IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1104 of 2023

In

Civil Writ Jurisdiction Case No.1966 of 2023

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Mala Kumari W/o Shri Shiv Nath Rai R/o Village Fulpura, P.O.- Chaksikandar, P.S.- Bidupur, District- Vaishali.

... ... Appellant

Versus

1. The State of Bihar through the Principal Secretary, Department of Education, Govt. of Bihar, Patna.
2. The Principal Secretary, Department of Education, Govt. of Bihar, Patna.
3. The Director, Primary Education, Govt. of Bihar, Patna.
4. The District Magistrate, Vaishali.
5. The District Education Officer, Vaishali.
6. The District Programme Officer (Establishment), Vaishali.
7. The Block Development Officer, Block- Bidupur, Vaishali.
8. The Block Education Officer, Block- Bidupur, Vaishali.
9. The Panchayat Secretary-cum-Secretary, Panchayat Teachers Employment Unit, Gram Panchayat Raj Chakathkursi Kusiyari, Block- Bidupur, Vaishali.
10. The Headmaster, J.T. High School, Barua, Bahuara, District- Vaishali.
11. The Bihar School Examination Board, Patna through its Chairman.

... ... Respondents

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Appearance :

For the Appellant	:	Mr. Yashraj Bardhan, Adv. Mr. Harsh Kaushal, Adv. Ms. Anapurna Sinha, Adv. Mr. Ashish Kumar, Adv.
For the State	:	Mr. Anjaneya Singh, AC to AAG-13

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

and

HONOURABLE MR. JUSTICE SOURENDRA PANDEY

CAV JUDGMENT

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(Per: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH)

Date: 09-09-2026

The present appeal has been filed against the order dated 09.08.2023, passed by the Ld. Single Judge of this Court in CWJC No. 1966 of 2023, whereby and whereunder the writ application has been dismissed, upon the Ld. Single Judge having come to a finding that no illegality or infirmity can be found in the order of termination as well as the order passed by the State Appellate Authority.

2. The brief facts of the case, according to the appellant are that in terms of the State Government Resolution No. 1079, dated 20.06.2002, an advertisement was issued for engagement of Panchayat Shiksha Mitra across the State of Bihar and the appellant being eligible had applied for the post of Panchayat Shiksha Mitra in Gram Panchayat Raj Chakathkursi Kusiyari. The Sukh Suvidha Samiti, Gram Panchayat Raj Chakathkursi Kusiyari, vide letter dt. 18.2.2003 had appointed the appellant as Panchayat Shiksha Mitra on contractual basis for 11 months, whereupon she had submitted her joining on 25.02.2003 at Upgraded Primary School, Gurmiswa, Block-Bidupur, District-Vaishali & since then she has been working there. Subsequently, the term of the appellant as Panchayat Shiksha Mitra at Gram

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Panchayat Raj Chakathkursi Kusiyari was extended from time to time for further period of 11 months each. In due course, the appellant also became a Panchayat Teacher in terms of memo No. 974, dt. 01.07.2006 of the Human Resources Department, Government of Bihar, whereby all the Panchayat Shiksha Mitra working as on 01.07.2006 were duly recognized as Panchayat Teachers.

3. The Ld. Counsel for the appellant has stated that the appellant passed the matriculation examination in the year 2001 and intermediate examination in the year 2003 apart from having also passed the Evaluation Exam of Elementary Teachers conducted by the Human Resources Department in the year 2009, whereafter in the year 2010, the appellant passed D.P.E. from IGNOU and she was declared to be a trained teacher with effect from 16.12.2012. It has been further stated that at the time of engagement as Panchayat Shiksha Mitra, since the appellant had not obtained the certificate of passing the matriculation exam, she had produced her mark-sheet and school leaving certificate in proof of passing the said exam as well as in proof of her date of birth, i.e. 10.09.1984, however subsequently on 04.08.2015 when she got certificate of matriculation exam, it transpired that her date of birth has been mentioned as

