

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.531 of 2015

Arising out of

Civil Writ Jurisdiction Case No. 20232 of 2013

Along with

Interlocutory Application No. 2353 of 2015

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Ritu Kumari, D/o Sri Krishna Chandra Prasad, Resident of Punpun Bazar, P.O. And
P.S. - Punpun, District - Patna

.... Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department,
Patna
 2. The District Education Officer, Patna
 3. The Block Education Officer, Punpun, District - Patna
 4. The Mukhiya, Punpun Gram Panchayat, Block and P.O. - Punpun, District -
Patna
 5. The Panchayat Secretary, Punpun Gram Panchayat, Block and P.O. - Punpun,
District - Patna
 6. The Headmaster, Primary Girls School, Punpun, P.O. - Punpun, District - Patna
- Respondent/s
- =====

Appearance :

For the Appellant/s : Mr. Suraj Narain Yadav, Advocate
Mr. Pancha Nand Pandit, Advocate
Ms. Annu Shree, Advocate
For the Respondent/s : Mr. Nivedita Nirvikar- GA10
Mr. Manish Dhari Singh, AC to GA-10.

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 20-06-2016

Re.: Interlocutory Application No. 2353 of 2015

The application is for condonation of delay of 2 days in
filing of the appeal.

For the reasons mentioned in the application, we find
that sufficient cause is made out for condonation of delay.
Consequently, the delay of 2 days in filing of the appeal is condoned.

Interlocutory Application stands disposed of.

Re.: Letters Patent Appeal No. 531 of 2015

The present Letters Patent Appeal is directed against an order dated 02.12.2014 passed by the learned single Bench in CWJC No. 20232 of 2013 whereby the writ petition filed by the appellant for a direction to permit her joining was dismissed.

The appellant was appointed as Shiksha Mitra in the year 2005, but on commencement of Bihar Panchayat Primary Teachers (Appointment and Service Condition) Rules, 2006 (hereinafter referred to as the “2006 Rules”), the appellant continued as Panchayat Teacher. It may be noticed that 2006 Rules has since been replaced by the Bihar Panchayat Primary Teachers (Appointment and Service Condition) Rules, 2012 published on 03.04.2012.

The appellant worked as Panchayat Teacher till 17.08.2012 but abstained thereafter from duty for a period of almost one year when she submitted joining report on 09.07.2013. The explanation of the appellant is that during this period, she has undergone B.Ed. course which was necessary for obtaining a trained teacher grade.

The learned single Bench dismissed the writ petition on the ground that there is no provision in the Rules for leave for obtaining higher degree and that she has an obligation towards the

children of the school, who have a fundamental right to education under Article 21A of the Constitution of India. Consequently, the Court found that it is not a case of condoning this kind of conduct of the appellant and dismissed the writ petition.

Learned counsel for the appellant refers to Rule 15(2) and Rule 17 of 2006 Rules and Rule 15(g) of the 2012 Rules to contend that even if the appellant was absent from duty, the authorities have to proceed for a disciplinary action but cannot withhold her joining.

We have heard learned counsel for the parties and find the arguments, raised by the learned counsel for the appellant, is meritorious. 2006 Rules are not applicable in respect of the appellant as she abstained from duty after commencement of the 2012 Rules on 17.08.2012. She submitted her joining report on 09.07.2013. Rule 15(g) of 2012 Rules contemplates that in case of habitual absence from duty, explanation would be asked and thereafter a disciplinary proceeding would be started. The appointment of the appellant is governed by the Rules, which contemplates the age of superannuation as 60 years. In case of absence, the Rules contemplate disciplinary action. Therefore, even if the appellant abstained from duty for almost one year, the only consequence is for initiation of a disciplinary proceeding for her absence. However, once she has submitted joining

report, there cannot be any refusal for acceptance of her joining as the respondent could initiate disciplinary proceeding for her absence.

Consequently, the order passed by the learned single Bench is set aside. The joining of the petitioner is ordered to be accepted. However, it shall be subject to the condition of taking of an appropriate decision by the respondents within a period of six months from today as to whether they would like to initiate a disciplinary proceeding against the appellant for her absence. If it is decided to take disciplinary action, then the payment of wages from 09.07.2013 till the date of her actual joining, will be subject to the result of disciplinary proceeding. But if it is decided not to initiate disciplinary proceeding, the appellant will be entitled to wages from the date, she submitted her joining i.e., 09.07.2013. The appellant shall be entitled to current salary from the date she submits her joining again.

With such directions, the appeal stands allowed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

Sujit/P.Kumar

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