

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7873 of 2018

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1. Shashi Kala Kumari, Wife of Dilip Kumar, Resident of Village-Kalarampur,
P.O.-Kalarampur, P.S.-Naya vamnagan District-Munger.

.... Petitioner/s

Versus

1. The State of Bihar through the District Magistrate, Munger.
2. The District Magistrate, Munger.
3. The District Education Officer, Munger,
4. The District Programme Officer, (Establishment), Munger.
5. The Block Education Officer, Jamalpur, Munger,
6. The Member Secretary-Cum-Gram Panchayat Secretary, Rampur Kala Gram
Panchayat, Block-Jamalpur, District-Munger.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Amish Kumar, Adv.
Mr. Prince Kumar Mishra, Adv.
Mr. Krishna Chandra Jha, Adv.
For the Respondent/s : Mr. S.C.MISHRA -SC16

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

Date: 08-05-2018

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

Petitioner is aggrieved by the order contained in Annexure-3..
Mr. Amish Kumar, has made two-fold submissions, firstly, that the
order contained in Annexure-3 was passed without any enquiry and
without opportunity of hearing to the petitioner. Secondly, he submits
that respondent No.3 has no jurisdiction to pass the order contained in
Annexure-3. He submits that the issue of validity of the certificate of
the petitioner was enquired into in the past and the respondents have



cleared the case of the petitioner, now they have filed a criminal case on the same date and they have issued the order restraining the petitioner from marking attendance. Mr. Amish Kumar submitted that FIR lodged by the respondent is only initiation of investigation. starting point of investigation and in the name of lodging FIR restraining the petitioner from marking the attendance will amount to taking a decision without opportunity of hearing.

Mr. Amish Kumar submitted that it is now well settled that one cannot be condemned without hearing. The action of the respondent vide Annexure-3 is without compliance of natural justice and as such it is unsustainable. However, he fairly submits that the issue requires examination of the validity of the certificate of the petitioner by competent authority. Accordingly, he submits that petitioner may be granted opportunity to represent the District Education Officer, Munger where he may furnish the relevant document for verification of the District Education Officer and as such the District Education Officer may be directed to examine the genuineness of the certificate of the petitioner and if it is found that the certificates of the petitioner are genuine, he may take appropriate corrective measure by allowing the petitioner to discharge his responsibility without any hindrance.

Considering the totality of the facts situation, the Court is of the view that the petitioner may be granted opportunity to approach the



District Education Officer, Munger who shall examine the validity / genuineness of the certificate within a maximum period of 60 days from the date of receipt of a production of a copy of this order. Since respondents have not allowed the petitioner to mark attendance that cannot be taken as a plea to deny him payment of salary. However, salary and other consequential benefits will abide by enquiry of the District Education Officer, Munger within the time frame indicated above. The lodging of FIR is not a ground to restrain the petitioner from discharging his duty and as such non-marking of attendance cannot be taken as a ground of No Work No Pay if ultimately certificate of the petitioner is found genuine and valid.

(Anil Kumar Upadhyay, J)

Sanjeev/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	
Transmission Date	