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10.09.1986. Thereafter, the appellant had vigorously tried to get the date of birth recorded in her matriculation examination certificate corrected, however to no avail but in the meantime, one Ashok Kumar had made a complaint before the District Public Grievance Redressal Officer, Vaishali on 12.07.2019 with respect to the irregular engagement of the appellant, whereupon a report was called for from the District Programme Officer (Establishment), Vaishali and in pursuance thereof, he had submitted his report dated 16.09.2019, *inter alia* stating therein that it is apparent from the records that though the date of birth of the appellant is 10.09.1984, however the Bihar School Examination Board, Patna has recorded it as 10.09.1986 in the original certificate and for correction of the same, the appellant has sent it to the Bihar School Examination, Patna, whereafter the proceedings before the District Public Grievance Redressal Officer, Vaishali was dropped, vide order dated 01.10.2019, stating therein that till a final decision is taken by the Bihar School Examination Board, Patna, there is no requirement of any action in the matter.

4. Subsequently, the salary of the appellant was stopped with effect from July 2022, vide letter dated 22.12.2021, issued by the Block Education Officer, Bidupur, Vaishali till correction

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of the date of birth by the Bihar School Examination Board, Patna. The appellant had then filed a writ petition bearing CWJC No. 502 of 2022, seeking a direction upon the Bihar School Examination Board, Patna for correcting her date of birth, which was disposed of by the Ld. Single Judge of this Court, vide order dated 08.03.2022, relegating the petitioner to the remedy of approaching the District Appellate Authority / State Appellate Authority for redressal of her grievance. The appellant had then challenged the said order dated 08.03.2022 by filing an appeal before this Court bearing LPA No. 232 of 2022. At this juncture, we may point out that upon having verified from the website of this Hon'ble Court, it has transpired that the aforesaid LPA No. 232 of 2022 has stood dismissed as withdrawn, vide order dated 05.12.2023.

5. Thereafter, the services of the appellant was terminated with immediate effect by the Panchayat Secretary-cum-Secretary, Panchayat Recruitment Committee, Gram Panchayat Raj Chakathkursi Kusiyari, after seeking a show cause reply from her, vide office order dated 26.08.2022 while she was working as Panchayat Teacher at the Upgraded Primary School, Gurmisma, Bidupur on the allegation that upon verification having been made from the Bihar School Examination Board,

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Patna regarding the date of birth of the appellant, it has been found that the appellant has made alteration in her date of birth and obtained employment as Panchayat Shiksha Mitra, apart from the appellant having not furnished any satisfactory reply.

6. The appellant had then challenged the aforesaid order dated 26.08.2022 by filing a petition before the State Appellant Authority, which was registered as O.A. No. 435/2022, however the same was dismissed by an order dated 04.11.2022. Being aggrieved by the said order dated 04.11.2022, the appellant had preferred the connected writ petition bearing CWJC No. 1966 of 2023, *inter alia* praying therein to set aside the order dated 04.11.2022, passed by the Ld. State Appellate Authority, Patna as also the order dated 26.08.2022, passed by the Panchayat Secretary-cum-Secretary, Panchayat Recruitment Committee, Gram Panchayat Raj Chakathkursi Kusiyari and for directing the Respondent authorities to pay salary to the appellant from 01.07.2022 till the date of termination of her services.

7. The District Programme Officer (Establishment), Vaishali had filed a counter affidavit in the aforesaid writ petition, wherein it has been stated that the appellant was initially appointed as Panchayat Shiksha Mitra, vide letter dated 18.02.2003 on the basis of wrong date of birth i.e. 10.09.1984

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instead of the actual date of birth, i.e. 10.09.1986, whereafter complaint was filed against the employment of the appellant before the District Public Grievance Redressal Officer, Vaishali, leading to submission of a report dated 16.09.2019, as aforesaid, whereafter the Block Education Officer, Bidupur, vide letter dated 22.12.2021 had stopped the salary of the appellant till verification of her date of birth. It has further been stated in para no. 9 of the said counter affidavit that the date of birth of the appellant was verified from the Bihar School Examination Board, Patna and it was found that the appellant has obtained employment as Panchayat Shiksha Mitra by changing her date of birth, hence the Panchayat Employment Unit took a decision in its meeting to terminate the services of the appellant in view of Bihar Panchayat Primary School Service Rules, 2020, whereafter the said decision was communicated to the appellant, vide letter dated 26.08.2022, by the Panchayat Secretary-cum-Secretary, Panchayat Recruitment Committee, Gram Panchayat Raj Chakathkursi Kusiyari. The said order dated 26.08.2022 was challenged before the State Appellate Authority, vide O.A. No. 435 of 2022, however the said O.A. was rejected vide order dt. 4.11.2022 on the ground that the appellant has taken steps to rectify her date of birth at a belated stage and after filing of

