

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9610 of 2013

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Nutan, Kumari W/O Sri Nityanand Jha, D/O Late Purandar Jha R/O Village-
Chopra, Bakhri, P.O.- Haldi Khora, P.S.- Kochadhaman, District- Kishanganj

.... Petitioner/s

Versus

1. The State Of Bihar Through The Chief Secretary Old Secretariat, Patna
2. The Principal Secretary Human Resources Development Department,
Government Of Bihar, Patna
3. The Secretary, Secondary Education Human Resources Development
Department, Government Of Bihar, Patna
4. The Director, Secondary Education Government Of Bihar, Patna
5. The Deputy Director, Secondary Education Government Of Bihar, Patna
6. The District Education Officer, Purnea, District- Purnea

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Subodh Kumar Jha, Adv.
Mr. Pranav Kumar Jha, Adv.

For the Respondent/s : Mr. Manoj Kumar Ambastha, GP-14
Mr. Subodh Kumar, AC to GP-14

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 20-07-2016

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

In this case, the petitioner is challenging memo no.
63/11/122 (P) Patna dated 15.3.2013 passed by the Director,
Secondary Education, whereby and whereunder, he has not accepted
the explanation tendered by the petitioner and thereby refused to allow
her to join the service.

Some necessary facts are essential for disposal of this
case. The petitioner was appointed as a Teacher by the Managing



Committee of the Mahakali Girls High School, Dhamdaha vide letter dated 19.8.1986 and, accordingly, she joined the post on 21.8.1986. The school was picked up and declared as a project school and the petitioner was found to be working in the said school by the Three Men Committee constituted at the instance of the Hon'ble Supreme Court in the judgment dated 3.1.2006 in Civil Appeal No. 6626-6681 of 2001 and, accordingly, the Committee, vide letter dated 24.6.2008, recommended her name for the project school in the subject of Science. An explanation has been given by the petitioner that as the teaching and non-teaching staff of the project school were not getting a single farthing and the petitioner, faced with the financial and health constraint, applied to the post of Panchayat Teacher under the Panchayati Raj Scheme and she was selected as Panchayat Teacher and posted at Middle School, Haldikhora, Kishanganj. After the intervention of the Hon'ble Supreme Court, the teaching and non-teaching staffs of the project school started getting salary. As a Panchayat Teacher, the petitioner was getting contractual amount, impelled the petitioner to approach the Director, Secondary School, Bihar, Patna, giving details of her cause for joining the other school of the State of Bihar and requested to allow her to join the post. After such an application, a show-cause was issued to the petitioner, asking her to give explanation as to why her services would be not



terminated. The petitioner filed her explanation dated 26.8.2010 in which she specifically stated that she had never tendered resignation, she was found working by the Inspecting Team recommended her name but because of her financial and health constraint, she was compelled to perform the duty of the school run by the State of Bihar. The Director refused to accept the explanation and did not allow her to join the school which led to filing of the writ application, CWJC No. 5517 of 2011. In the writ application, the learned counsel for the petitioner had taken a plea that the period which she discharged as a Panchayat Teacher be treated as an extraordinary leave and she should be allowed to join the services. The Court remitted the matter back for fresh consideration.

The respondent Director, Secondary Education, Bihar, Patna, vide order dated 15.3.2013, refused to accept the explanation, a ground has been taken that she on her own volition left the organization without taking permission from the competent authority. Learned counsel for the petitioner has pointed out that on remand, the authority has reiterated same fact of illegality while disposing of the representation but, did not deal with ground that the petitioner has specifically taken a plea that she never tendered her resignation. The respondent has not recorded any finding about the fact of resignation letter and acceptance of the same. A plea has been taken by the



petitioner that she had discharged the duty of Panchayat Teacher on account of financial and physical constraint should be treated as an extraordinary leave. Per contra, learned counsel for the State has submitted that when she herself has left the organization, the question of again allowing her to join the post does not arise and she cannot be allowed to join the post.

Having considered the rival contentions of the parties, admittedly from 2006 to 2009, the petitioner did not discharge the duty of Panchayat Teacher. She has taken a plea that she was not in a position to continue in the project school on account of financial constraint as well as health constraint. The impugned order does not disclose anywhere the date of filing of her resignation and acceptance of the same. Even if the petitioner had filed her resignation, it does not mean that the resignation has been accepted and the authority concerned has not pointed out about any application filed by her and the same was accepted. If a person remains absent for a long period, it can be a matter of misconduct but, it cannot be ipso facto treated as a resignation.

In that view of the matter, the matter is remanded to the Director, Secondary Education who will dispose of the matter by passing a reasoned order within a period of three months from the date of receipt/production of a copy of this order but, only after

extending an opportunity of hearing to the parties.

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

(Shivaji Pandey, J)

Rishi/-

AFR/NAFR	NAFR
CAV DATE	NA
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Transmission Date	NA