Prasad. [, 2008(2) PLJR 458], the Bench failed to appreciate that the benefit of relaxation in qualification was not extended to the male candidates. The Bench also did not notice the factum of abolition of cadre of Panchayat Shiksha Mitra

and the replacement of the Scheme by the Statutory Rules of 2006. The judgment in the matter of Kishori Prasad v. The State of Bihar & Ors [, 2008(2) PLJR 458] is, therefore, per in curium and is expressly overruled. The decision in the matter of Rima Kumari v. The State of Bihar & Ors. [2012(1) PLJR 107] is affirmed."

14. In the present case the dispute is with respect to appointment of Shiksha Mitra. No post of Shiksha Mitra is available and that chapter is close forever.

15. In this view of the matter, this Court does not find any error in the impugned order.

16. Accordingly this writ petition is dismissed.