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complaint against her. The respondents have supported the said order dt. 4.11.2022, passed by the Ld. State Appellate Authority.

8. We find that a counter affidavit has also been filed by the Bihar School Examination Board, Patna in the connected writ petition, wherein it has been stated that the case of the appellant, after receipt of the writ petition, was looked into and the connected records/documents available at the Board i.e. the original tabulation register (OTR) and the duplicate tabulation register (DTR), pertaining to the appellant for the annual matriculation examination, 2001 were examined and it has been found that the appellant was a candidate of annual secondary school examination, 2001, who had appeared under Roll Code-5309 and Roll No. 0118 as a regular candidate from J.T. High School, Barun-Bahuara and her date of birth has been duly recorded as 10.09.1986. It has also been submitted that the date of birth is tabulated on the basis of the examination form filled by the examinees / candidates, duly forwarded and submitted by the Headmasters of the concerned school at the relevant point of time, however such examination forms are normally preserved with the Bihar School Examination Board, Patna for a year only, as such at the moment, no such examination form / data copies relating to the appellant for the year 2001 annual matriculation

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examination are available, nonetheless the tabulation register is kept preserved in office of the Bihar School Examination Board, Patna, wherein the date of birth of the appellant has been recorded as 10.9.1986. It is also mentioned in the counter affidavit filed by the Bihar School Examination Board, Patna that in all cases where an application is filed seeking correction in the date of birth, the Bihar School Examination Board, Patna necessarily requires that the concerned candidate submits his / her original admit-card, original register slip, supporting original school admission register, original T.C. guard file etc. and the application for correction of date of birth has to be filed within 10 years, whereafter the entire documents so produced by the concerned candidate are taken into account by the Bihar School Examination Board, Patna and corrections of printing mistake only, if any, found genuinely is made. It has also been pointed out that as per Rule 96 of the Bihar Finance Rules, no representation for rectification of mistake in the date of birth as entered in the records of service of a government servant is to be entertained if the same is not submitted within 10 years of the date of entry into Government service and all such representations made thereafter, are required to be summarily rejected. In this connection, reliance has been placed on a

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judgment rendered by a Ld. Single Bench of this Court dated 11.12.2008, passed in CWJC No. 869 of 2007 (***Rajiv Ranjan vs. The State of Bihar & Ors.***), relevant portion whereof is reproduced herein below:-

> *"The counter affidavit filed on behalf of the Board contains a clear averment in paragraph-12 that the letter contained in Annexure-1 is not available. Two judgments of Division Bench contained in Annexures-A and A/1 show that in context of students' demand for publication of result made after 13 years or 16 years the writ court refused to interfere in the matter. In this case, petitioner knew his date of birth as mentioned in his certificate issued by the Board in the year 1991 itself. He has filed the present writ petition in the year 2007 after about 16 years. Judicial notice can be taken of the fact that many of the old records in the School Examination Board are not retained after ten years. Such delay if condoned is likely to encourage cases of fraud. A change in the date of birth recorded in matriculation certificate issued by the Board is a serious matter because it involves many consequences and particularly affects the date of retirement etc. Hence, this Court is not persuaded to condone such delay in such matters. The writ petition is dismissed on the preliminary issue itself."*

9. The aforesaid order dated 11.12.2008, passed in the case of ***Rajiv Ranjan*** (supra) was assailed by filing an appeal bearing LPA No. 67 of 2009, however the same has also stood dismissed

