

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.21317 of 2014

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1. Rama Kumari daughter of Late Kalyug Baitha r/o village - Barhara. P.O. and P.S.
- Bhore, distt. Gopalganj.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department , Govt.
of Bihar New Secretariate, Patna
2. The Director (Primary Education), Bihar, Patna.
3. The District Education Officer , Gopalganj.
4. The Block Education Officer, Bhore, Gopalganj.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Jai Kishor Poddar
Mr. Shivendra Kishore, Sr. Adv.
For the Respondent/s : Mr. PARTHA SARTHY- GA11.
Utsav Kumar, A.C. to G.A.-4.

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

Date: 07-08-2018

Heard learned counsel for the petitioner, counsel appearing on
behalf of the State.

Learned Senior counsel for the petitioner, Mr. Shivendra Kishore
submitted that the petitioner was entitled to payment of salary but
without any reason petitioner was not paid salary from 01.08.2009 to
till date despite the petitioner is regularly working. He referred to
Annexure-5 dated 3.4.2014 which is certificate issued by the Head
master of the school in question who has authenticated that the
petitioner is regularly working in the school in question after filing
medical leave for the period 01.05.2009 to 31.07.2009. Respondents
have filed counter affidavit where stand has been taken that the
petitioner has given resignation on 12.07.2009 to the Head Master of



the school.

Mr. Shivendra Kishore learned counsel for the petitioner submitted that from perusal of Annexure-1 appended to the counter affidavit, it appears that letter is written in different and somebody has played mischief in the instant case. Ultimately he submits that petitioner has approached this Court and he categorically denies tendering resignation and in that view of the matter, resignation, if not, accepted cannot be a ground to deny salary to the petitioner for the period she has actually done work. Referring to Annexure-5 which is the certificate issued by the Head Master of the school Mr. Kishore submitted that Annexure-5 substantiate the claim that the petitioner is regularly working in the school. The law in the matter of resignation and its acceptance is well settled by the Constitution Bench of the Hon'ble Supreme Court in the case of ***Raj Kumar Vs. Union of India AIR 1969 SC 180***. The Apex Court has categorically held out that unless the resignation is accepted, the person tendering the resignation has every right to withdraw the same.

From the materials available on record, it is not established that the resignation was accepted by the respondent. The letter addressed to the Head master is not relevant as the Head Master is not the competent authority to accept the resignation and if it is alleged that the letter to the Head is no ground to treat the letter as valid resignation.

In view of the facts and circumstances indicated hereinabove, the



Court is unable to accept the plea of the respondent as to resignation of the petitioner and on that ground, genuine salary payable to the petitioner cannot be denied. Annexure-5 indicates that the petitioner has worked up to 2016, immediately before the date of filing of the writ application.

Under the aforesaid circumstance, the writ petition is allowed. The respondents are directed to treat the petitioner in continuous service and the letter of resignation cannot be treated as valid resignation and relationship of employees and servants is hereby declared as subsisting and accordingly petitioner is entitled for payment of salary for the period petitioner has actually worked. Accordingly, the respondents are directed to work out the entitlement of arrears and current salary and ensure payment thereof within the maximum period of four months from the date of receipt / production of a copy of this order.

With the aforesaid the writ petition stands allowed and disposed of.

(Anil Kumar Upadhyay, J)

Sanjeev/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16/08/2018
Transmission Date	NA

