

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.22027 of 2013

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Kameeshwar Pandey Son Of Late Gaya Dev Pandey Resident Of Village - Keshpa,
P.S. Alipur, Distt. - Gaya

.... Petitioner/s

Versus

1. The State Of Bihar Through Secretary Human Resource Development
Department, Patna, Bihar
2. The District Magistrate, Jehanabad
3. Regional Dept Director Of Education, Gaya
4. District Education Officer, Jahanabad
5. Block Education Officer Cum School Inspector Kurtha Jahanabad
6. Drawing And Disbursements Officer, Jahanabad
7. Accountant General, Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. HEMANT KUMAR
For the Respondent/s	:	Mr. PARTH SHARTHI
		Mr. Utsav Kumar, A.C. to G.A.-4.
For the A.G.	:	Dr. Anand Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

Date: 12-09-2018

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

2. Petitioner has earlier filed C.W.J.C. No.17569 of 2010 and vide order dated 25.10.2010, the writ application was disposed of with a direction to the respondent to dispose of the representation filed by the petitioner. The representation was not disposed of by the respondents and as such the petitioner filed MC No.1751 of 2011 during the pendency of MJC No. 1751 of 2011, the respondent District Education Officer, Jehanabad has passed order on 09.03.2013. The contempt proceeding was dropped in view of the order dated 09.03.2013 which is impugned in the



present application. The District Education Officer, Jehanabad has admitted that petitioner was appointed as Assistant Teachers, Sanskrit in primary school, Dumaria, District-Gaya. He also admitted that petitioner has worked up to 29.06.1996 but he disputed the claim of the petitioner that he was transferred to primary school Parshurampur Jehanabad. The District Education Officer, Jehanabad proceeded that there is no reference of such transfer in the service book of the petitioner. In view of the aforesaid dispute original service of the petitioner was called for.

3. Today, the Court after perusal of the original service book came to a conclusion that order of the District Education Officer is error of record as the service book of the petitioner in fact mention about the transfer of the petitioner to Jahanabad school. This factual error is admitted even by the State counsel that there is reference of transfer order in the original service book of the petitioner. In view of the above, the Court finds that the order impugned is error of record. In addition thereto, the Court does not find any justification for the denial of pensionary claim to the petitioner on the ground that there is break in service. Unfortunately, at no point of time of any action was taken by the respondent for alleged unauthorized absence of the petitioner from duty and in the absence of any proceeding against the petitioner for unauthorized absence, the Court cannot approve the decision of the respondent treating the 9 years 20 days, as break in service.



4. Learned counsel for the petitioner submitted that the petitioner kept of moving from pillar to post for redressal of his grievance but the respondents have not considered the case of petitioner and on their failure to correct the notification with regard to transfer the petitioner was not paid salary for the period July, 1996 onwards and in the meanwhile petitioner, attained the age of superannuation, 30.04.2007. In the facts and circumstances the Court cannot approve the action of the respondent to treat the absence of more than 5 years and above as automatic termination of service. The law in this regard is well settled that there is no automatic termination on account of unauthorized absence without departmental proceeding. The authorities are obliged to follow the principal of natural justice and fair play and has to give an opportunity of hearing before taking any decision of break in service. Accordingly, the Court holds that the respondent cannot treat the petitioner case as automatic termination on account of alleged unauthorized absence. Since the petitioner has approached after superannuation, the Court direct the respondent to treat the service of the petitioner up to the age of superannuation, i.e., 30.04.2007 for the purpose of pension and pensionary benefits and grant all pensionary benefits treating the petitioner service upto 23.04.2007 within the maximum period of four months from the date of receipt / production of a copy of this order. However, in the peculiar facts and circumstances, the Court does not feel inclined to grant any direction for payment of salary for the period July 1996 to 30.04.2007.



5. With the aforesaid direction and observation, this writ petition stands allowed and disposed of.

Sanjeev/-

(Anil Kumar Upadhyay, J)

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18/09/2018
Transmission Date	NA