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in the following terms:-

> *"Writ petitioner-appellant appeared in the examination conducted by the Bihar School Examination Board in the year 1991. He filed application before this Court inter alia praying for a direction to the respondent Bihar School Examination Board to correct his date of birth. It was pointed out that in the year 1991 the matter was inquired.*
>
> *The learned Single Judge taking into account the fact that the writ petitioner has approached this Court belatedly, declined to interfere.*
>
> *We do not find any error in the same.*
>
> *The appeal stands dismissed in limine."*

10. In the counter affidavit filed by the Bihar School Examination Board, reference has been made to a decision of the Board dated 27.09.2006, wherein it has been stipulated that normally the time limit for correction of date of birth shall be 10 years. It has also been mentioned in the counter affidavit that the appellant had approached the Regional Office (Tirhut Range) of the Bihar School Examination Board, Patna and submitted an application seeking correction in the date of birth only on 31.03.2022, whereafter upon registering her claiming ID No. 128925 was created for major correction but after due scrutiny of the matter, the application of the appellant was rejected on

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22.04.2022. It has been averred in the counter affidavit that the documents issued by the Bihar School Examination Board, Patna with respect to the appellant i.e. the registration slip, admit-card and matriculation certificate, all contain her date of birth as 10.09.1986.

11. It has also been contended in the counter affidavit filed by the Bihar School Examination Board that the conduct of the appellant is further revealed from the startling fact that in order to make herself eligible for engagement as Panchayat Shiksha Mitra, the minimum age required being 18 years, she had deliberately not produced the original documents / certificates containing her date of birth as 10.09.1986, rather she had furnished the school leaving certificate, wherein her wrong date of birth, i.e. 10.09.1984 was mentioned, inasmuch as on the date of her selection by the Sukh-Suvidha Committee, Gram Panchayat Raj Chakathkursi Kusiyari on 18.02.2003, she would have been only 16 years 05 months and 17 days, i.e. below 18 years of age, if her original date of birth, i.e. 10.09.1986 is considered, hence in order to grab the job of Panchayat Shiksha Mitra, she had furnished wrong date of birth, which now she is hopelessly trying to overcome by making a false claim for correction of date of birth.

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12. The learned counsel for the appellant has submitted that the appellant had long back taken active steps to rectify her date of birth and in the process submitted her application along with necessary documents to the Headmaster of the school, who had forwarded her application to the Bihar School Examination Board, Patna, however the Bihar School Examination Board, Patna was sitting tight over the matter, against which the appellant has been pursuing her remedy before this Court separately. It is further submitted that in view of the decision of the Hon'ble Full Bench of this Court rendered in the case of ***Kalpana Rani vs. The State of Bihar & Ors.***, reported in ***2014 (2) PLJR 665 (FB),*** the issue pertaining to appointment of Panchayat Shiksha Mitra cannot be reopened.

13. The learned counsel for the appellant has next contended that the judgment rendered by the Hon'ble Apex Court in the case of ***R. Vishwanathan Pillai vs. State of Kerala & Others,*** reported in ***(2004) 2 SCC 105*** is not applicable in the present case, inasmuch as in the said case, the incumbent had obtained appointment by playing fraud on the basis of a false caste certificate whereas in the present case the appellant had mentioned her correct date of birth at the time of her engagement as Panchayat Shiksha Mitra, however the change in

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the date of birth of the appellant is on account of mistake committed by the Bihar School Examination Board, Patna and for correction of the same, the appellant has taken steps so that the date of birth is corrected in the records. Thus, it is submitted that neither the appellant has suppressed any fact nor committed any fraud/forgery to obtain employment.

14. The learned counsel for the appellant has next referred to the school leaving certificate dated 16.06.2001, wherein the date of birth of the appellant has been mentioned as 10.09.1984. It is submitted that the school entry / admission register of J.T. High School, Barun-Bahuara also mentions the date of birth of the appellant to be 10.09.1984. In fact, the appellant has been pursuing her case for correction of date of birth but without any fruitful results.

