

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1654 of 2014
IN
Civil Writ Jurisdiction Case No. 1106 of 2013**

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Kranti Kumari, wife of Braj Kishore Thakur, Resident of Village Shahpur, Police Station Kusheshwar Asthan, District Darbhanga.

.... Appellant/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Department of Primary Education, Government of Bihar, Patna.
3. The District Education Officer, Darbhanga.
4. The District Programme Officer, Darbhanga.
5. The Block Education, Extension Officer, Kusheshwar Asthan.
6. In Charge Head Master Primary School, Sahapur, Police Station Kusheshwar Asthan, District Darbhanga.
7. Gram Panchayat Raj Chigri-Simraha through Panchayat Secretary, Police Station Kusheshwar Asthan, District Darbhanga.
8. The Mukhiya Gram Panchayat Raj Chigri Simraha, P.S. Kusheshwar Asthan, District Darbhanga.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Jagdish Prasad Singh, Advocate
For the Respondent/s : Mr. A. Ujjwal, SC 25

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 11-03-2015

Interlocutory application No.9362 of 2014

This application under Section 5 of the Limitation Act is filed with a prayer to condone the delay of 239 days in preferring the Letters Patent Appeal against the order dated 11.02.2014 passed by the learned Single Judge in CWJC No.1106 of 2013.

We heard the learned counsel for the appellant and the

learned counsel for the respondents and we are satisfied with the reasons assigned for the belated filing of the Letters Patent Appeal.

The interlocutory application is, accordingly, ordered and the delay is condoned.

Letters Patent Appeal No.1654 of 2014

The unsuccessful petitioner in CWJC No.1106 of 2013 is the appellant. The appellant was appointed as a Panchayat Teacher with effect from 01.07.2006 in a school at Shahpur of the Darbhanga District. She was promoted as Headmistress of the School in the year 2009. The Mukhiya of the Panchayat i.e. the 8th respondent passed an order dated 11.12.2012 placing the appellant under suspension. The basis therefor is the letter dated 29.10.2012 issued by the District Programme Officer- the 4th respondent and the resolution dated 05.12.2012 passed by the Appointment Committee of Panchayat teachers. The same was challenged in the writ petition. It was pleaded that the order of suspension is bereft of any reasons and there was absolutely no basis for the 8th respondent to suspend the appellant.

The writ petition was opposed by the respondents. Separate counter affidavits were filed by the respondents 3 to 5, on the one hand and the Panchayat Secretary, i.e. the 7th respondent, on the other hand. The respondents 3 to 5 pleaded that complaints were

received about the unauthorized absence and improper operation of Mid-day Meal Scheme by the appellant. The counter affidavit filed by the 7th respondent was almost a formality and nothing substantial was stated therein.

The learned Single Judge dismissed the writ petition through order dated 11.02.2014. Hence, this Appeal.

Heard learned counsel for the appellant and the learned counsel for the respondents.

This Court would be slow to interfere with the order of suspension pending enquiry. However, there are certain exceptions to this, namely where the suspension is found to be without basis or where it is continued beyond reasonable period hardly with any progress in the departmental enquiry.

In the order of suspension dated 11.12.2012, reference was made to the proceedings dated 29.10.2012 issued by the District Programme Officer-4th respondent. A perusal of the same discloses that two aspects were pointed out, namely that the appellant was absent unauthorisedly on certain occasions and that she did not operate the Mid-day Meal Scheme properly. However, when it comes to the question of pleadings before this Court, a totally different picture was presented. Reliance was placed on letter dated 03.10.2012 said to have been addressed by the District Education

Officer.

Before the learned Single Judge it was also pleaded that the Panchayat issued as many as three show cause notices and there is allegation about misuse of funds to the tune of Rs.17 lacs. Here again, we may mention that there was not even a semblance of that allegation in the order of suspension or in the counter affidavit filed by the Panchayat.

We are conscious of the fact that gravity of the charges cannot be dealt with in the proceedings where the order of suspension is challenged. However, once an order of suspension pending enquiry was passed, the appointing authority was under obligation to frame charges and to proceed with the enquiry, particularly when no stay was granted by this Court. Though more than two and half years have elapsed, no chargesheet has been issued to the appellant so far, much less any enquiry has been conducted. Further, the respondents are not sure about the reasons on account of which the appellant was suspended. At one place, reference was made to the letter addressed by the 4th respondent and in the counter affidavit reference is made to the representation given to the Hon'ble Chief Minister. When such is the situation, the right of the appellant to continue in the employment cannot be defeated. The suspension beyond a reasonable period, tends to become a

punishment, by itself. Added to this, public exchequer would be burdened on account of payment of subsistence allowance to an employee without taking any work from him.

We, therefore, allow this Letters Patent Appeal and set aside the order dated 11.02.2014 passed by the learned Single Judge in CWJC No.1106 of 2013. The writ petition is allowed and the order of suspension dated 11.12.2012 is set aside. It shall be open to the disciplinary authority to proceed with the matter.

Interlocutory application, if any, shall stand disposed of. There shall be no order as to costs.

(L. Narasimha Reddy, CJ)

(Vikash Jain, J)

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