

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4049 of 2016

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Raj Kumari Devi wife of Sri Lok Prakash Singh, R/o Village- Sikraul, P.S.-
Sikrahata, District- Bhojpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Government of Bihar, Education Department, Patna.
3. District Magistrate, Bhojpur at Ara.
4. The District Education Officer, Bhojpur, Ara.
5. The District Programme Officer, Bhojpur Ara.
6. Block Development Officer Tarari, Bhojpur.
7. The Block Education Officer, Tarari Bhojpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ravindra Kumar
For the Respondent/s : Mr. Arvind Kumar- Gp23

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

4 07-05-2018 Heard learned counsel for the petitioner and the
counsel appearing on behalf of the State.

This writ petition was filed on 25.02.2016 after service of two advance copies to the office of Advocate General. On 16.03.2018 i.e. after two years of filing of the writ petition, four weeks time was granted to the respondents to file counter affidavit but unfortunately respondents have not filed any counter affidavit.

Under the aforesaid circumstances, the court is not interested in granting further time to the respondents to file counter affidavit. The court is now supposed to scrutinize the material available on record in final disposal of the writ



application in view of the fact that enough time was granted to the respondents to file counter affidavit.

The petitioner is aggrieved by the order contained in Annexure-10, the order passed by the Block Education Officer, Tarari dated 17.8.2015 which was passed pursuant to the order passed by District Education Officer vide order dated 16.9.2014. The Law in this regard is well settled . Apex Court has already held out in the case of Purtabpore Co. Ltd vs. Cane Commissioner of Bihar AIR 1970 SC. 1896. In the instant case petitioner was adjusted in the new Primary School, Skiraul Tola, Anchal-Tarari. The said decision of posting was taken by the respondents at the request of the petitioner and suddenly on the order of District Education Officer, the petitioner was sent back to the school from where the petitioner was adjusted in the new Primary School, Skiraul Tola, Anchal-Tarari vide Annexure-10.

Considering the aforesaid, the writ petition is disposed of with direction to the respondents to work out the payment of salary to the petitioner ignoring Annexure-10 as the said order is unsustainable in view of the law laid down by the Apex Court in the case of Purtabpore Co Ltd (supra) where the Apex Court held out where the order passed at the dictate of superior is nullity in the eye of law and as such unsustanaibale. in the



instant case as Annexure-10 was passed at the dictate of District Education Officer and as such the order contained in Annexure-10 is unsustainable. The respondents have to treat Annexure-10 as nullity, and as if Annexure-10 never existed while deciding the claim of the petitioner for payment of salary. The entire exercise in this regard may be completed by the respondent within a period of 60 days from the date of receipt/production of the copy of this order.

It is made clear that Annexure-10 will not come in the way of respondents taking decision of payment of salary.

With the aforesaid the writ petition stands disposed of.

(Anil Kumar Upadhyay, J)

Ravi/-

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