15. The learned counsel for the appellant has relied on a judgment dated 14.11.2017 rendered by a coordinate Bench of this Court in LPA No. 501 of 2017 (***Ajit Kumar vs. The State of Bihar & Ors.***) to contend that the Ld. Division Bench of this Court by relying on a judgment rendered in the case of ***Chief Post Master General vs. Nirbhay Kumar***, reported in ***2008 (3) PLJR 344***, has held that in case of termination of services of the appellant of the said case for having procured it by producing a

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forged certificate, an opportunity of hearing was required to be granted and the same having not been done, this itself is sufficient enough to allow the writ petition. Thus, the coordinate Bench of this Court in the aforesaid case of ***Ajit Kumar*** (supra) had allowed the writ petition, quashed the order of termination and granted liberty to the State Respondents to proceed in accordance with law after reinstating the petitioner, however it was directed that no salary shall be payable for the intervening period. The learned counsel for the appellant has also referred to a judgment rendered by a coordinate Bench of this Court dated 10.03.2010, passed in LPA No. 426 of 2010 (***The State of Bihar vs. Birendra Kumar***), paragraphs no. 11 and 12 whereof are reproduced herein below:-

> *"11. One thing however which needs to be clarified here is that on the strength of the matriculation certificate as per Annexure-17 recording the date of birth of the Respondent writ petitioner as 30.6.1974, on the basis of which he claims to have been appointed despite being a minor, he can continue in service for a maximum span of 42 years and therefore if he had taken advantage by entering in service before attaining 18 years of his age he has to be made to superannuate on completion of maximum 42 years of permissible government service as per the policy decision of the State Government of the year 1998, also approved by a Full Bench Judgment of*

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this Court in the case of ***Ragiawa Narayan Mishra Vs. Bihar Rajya Khadi Gramoudyog Board and others*** *reported in* ***2006(1) PLJR 410****, even though he will not be completing 60 years of age i.e. the age of normal superannuation of a clerk in a secondary school governed by Bihar Shiksha Anusachivia Niyamabali, 1974.*

12. This court thus while upholding the order of learned single Judge would make it clear that since it is the case of respondent-writ petitioner that his matriculation certificate bearing No. 88C 218334 recording his date of birth as 30.6.1974 is the one, on the basis of which he got appointed on 18.8.1990, he would accordingly also superannuate from service upon completing 42 years of maximum service permissible to a government servant as he cannot take benefit of the date of birth of 30.7.1970 shown in his another matriculation certificate subsequently found to be forged, as was held by a Division Bench of this Court in the case of ***Baidyanath Prasad Sinha Vs. State of Bihar and others*** *reported in 1983 Labour and Industrial Cases 162. Accordingly, the date of superannuation of the petitioner will be 18.8.2032 the date on which he would complete 42 years of service and not 30th June 2034 the date on which he would complete 60 years of age."*

16. Thus, it is contended by the learned counsel for the appellant by relying on the aforesaid judgment rendered in the case of ***Birendra Kumar*** (supra) that even if an incumbent has

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been appointed despite being a minor, he / she can continue in service for a maximum span of 42 years and therefore, if the said incumbent had taken advantage by entering in service before attaining the age of 18 years, he/she has to be made to superannuate on completion of maximum 42 years of permissible Government service as per the policy decision of the State Government of the year 1998, as also approved by a full Bench judgment of this Court rendered in the case of ***Rajiawa Narayan Mishra*** (supra), even though the incumbent shall not be completing 60 years of age i.e. the age of normal superannuation of a clerk in a secondary school governed by Bihar Shiksha Anusachivia Niyamabali, 1974.

17. The learned counsel for the appellant has also relied on a judgment dated 17.05.2026, passed by a Ld. Single Judge of this Court in CWJC No. 10079 of 2011 (***Md. Ashraf Ansari vs. The State of Bihar & Ors.***), relevant portion whereof is reproduced herein below:-

> *"Besides hearing learned counsel for the parties, I have also perused the materials available on record. Fact remains that presently there is no order on record to suggest that any action has been taken against the petitioner on the ground that he was under age at the time of initial appointment as Shiksha Mitra. Without going into detail keeping in view the fact that till date no final order has been passed it would not be appropriate*

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for this court to pass any positive order. However, the court is of the opinion that once a person was appointed as Shiksha Mitra on contractual basis which was only for a period of eleven months subject to re-engagement, thereafter he was re-engaged and at the time of re-engagement if he had attained the age eligible for appointment the earlier defect at subsequent stage has got no relevance. For consideration the relevant date would be the date on which status of Shiksha Mitra was changed as Panchayat Teacher. If on the cut-off date a person was eligible to be appointed or converted as Panchayat Teacher certainly in that event any error committed at the initial stage on contractual basis may not have any relevance. With above observation the writ petition stands disposed of with indication that if any action is taken against the petitioner on the plea that he was under age in the year 2003 at the time of his initial engagement as Shiksha Mitra he would be at liberty to directly approach this court.

