

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18810 of 2016

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Neelam Kumari Wife of Amlesh Kumar Singh Resident of Village - Pasnauli,
Police Station - Maharajganj, District - Siwan, At present posted and working as
Panchayat Teacher in Govt. Primary School, Pipra Kanya, Block - Raghunathpur,
District - Siwan.

.... Petitioner

Versus

1. The State of Bihar.
2. The Principal Secretary, Education Department, Government of Bihar, Patna.
3. The Director, Primary Education Department, Government of Bihar, Patna.
4. The District Magistrate, Siwan.
5. The District Education Officer, Siwan.
6. The District Programme Officer (Establishment), Siwan.
7. The District Programme Officer, Primary Education and Sarv Shiksha Abhiyan, Siwan.
8. The Block Development Officer, Raghunathpur, District - Siwan.
9. The Block Education Officer, Raghunathpur, District Siwan.
10. The Panchayat Secretary, Gram Panchayat Raj, Dighwalia, Block Raghunathpur, District - Siwan.
11. The Chairman, Gram Panchayat Raj through its Mukhia, Gram Panchayat Raj Dighwalia, Block Raghunathpur, District Siwan
12. The Member Secretary, Gram Panchayat Raj, Dighwalia, through its Panchayat Secretary, Gram Panchayat Raj, Dighwalia, Block Raghunathpur, District Siwan

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Umesh Kumar Mishra, Adv.
For the Respondent/s : Mr. Madanjeet Singh, GP20

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL JUDGMENT
Date: 15-12-2016

Heard Mr. Umesh Kumar Mishra, learned counsel for the
petitioner and the learned counsel for the State.

The petitioner is aggrieved by the order bearing Memo No.
1226 dated 17.10.2016 of the District Education Officer, Siwan, who
while taking note of default of the petitioner regarding her continued
absence as well as other irregularities has recommended for her



termination in the light of the provisions underlying Bihar Panchayat Elementary Teachers (Appointment and Service Condition) Rules, 2006 as amended from time to time and presently stands replaced by Bihar Panchayat Elementary Teachers (Appointment and Service Condition) Rules, 2012.

Mr. Umesh Kumar Mishra, learned counsel for the petitioner, in reference to the Rules has submitted that whereas the jurisdiction in this regard stands vested in the Appointment Committee exclusively, the order of the District Education Officer to terminate the service of the petitioner is prejudging an issue and even before the petitioner is granted an opportunity to defend herself in a duly constituted proceedings in the light of the provisions underlying Rule 15(chha) of the Rules, 2012. While admitting that no formal order has yet been passed, he submits that the direction itself is clear and the termination is only a consequence flowing.

Neither the Panchayat Secretary, Gram Panchayat Raj, Dighwalia, who is stated to be the Secretary of Panchayat Shikshak Niyojan Samiti, nor the Mukhia, who is the Chairman of the Niyojan Samiti, are added as party respondent.

As prayed, learned counsel for the petitioner is permitted to add the Mukhia, Gram Panchayat Raj, Dighwalia and the Panchayat Secretary, Gram Panchayat Raj, Dighwalia, in the district of Siwan as



respondents no. 11 and 12 during the course of the day in the Court proceedings as well as in the pleadings of the Govt. Counsel.

I have heard learned counsel for the parties and have perused the records.

The only apprehension in the mind of the petitioner is that there would be a mechanical obedience of the direction of the District Education Officer. While accepting that no final orders have been passed in the matter, the petitioner apprehends such eventuality. A mere apprehension may not be sufficient to give the petitioner a cause of action until the direction is acted upon. The direction by an authority not having jurisdiction over the subject matter, if mechanically applied by an authority having jurisdiction thereon, would be a void discharge. No doubt, there are irregularities pointed out against the petitioner but which needs to be deliberated upon and the procedure is provided under Rule 15(chha) of the Rules, 2012. Even though a recommendation has been made by the District Education Officer for termination of the service of the petitioner, any such termination can only take place in observance of the Rules by following the due procedure provided therein.

In the circumstances discussed and without expressing any opinion on the merits of the case, I deem it fit and proper to dispose of the writ petition to merely remind the Panchayat Shikshak Niyojan



Samiti, Gram Panchayat Raj, Dighwalia in case they intend to proceed against the petitioner, to discharge their obligation in observance of the statutory Rules and by affording an opportunity of hearing to the petitioner without being prejudiced by the directions issued by the District Education Officer, Siwan.

The writ petition is disposed of.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.12.2016
Transmission Date	NA

