

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8920 of 2016

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Nusrat Jahan, W/o Md. Kalimuddin, R/o village & P.O. Bijai, P.S. Ghorasahan,
District - East Champaran

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of Education, Government of Bihar, Patna
2. The Principal Secretary, Department of Education, Government of Bihar, Patna
3. The Director (Primary Education), Government of Patna, Patna
4. The District Magistrate, East Champaran at Motihari
5. The District Education officer, East Champaran at Motihari
6. The District Programme officer (Establishment), East Champaran at Motihari
7. The Block Development officer, Ghorasahan, East Champaran
8. The Block Education officer, Ghorasahan, East Champaran

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Amarendra Kumar, Advocate

For the Respondent/s : Mr. Vikash Kumar, AC to AG

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 22-02-2017

Heard parties.

The petitioner was appointed as 'Siksha Mitra' and after coming into force of Bihar Panchayat Elementary Teachers (Employment and Service Conditions) Rules, 2006, she was absorbed on the post of Prakhanda Teacher in Upgraded Middle School, Bijai Urdu, Ghorasahan in the district of East Champaran. She was placed under suspension, as such, she preferred CWJC No.9725 of 2015 for quashing of the suspension order as well as the charge memo and entire departmental proceeding. Vide order dated 4.12.2015 passed in



CWJC No.9725 of 2015 (Annexure-1), the suspension order was set aside and the departmental proceeding was also not found to be sustainable in law having been initiating *dehors* the procedure laid down in the statute concerned. Thereafter, the petitioner, vide Annexure-2, approached the competent authority for her joining. However, vide Annexure-4, after revocation of suspension, she has been posted at Upgraded Middle School, Bijai Parariya, i.e., at a different school.

A simple query was made to the learned counsel appearing for the state that under what circumstances, such order could have been passed as, after quashing of suspension order, ordinarily she should have been posted in the same school where she was working since no order of transfer was passed by a competent authority. In fact, learned counsel has not been able to show that she could have ever been transferred to another school. However, it is stated in paragraph 8 of the counter affidavit that there are serious allegations of rude behaviour with the teachers and the embezzlement of amount of scholarship of the students of the concerned school for which complaint has been made by the villagers also. This will give rise to another question as to whether document which has been appended as Annexure-B is prior to Annexure-A which is an order of suspension and which has been quashed by this Court vide Annexure-



1 or is subsequent to that. Unfortunately, Annexure-B does not bear even a date so that a prudent person could come to such conclusion. On the basis of such documents, in my view, such step could not have been taken by the authority. Learned counsel for the State has not been able to show that there is a provision of transferring a teacher to any other school save and except on her own consent or choice twice in her/his service career. That apart, Annexure-4 is not an order of transfer. Simply the suspension order was quashed by this Court and the petitioner went to join there. Even there was no occasion at all to pass any order of revocation of suspension as that order was already quashed by this Court. Under the garb of that, it appears that the petitioner has been transferred which is found contrary to the statutory provisions.

It is contended by the petitioner that during the period of suspension merely subsistence allowance was given to the petitioner. In my considered view, since the disciplinary proceeding itself was found to be *de hors* the procedure laid down in the statute and the order of suspension has already been set aside, the petitioner would be entitled for full payment of salary for the said period. Thus, I find force in such submission also made by the petitioner. Though a stand has been taken in paragraph 9 of the counter affidavit that payment of full salary for the period of suspension after adjusting the amount of



subsistence allowance could not be taken due to Panchayat Election, 2016 as the Prakhanda Niyojan Samiti was dissolved and the same is yet to be constituted and further that soon after its constitution, a decision regarding payment of salary of the petitioner for the period of suspension after adjusting the amount of subsistence allowance would be taken forthwith, this stand itself is intriguing as it is not stated anywhere that, in view of the dissolution of such Prakhanda Niyojan Samiti, whether other teachers are getting salary or not? If other teachers are getting the salary then the question would be why a decision of releasing the salary to the petitioner could not be taken?

However, this Court is of the opinion that, since nothing has been found against the petitioner by this Court in its earlier order and the suspension order was also found illegal, there is no occasion to withhold the salary of the petitioner. Accordingly, this Court would direct the respondents to calculate the full salary of the petitioner during the period of suspension, thereafter, deduct the subsistence allowance which has already been paid to her and balance amount should be paid her within a period of three months from the date of receipt/production of a copy of this order.

In my view, the order contained in Annexure-4 cannot be sustained in the eye of law and, as such, the same is quashed and set aside.



As a result, this writ application succeeds.

The petitioner would join at her earlier place of posting in Upgraded Middle School, Bijai Urdu, Ghorasahan, East Champaran.

However, it is made clear that if something has been found against the petitioner then this order would not come in way of the competent authority in initiating a disciplinary proceeding in accordance with law.

(Dr. Ravi Ranjan, J)

V.K. Pandey/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	26.04.2017
Transmission Date	N.A.