18. We have heard the learned counsel for the parties and gone through the materials on record and we find that the facts of the case lie in a narrow encompass, inasmuch as the appellant was initially appointed as Panchayat Shiksha Mitra, vide letter dated 18.02.2003 on contractual basis for 11 months, whereafter the term of the appellant was extended from time to time for further period of 11 months each. In due course, the appellant became a Panchayat Teacher in terms of memo No. 974, dt. 01.07.2006 of the Human Resources Department, Govt. of Bihar. A bare perusal of the records would show that the appellant, in order to make herself eligible for engagement as

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Panchayat Shiksha Mitra, had furnished the school leaving certificate, wherein her wrong date of birth, i.e. 10.09.1984 was mentioned, inasmuch as on the date of her selection, i.e. on 18.02.2003, she would have been only 16 years 05 months & 17 days, i.e. below 18 years of age, if her original date of birth, i.e. 10.09.1986 is considered. It is a matter of record that by virtue of the appellant's appointment as Panchayat Shiksha Mitra, she was absorbed on the post of Panchayat Teacher under the Bihar Panchayat Primary Teachers (Recruitment & Condition of Service) Rules, 2006, issued vide notification dated 01.07.2006.

19. Subsequently, a complaint was filed before the District Public Grievance Redressal Officer, Vaishali, leading to submission of a report dated 16.09.2019, as aforesaid, whereafter the Block Education Officer, Bidupur, vide letter dt. 22.12.2021 had stopped the salary of the appellant till verification of her date of birth. The respondents had then got the date of birth of the appellant verified from the Bihar School Examination Board, Patna & it was found that the appellant has obtained employment as Panchayat Shiksha Mitra by changing her date of birth, hence the Panchayat Employment Unit took a decision to terminate the services of the appellant, whereafter the said decision was communicated to the appellant, vide letter

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dt. 26.08.2022. The said order dated 26.08.2022 was challenged before the State Appellate Authority, vide O.A. No. 435/2022, however the said O.A. was rejected vide order dt. 4.11.2022. The appellant had then challenged the said order dated 04.11.2022 by filing the connected writ petition bearing CWJC No. 1966 of 2023, which has also stood dismissed by the impugned Order dt. 09.08.2023.

20. The records would bear it out that the entire dispute has arisen on account of two date of births of the appellant being available on record, inasmuch as on the one hand, the school leaving certificate issued by J.T. High School, Barun-Bahuara, Vaishali records the date of birth of the appellant to be 10.09.1984, whereas the matriculation pass certificate issued by the Bihar School Examination Board, Patna shows the date of birth of the appellant to be 10.9.1986, however we find from the contemporaneous records like the school entry/admission register, school leaving certificate etc. that the date of birth of the appellant has been recorded as 10.09.1984, hence the possibility of mistake having been committed while issuing the matriculation pass certificate cannot be ruled out.

21. We would first advert to the issue as to whether the judgment rendered by the Hon'ble Apex Court in the case of ***R.***

