

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6402 of 2013

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Kiran Kumari W/O Satyendra Prasad R/O Village- Makhdumpur, Police Station- Ekangarsarai, District- Nalanda, At Present Posted As Assistant Teacher Middle School, Arjupur, Police Station and District- Buxar

.... Petitioner/s

Versus

1. The State Of Bihar Through The Principal Secretary Department Of Education, Government Of Bihar, Patna
2. The Director (Primary Education) Department Of Education, Government Of Bihar, Patna
3. The District Officer, Nalanda
4. The District Education Officer, Nalanda
5. The District Programme Officer, Nalanda
6. The Block Development Officer, Ekangarsarai, District- Nalanda
7. The Block Education Officer, Ekangarsarai, District- Nalanda

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajesh Kumar Singh, Adv.
Mr. Anil Kumar Singh, Adv.

For the Respondent/s : Mr. Mithilesh Kumar Singh, AC to SC-6

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 31-03-2016

Heard learned counsel for the petitioner and counsel for the State.

Learned counsel for the petitioner submits that during pendency of the writ application save and except arrear of salary for the period from 1.11.2009 to 30.4.2010, all other benefits have already been paid.

A claim has been made by the learned counsel for the petitioner that she is entitled to salary for the period 1.11.2009 to 30.4.2010 and submitted that during that period, she attended the



school but, wrongly has been deprived of her salary as there was some dispute between the petitioner and Smt. Nilam Sinha, Ex-Headmistress of the Primary School, Parthu. Learned counsel for the petitioner submits that the petitioner was allowed by the then Block Education Officer, Ekangarsarai to mark her attendance on different register and, accordingly, she put her attendance on the said register.

The District Programme Officer, Nalanda, on the direction of this Court, has considered the case of the petitioner with regard to her entitlement for the salary, arrived at a conclusion that as her attendance is not there in the composite attendance register, she will be treated to be absent during that period.

Learned counsel for the petitioner has submitted that this finding is based on the statement of Ex-Headmistress as well as on the basis of composite attendance register maintained by the school but, the fact remains that during that period, there was a dispute between the Ex-Headmistress and the petitioner and she was not allowed to mark attendance which will be clear from Annexure-2 of the writ application where the signature of Block Development Officer, Ekangarsarai and Block Education Officer, Ekangarsarai are there from where it appears that a direction was given to the Headmistress to prepare a bill for payment of salary for the aforesaid period so that the payment can be made to the petitioner. He has further submitted



that the letter of the Block Development Officer, Ekangarsarai dated 28.1.2011 from where it appears that he has recorded a finding that the villagers were present during the inspection stated that the petitioner was present in the school during the period in question and the Ex-Headmistress did not allowed the petitioner to mark attendance in the composite attendance register and, as such, on the statement of Ex-Headmistress, the District Programme Officer has committed an illegality in arriving to a finding of non-entitlement of salary during that period. Learned counsel for the State submits that the petitioner's signature is not there on the attendance register which is only proof of her presence.

From perusal of the records, it appears that admittedly there was a dispute between the present petitioner and Ex-Headmistress during that period. Two conflicting versions have been recorded by the authority concerned, the petitioner had discharged the duty, as claimed by petitioner, she was directed to mark attendance on separate attendance register which he denies. At the same time, the Ex-Headmistress also denied the presence of the petitioner during that period but, other documents such as Annexure-2 and the show-cause issued to Nilam Kumari dated 28.1.2011 (Annexure-3) show the fact that she was present and she was asked to mark attendance register.

Where there is a disputed question of fact, this Court



cannot arrive to a finding with regard to her presence during that period in the school. Let this matter be decided by the Director, Primary Education who will examine the case of the petitioner, would take into consideration all aspects of the matter including report of the Block Development Officer dated 25.7.2011 (Annexure-2) and any other material whichever is brought by the petitioner including the attendance register of the school as well as he will make enquiry from the Block Education Officer, Ekangarsarai who was posted there at the relevant time and decide the case on the its own merit within a period of four weeks from the date of receipt/production of a copy of this order. This Court has expressed no opinion on the merit of the case and the aforesaid authority will decide the matter in accordance with law.

With the aforementioned observation and direction, this application is disposed of.

(Shivaji Pandey, J)

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