

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.732 of 2015

In
Civil Writ Jurisdiction Case No.3460 of 2015

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Dev Narayan Paswan. Son of Bhagwanlal Paswan. Resident of Village -
Sahdulipur, P.S.- Ahiyapur, Block - Mushahari, District - Muzaffarpur.

... .. Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Human Resources Development Department, Govt. of Bihar, Patna.
2. The Director, Primary Education, Govt. of Bihar, Patna.
3. The District Magistrate, Muzaffarpur.
4. The District Programme Officer, Muzaffarpur.
5. The Block Education Officer, Mushahari, Muzaffarpur.
6. The Mukhiya, Gram Panchayat Raj, Bada Jagannath, P.S.- Ahiyapur, Block - Mushahari, District - Muzaffarpur.
7. The Panchayat Secretary, Gram Panchayat Raj, Bada Jagannath, P.S.- Ahiyapur, Block - Mushahari, District - Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.
For the Respondent/s : Mr. Jitendra Kumar, AC to AAG-14

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 13-11-2017

Seeking exception to an order dated 10.3.2015 passed by the learned Writ Court in C.W.J.C. No.3460 of 2015, this appeal has been filed under Clause 10 of the Letters Patent.

Petitioner was a Panchayat Teacher and on account of his unauthorized absence for 330 days from School, his services were terminated vide Annexure 7 on 9.1.2015, primarily on the



ground that as a Panchayat Teacher, the permissible medical leave available to him is of 120 days only and as he has remained absent for 330 days, he cannot be permitted joining. The learned Writ Court dismissed the writ petition only on the ground that the petitioner was not a Government servant, his appointment was on contract basis and, therefore, no relief could be granted to him.

However, having heard learned counsel for the parties, we find that the petitioner was appointed on 1.2.2003 on contract basis, but subsequently, by virtue of the statutory amendment made, he attained the status of a 'Panchayat Teacher' on 1.7.2006 and since then he was a permanent employee of the State Government working as a Panchayat Teacher and, if that be so, the finding recorded by the learned Writ Court that he was only a contract employee is not correct. Even though his initial appointment on 1.2.2003 was on contract basis, but on 1.7.2006 he became a permanent Panchayat Teacher by operation of law. That apart, the allegation against the petitioner is that he was unauthorizedly absent without sanctioned leave from 22.6.2011 to 29.12.2012. However, the petitioner has filed, along with the writ petition, Annexure-2, an application submitted by him to the Mukhia of the Panchayat along with a copy to the Secretary of the Panchayat indicating that he is suffering from T.B., has been



advised to take bed rest and, thus, cannot attend duty. He has thereafter sent another application seeking extension of leave on 22.6.2011 and finally when he reported for joining duty on 29.12.2012, he filed a medical certificate indicating that he was suffering from T.B. and then from Jaundice and was advised to bed rest on 20th of December, 2012.

Respondents in the counter affidavit filed, except for contending that a Panchayat Teacher is only entitled to 120 days' medical leave and the petitioner has remained absent without sanctioned leave for more than 330 days, do not say or whisper anything about the ailment of the applicant and the application submitted by him vide Annexures-2 and 3 to say that he was suffering from T.B. and thereafter from Jaundice which prevented from discharging his duties.

Learned counsel appearing for the appellant invited our attention to a judgment of Hon'ble Supreme Court rendered in the case of Jay Shanker vs. State of Rajasthan, AIR 1966 492, to say that even overstaying of leave is a misconduct and services for overstaying of leave cannot be terminated without causing an enquiry and granting him an opportunity of say in the matter. The documents and the evidence produced by the appellant, as indicated hereinabove, does show that he was suffering from T.B.



and Jaundice and, if that be so, the petitioner could reasonably not attend the school during the period in question.

Be that as it may, once the petitioner attained the status of a Panchayat Teacher by operation of a statutory provision, it was a permanent post and before taking action against the petitioner, the Department was required at least to issue notice to him, grant him an opportunity of hearing, cause enquiry with regard to the absence and after granting opportunity of hearing to proceed for taking action. This was the bare requirement of law and this having not been done, based on the overwhelming material that has been brought on record by the appellant in support of his case, we deem it proper to allow this appeal and grant liberty to the authorities to proceed in the matter after following the procedures as indicated hereinabove.

The impugned order of termination, Annexure 7 dated 9.1.2015, and the order of the learned Writ Court are quashed. Petitioner is directed to be reinstated in service. However, for the period of absence, the petitioner shall not be entitled to any salary. The respondents are granted liberty to proceed, if so advised, in the matter in accordance with law. However, payment of backwages from the date the appellant reported joining i.e. 28th of December, 2012 till his termination on 9.1.2015 shall be



considered by the competent authority based on the decision taken after an enquiry into the matter as conducted.

With the aforesaid, the appeal stands allowed and disposed of. However, as the order of termination, Annexure-7 dated 9.1.2015 is quashed, the petitioner shall be entitled to salary from the said date.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

K.C.Jha/-

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