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Vishwanathan Pillai (supra) would be applicable in the facts and circumstances of the present case to the extent that no right under Article 311 of the Constitution of India is available to a person obtaining appointment fraudulently on the basis of a forged caste certificate. In this regard, we would observe that as far as the judgment rendered in the case of ***R. Vishwanathan Pillai*** (supra) is concerned, the same was dealing with a case where the very appointment to civil post was vitiated by fraud, forgery or crime or illegality and in such cases, it would necessarily follow that no constitutional rights under Article 311 of the Constitution of India can possibly flow from such a tainted force, thus the cloak of protection under Article 311 of the Constitution of India would not be attracted. However, in the present case, we find that it is not a case of obtaining employment in a fraudulent manner, inasmuch as the appellant had definitely passed her matriculation exam since she had submitted her mark-sheet at the time of employment as Panchayat Shiksha Mitra on 18.02.2003 along with the school leaving certificate in which the date of birth of the appellant was mentioned as 10.09.1984, however later on when she got her duplicate matriculation pass certificate issued by the Bihar School Examination Board, Patna on 04.08.2015, since the

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original matriculation certificate was not available, it was found that her date of birth has been recorded as 10.09.1986 inadvertently, whereafter the appellant had taken steps to get the date of birth rectified by approaching the Bihar School Examination Board, Patna but when no response was shown, she had filed a writ petition bearing CWJC No. 502 of 2022, however the Ld. Single Judge by an order dated 08.3.2022 had relegated the appellant to the remedy of approaching the District Appellate Authority/State Appellate Authority.

22. The appellant had then approached the State Appellate Authority by filing O.A. No. 435 of 2022, however the issue of different date of births was not gone into by the Ld. State Appellate Authority while passing the order dated 04.11.2022, hence the appellant was virtually left remediless with regard to correction of her date of birth in the records of the Bihar School Examination Board, Patna. Thus, we are of the opinion that a bonafide dispute has arisen with regard to the date of birth of the appellant and the records would bear it out that the appellant has not committed any forgery for the purposes of obtaining employment much less altered her date of birth, inasmuch as there is no allegation of tampering with the date of birth in the school leaving certificate as would be apparent from a bare

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perusal of the school leaving certificate dated 16.06.2001. Yet another aspect of the matter is that the matriculation examination pass certificate issued by the Bihar School Examination Board, Patna recording the date of birth of the appellant as 10.09.1986 is not disputed by the authorities of the Bihar School Examination Board, Patna, however on account of the intervening circumstances i.e. the appellant not possessing the matriculation examination certificate at the time of being appointed as Panchayat Shiksha Mitra on 18.02.2003, the appellant had submitted the mark-sheet of the matriculation examination and the school leaving certificate mentioning her date of birth as 10.09.1984, leading to her date of birth being recorded by the State authorities as 10.09.1984. Thus, it cannot be said that the appellant has obtained appointment on the basis of a forged matriculation certificate, inasmuch as the same has not been stated to be a forged document by the Bihar School Examination Board, Patna.

23. Therefore, if the appellant is possessing a valid matriculation pass certificate mentioning her date of birth as 10.09.1986, then the only question which arises from the point of view of the Respondents is as to whether the appellant could have been appointed in the year, 2003 since she was then only

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about 16 and a half years of age, which in our view would at best be a mere irregularity in the appointment of the appellant. Therefore, considering the aforesaid facts and circumstances of the case we are of our view that the appellant cannot be punished in the year 2022, i.e. after lapse of more than 19 years since her appointment. In fact, it cannot be said that the appellant was appointed on the basis of a matriculation certificate, wherein the appellant had altered the date of birth, inasmuch as she was appointed on the basis of the date of birth mentioned in the school leaving certificate and it was incumbent upon the appointing authority to have verified the certificates of the appellant in the year 2003 itself, however having not done so, the respondent authorities cannot at a belated stage take punitive action against the appellant for no fault of hers. Reference be also had to Rule 13 of the Bihar Panchayat Elementary School Service (Appointment, Promotion, Transfer, Disciplinary Proceeding and Service Condition) Rules, 2020 (hereinafter referred to as the “Rules, 2020”).

24. We also find from the records that neither there has been any concealment on the part of the appellant nor the appellant has engaged in any sort of forgery and the issue of two date of births qua the appellant has arisen only on account of the

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difference of two years in between the date of birth as mentioned in the school leaving certificate vis-a-vis the one mentioned in the matriculation pass certificate issued by the Bihar School Examination Board, Patna. Moreover, the services of the appellant has been terminated by the impugned order dt. 26.08.2022, issued by the Panchayat Secretary-cum-Secretary, Panchayat Recruitment Committee, Gram Panchayat Raj Chakathkursi Kusiyari contrary to the provisions contained in the Rules, 2020. Thus, we are of the opinion that the said office order dated 26.8.2022, issued by the Panchayat Secretary-cum-Secretary, Panchayat Recruitment Committee, Gram Panchayat Raj Chakathkursi Kusiyari is illegal and fit to be set aside.

