

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.934 of 2011

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Smt.Sonam Kumari, W/O Vikash Kumar Jha, R/O Tailhara Kala, P.S. - Dhaka,
District - East Champaran.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The District Magistrate, Motihari, East Champaran.
3. The Block Education Officer, Dhaka.
4. District Superintendent of Education, East Champaran.
5. The Head Master, Rajkiya Primary School, Thurkiliya, Block- Dhaka, District - East Chamaran.
6. Mukhiya of Gram Panchayat, Jhowaram, Block Dhaka, District- East Chamaran.
7. The Secretary of Gram Panchyat, Jhowaran, Block- Dhaka, District- East Champaran.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dhananjay Kumar No.2, Advocate
For the Respondent-State : Mr. Jai Prabhat Kishore, AC to SC-13
For the Respondent No.5 : Mr. Raja Ram Mishra, Advocate
For the Respondent No.7 : Mr. Sunil Kumar Verma, Advocate
Mr. Suman Kumar Verma, Advocate
Mr. Pramod Kumar Prasad, Advocate
Mr. Anish Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 23-08-2016

A copy of the counter affidavit filed on behalf of the Panchayat is on record but has not been served on Mr. Dhananjay Kumar No.2, learned counsel appearing for the petitioner. A copy of the counter affidavit is being served on him today in Court.

Heard Mr. Dhananjay Kumar No.2, learned counsel appearing for the petitioner, Mr. Jai Prabhat Kishore, learned Assisting Counsel to Standing Counsel No.13 for the State and Mr. Sunil Kumar Verma, learned counsel appearing for the Panchayat

Secretary, Gram Panchayat, Jhowaram in the district of East Champaran.

The petitioner was appointed as a Panchayat Teacher on 30.11.2006 and her service has been terminated vide order bearing Memo No.14/2010 dated 7.12.2010, inter alia, on grounds of continued absence which is impugned at Annexure-1.

Although a preliminary objection has been raised by Mr. Verma, learned counsel appearing for the Panchayat Secretary as regarding the maintainability of the writ petition with reference to the provisions underlying rule 18 of the Bihar Elementary Teachers (Appointment and Service Condition) Rules, 2006 which provides for an appellate forum in respect of any matter concerning the service conditions of a Panchayat Teacher but considering the nature of contest raised herein I am not persuaded to uphold the preliminary objection.

The argument advanced by Mr. Dhananjay Kumar No.2 to question the impugned order is, that it has been passed without any notice or opportunity of hearing to the petitioner. This argument is being contested by Mr. Verma in reference to the statement made in paragraphs 7 and 8 of the counter affidavit to submit that the notice was issued to the petitioner on 17.8.2010 and 10.11.2010 by the Panchayat Secretary under speed post but she has not responded.



Although a copy of the counterfoil of the speed post is on record but the movement of the notice has not been placed on record which would substantiate whether the notice was actually served on the petitioner. There is no other evidence of service on the petitioner either.

In that view of the matter, the assertion made by the petitioner goes uncontested. On this limited point the order of termination bearing Memo No.14/2010 dated 7.12.2010 in so far as it concerns the petitioner cannot be upheld and is accordingly set aside.

The writ petition is allowed. The petitioner stands restored to her post but considering the nature of default I am not persuaded for payment of any arrears of salary. This order would not preclude the Panchayat Secretary to proceed afresh but in accordance with law.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	05-09-2016
Transmission Date	N.A.