

\2007

ITEM NO.26

COURT NO.3

SECTION XVI

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil)...../2013
CC 9847/2013

(From the judgement and order dated 08/08/2012 in LPA No.1681/2010 in CWJC No.1636/2007 of The HIGH COURT OF PATNA)

RAJ KUMAR SHARMA Petitioner(s)

VERSUS

STATE OF BIHAR & ORS. Respondent(s)

(With appln(s) for c/delay in filing SLP,c/delay in refiling SLP)

Date: 07/05/2013 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI
HON'BLE MRS. JUSTICE RANJANA PRAKASH DESAI

For Petitioner(s) Mr. Devendra Kr. Singh, Adv.

For Respondent(s)

UPON hearing counsel the Court made the following
O R D E R

The petitioner, who managed to secure appointment as Shiksha Mitra on account of patently wrong recording of the marks secured by him at the level of graduation has filed this petition to question the correctness of judgment dated 8.8.2012 of the Division Bench of the Patna High Court in Letters Patent Appeal No.1681/2010 titled Krishna Prasad v. State of Bihar and others. He has also filed an application for condonation of 127 days delay.

We have heard learned counsel for the petitioner and perused the record.

The delay in filing the special leave petition is condoned because the petitioner has shown sufficient cause for not filing the special leave petition within the prescribed period of limitation. However, we do not find any merit in the petitioner's challenge to the impugned judgment.

A perusal of the record shows that the petitioner and respondent No. 9 were among the candidates, who had applied for recruitment as Shiksha Mitra. In the merit list prepared by the Select Committee, the petitioner was placed above respondent No. 9. Accordingly, he was appointed as Shiksha Mitra vide letter dated 21.9.2005.

In 2006, the posts of Shiksha Mitra were abolished and the existing incumbents including the petitioner were appointed as Prakhhand Teacher.

Respondent No.9 challenged the petitioner's appointment in

CWJC No.1636/2007, which was dismissed by the learned Single Judge vide order dated 1.9.2010 primarily on the ground that the post of Shiksha Mitra had been abolished w.e.f. 1.7.2006.

The Division Bench of the High Court took cognizance of the communication sent by the Professor-in-charge of Rajendra College, Chapra, which revealed that the petitioner has secured 413 marks only at the level of graduation but in the merit list he was shown to have secured 517 marks and held that his appointment was void ab initio. Accordingly, the Division Bench allowed the letters patent appeal filed by respondent No.9, set aside the petitioner's appointment and directed that the resultant vacancy be filled by the candidate of the category in the order of merits. The relevant portions of the impugned judgment are extracted below:

"The main ground of for challenging the illegal appointment of respondent no.9, namely Raj Kumar Sharma is that there was interpolation in preparing the merit list for appointment of Siksha Mitra, in a as such as, his marks at the level of graduation was shown as 517, whereas in fact he had obtained only 413 marks at the level of graduation. On the basis of the above marks the respondent no.9 was awarded additional marks which altogether came to be 17 whereas the writ petitioner was awarded 15 marks only.

It is relevant to state here that a communication dated 14.5.2009 was issued vide Ref. No. RC. No. 444 by the Professor-in-charge, Rajendra College. Chapra under Annexure -7 to substantiate that respondent no.9 had in fact secured 413 marks only at the level of graduation which was wrongly reflected in the merit list as 517. There is no dispute to this factual aspect.

No explanation is forthcoming from respondent no.9 as to show 517 marks has been shown in the merit list at the level of graduation against 413 as has been mentioned in the communication made by Professor-in-charge, Rajendra College, Chapra to the appellant under the Right to information Act.

In that view of the matter, the appointment of respondent no.9, Raj Kumar Sharma as Siksha Mitra on the basis of marks obtained by him at the graduation level cannot be sustained and the same is held it to be void ab initio. His subsequent absorption by virtue of Rule as Panchayat Shikshak also cannot be sustained and is declared to be void. In view of the fact that the appointment/absorption of respondent no.9 has been declared to be void ab initio and as the litigation is continuing the resultant vacancy on the post has to be filled up by the next candidate of the category in order of merit in accordance with law."

The petitioner has not controverted the fact that he had secured only 413 marks at the level of graduation. He has also not denied that in the merit list, his marks were shown as 517. It is thus evident that either the petitioner or someone on his behalf had made manipulation in the select list and facilitated his appointment as Shiksha Mitra.

In view of the above, we hold that the Division Bench of the High Court did not commit any error by declaring that the petitioner's appointment was void ab initio.

With the above observations, the special leave petition is dismissed.

| (Parveen Kr.Chawla)
| Court Master
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| | (Phoolan Wati Arora)
| | Court Master
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