

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3058 of 2015

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Ashok Kumar Yadav S/o - Shri Satyebdra Yadav resident of village -
Chhechhahi , P.O. - Belsandi , P.S. - Bithan , District- Samastipur.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Director Magistrate, Samastipur.
3. The District Programme Officer , Establishment, Samastipur.
4. The Block Development Officer, Bithan , District- Samastipur
5. The Block Development Officer , Block- Samastipur, District- Samastipur.
6. The Block Education Extension Officer , Block- Bithan, District- Samastipur.
7. The Panchayat Secretary , Panchayat Raj - Narpa , Block - Bithan , District- Samastipur.
8. Anil Kumar S/o - Shri Ram Japo Yadav resident of village - Lakshminiya, P.O.- Narpa, P.S. - Bithan , District- Samastipur.
9. Smt. Sunita Kumari W/o not known to the petitioner, Headmistress, Primary School, Kujra Tola, Moglani Chowk, Warisnagar, District-Samastipur

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Shri Prakash Srivastava
For the Respondent/s : Mr.Ga9- Anil Kumar Sinha

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

9 31-01-2019 The present writ petition has been filed for directing the respondents no. 3 to 6 to not issue any direction for payment of salary to the respondent no. 8, as per the direction issued by this Court in C.W.J.C. No. 11356 of 2009, as also by the District Teachers Appellate Authority, Samastipur whereby and whereunder the authority by an order dated 04.06.2012 had rejected the claim of the Respondent No. 8.

2. The learned counsel for the petitioner has submitted that the Respondent No. 8 had resigned from his post since he had contested election and was elected as a Ward Member, hence, no



salary was required to be paid to the Respondent No. 8 and if, any salary has been paid then the same has been paid illegally. It is further submitted that since the petitioner is Mukhiya of the concerned Panchayat, as stated in paragraph no. 9 of the writ petition, the petitioner is fully competent to maintain the present writ petition.

3. Per contra, the learned counsel for the State has referred to the counter affidavit filed by the respondent no. 3 and has submitted, referring to paragraph no. 6, that the District Teachers Appellate authority, Samastipur by its order dated 4.06.2012 passed in Appeal No. 1605 of 2012 has held that the authority is not competent to decide as to whether the respondent no. 8 has resigned from his post or not and it is for the said authorities to decide the issue regarding payment of salary. The Respondent No. 3 has further filed a supplementary counter affidavit and in paragraph no. 7, it has been stated that the Block Education Officer, Bithan by its letter dated 15.09.2018 has submitted a report to the District Programme Officer (Establishment), Samastipur stating that according to the records available in the office, the Respondent No. 8 had participated in the Panchayat Election, 2001 and was elected as a ward councilor of Ward No. 1, hence, the Respondent No. 8



resigned from the post of Shiksha Mitra as is evident from memo no. 1430 dated 11.10.2012 issued under the signature of the District Panchayat Raj Officer, Samastipur. It is further submitted by the learned counsel for the respondent No. 3 that since respondent No. 8 had resigned from the post of Panchayat Shiksha Mitra and was not in service with effect from 29.12.2006 to 20.09.2012, the Respondent No. 8 cannot be considered as Block Teacher.

4. The learned counsel for the petitioner has submitted that the Respondent No. 8 has never resigned from the post of Panchayat Teacher, however, on the contrary, though the petitioner had contested the election of Ward Councilor / Ward Member, he had resigned from the said post.

5. I have heard the learned counsel for the parties and I find that the Respondent No. 8 has neither controverted the stand taken by the State-respondent by filing any rejoinder affidavit nor has filed any counter affidavit, despite lapse of several years, during which period, the writ petition has remained pending, hence, the submission made by the State-respondent is required to be accepted.

6. Accordingly, the writ petition is disposed of with a direction to the respondents to act in accordance with the stand



taken by the Block Education Officer, Bithan in the two counter affidavits filed by him.

(Mohit Kumar Shah, J)

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