25. As far as the judgment rendered in the case of ***R. Vishwanathan Pillai*** (supra) is concerned, the same is not applicable in the facts and circumstances of the present case since this is not a case where the appellant has either obtained employment on the basis of forged caste certificate much less forged matriculation certificate, hence the cloak of protection under Article 311 of the Constitution of India is definitely attracted in the present case.

26. We are of the view that now at this belated stage, it would be inequitable and a travesty of justice if we allow the

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concerned State authorities to initiate departmental proceeding or undertake the procedure prescribed under the Rules, 2020 but then what has weighed in our mind to persuade us in not giving such liberty is that admittedly, neither the matriculation pass certificate issued by the Bihar School Examination Board, Patna has been found to be forged nor the State authorities have been able to prove that the same is forged, inasmuch as the Bihar School Examination Board, Patna has itself, in the counter affidavit filed before the Writ Court, admitted that the said certificate is genuine and the date of birth recorded therein is 10.09.1986, hence the appointment of the appellant as Panchayat Shiksha Mitra on 18.02.2003 on the basis of school leaving certificate showing her date of birth to be 10.09.1984 can at best be stated to be a mere irregularity for which the appellant cannot be proceeded and punished in the year 2022 much less in the year 2026.

27. Thus, the only issue which now survives for consideration is that if the date of birth as mentioned in the matriculation pass certificate i.e. 10.09.1986 is to be taken into account on the strength of which the appellant was appointed despite being a minor, then she can continue in service for a maximum span of 42 years only in terms of Rule 9 and Rule 14 of the Rules, 2020,

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which prescribes the minimum age for appointment on the post of District Elementary Teacher to be 18 years and further stipulates that the Headmaster, Teacher and instructor may remain in service up to 60 years of age. Thus, if the appellant had taken advantage by entering in service before attaining 18 years of age, she has to be made to superannuate on completion of maximum 42 years of permissible government service as per the Rules, 2020, even though she would be completing 60 years of age later on. Hence, we clarify that since it is the case of the appellant that she has got employment on the post of Panchayat Shiksha Mitra on 18.2.2003 on the strength of the matriculation pass certificate issued by the Bihar School Examination Board, Patna, as aforesaid, which records her date of birth as 10.09.1986, she would accordingly remain in service for a maximum period of 42 years of service as also she would not be entitled to take the benefit of the date of birth, i.e. 10.09.1984, as depicted in the school leaving certificate. This aspect of the matter is not only covered by the Hon'ble Full Bench Judgment of this Court rendered in the case of ***Rajiawa Narayan Mishra*** (supra) but also by the judgment rendered by a coordinate Bench of this Court in the case of ***Birendra Kumar*** (supra).

28. Having regard the facts and circumstances of the case and

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for the foregoing reasons, we find that the order dated 26.08.2022, passed by the Panchayat Secretary-cum-Secretary, Panchayat Recruitment Committee, Gram Panchayat Raj Chakathkursi Kusiyari, terminating the services of the appellant and the order dated 04.11.2022, passed by the State Appellate Authority in O.A. No. 435 of 2022, being illegal and perverse are liable to be set aside, hence are quashed. Accordingly, the appellant shall be entitled to back wages for the period she has worked. Consequently, we find that the impugned order dated 09.08.2023, passed by the Ld. Single Judge of this Court in CWJC No. 1966 of 2023 is not sustainable in the eyes of law, hence is also set aside.

29. The present appeal stands allowed.

(Mohit Kumar Shah, J)

I agree.
(Sourendra Pandey, J)

(Sourendra Pandey, J)

Ajay/-

AFR/NAFR	AFR
CAV DATE	27.07.2026
Uploading Date	09.09.2026
Transmission Date	NA

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