

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.24168 of 2019

Abhilasha Bharti, W/o Milan Raj, Resident of Village- Jagdeopuri,
Jagdeopath, Haldiram Sweet Shop, B.V. College, Patna, Bihar-800014

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Govt. of Bihar, Patna
2. The Director Primary Education Department, Govt. of Bihar, Patna
3. The District Magistrate, Samastipur
4. The District Education Officer, Samastipur
5. The District Programme Officer (Establishment), Samastipur
6. The Block Development Officer, Mohanpur, Distt.- Samastipur
7. The Block Education Officer, Mohanpur, Distt.- Samastipur
8. The In-Charge Headmaster, Govt. Upgraded Middle School, Dashora, Mohanpur Prakhand, Samastipur
9. The Prakhand Pramukh, the Chairman of Prakhand Employment Unit, Mohanpur Block, Mohanpur, Distt.- Samastipur
10. The Presiding Officer, District Teachers Employment Appellate Authority, Samastipur.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Bamdeo Pandey, Advocate

For the Respondent/s : Mr. Mukund Jha, A.C. to G.P. 27.

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 05-12-2019

Heard learned counsel for the parties.

2. It is case of the petitioner that she was working as a Block teacher in upgraded Middle School, Dashora, Mohanpur, in the District of Samastipur. She had applied for maternity leave for 135 days from 22.11.2012 to 04.04.2013. Subsequently, she is said to have applied for leave without pay with effect from 15.08.2013. Again he made an application on 25.01.2014 before the In-Charge, Headmaster of



the School for extension of her leave without pay upto 31.12.2014 and sent a copy of her application by registered post on 29.01.2014.

3. It appears from the materials on record that the matter was communicated to the Block Education Officer, Mohanpur, by the Headmaster of the school stating that the petitioner had remained absent from duty without permission with effect from 15.08.2013. He informed the Block Education Officer that the petitioner had sent an application on 04.02.2014 by registered post mentioning therein that she had already submitted an application for leave without pay from 15.08.2013 to 31.01.2014 with a request to extend leave upto 31.12.2014.

4. As she was not being allowed to join on return from leave, she had approached the District Appellate Authority, Samastipur, by making an application which was registered as Appeal No. 30/2015. The Appeal was rejected by an order dated 03.03.2017 passed by the District Appellate Authority.

5. The petitioner, thereafter, approached the State Appellate Authority, aggrieved by the order of the District Appellate Authority. The State Appellate Authority has disposed of the petitioner's Appeal No. 65/2017 allowing the petitioner's Appeal, with a direction to the respondents to allow her join her duties as teacher in the school. Learned Chairman of the State Appellate Authority has, however, observed that the respondent authorities would be at liberty to initiate



any action against her for her long absence. While allowing the appeal, the State Appellate Authority has made following observations:

“Serial no.(vii) (ख) of the major penalty under rules 15 of Rules, 2012 provides that if a teacher is found absent from the school without information during any inspection, an explanation will be called from the absent teacher. If the explanation is not found satisfactory, direction can be given for deducting the pay for the period of absence. Further, Rule,15 (ख) also prescribes the procedure for initiating departmental proceedings against an erring teacher and for imposition of penalty after conducting the inquiry. It further provides that different types of major penalty can be imposed on the guilty school teacher. Major penalty includes removal from service. But action against Rule,15 (ख) of the Rules,2012 has not been taken against the appellant. The appellant has also not been removed from the service. Therefore, it is admitted that the appellant continues to be in service. If the appellant is in service, there is no rule to prevent her from joining the school after her return from leave and even unauthorized absence. Therefore, the respondent no.7 and respondent no.8 are not justified in not allowing the appellant to join her duty in the school.”

6. In the above background, this writ application has been filed seeking direction to the respondents to pay the petitioner her salary right from April, 2012 to 2019. It is an admitted fact that the petitioner



was absent from her duties right from November, 2012. Why she could not be paid her salary from April, 2012 till she made her application seeking maternity leave on 21.11.2012 has not been explained in the writ application.

7. In the light of the observations made by the State Appellate Authority in the order dated 18.07.2017, whether any action has been initiated against the petitioner for her unauthorized absence, or not, has also not been made known to the Court. This Court, in such circumstance, cannot issue any direction to the respondents for payment of salary for the period when the petitioner admittedly did not discharge her duties. The petitioner shall however be at liberty to pursue her claim before the appropriate authority and the disciplinary authority, who shall also be at liberty to proceed against the petitioner, in the light of the observations made by the State Appellate Authority in the order dated 18.07.2017.

8. This writ application is, accordingly, disposed of with aforesaid observation.

S.Ali/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	11/12/2019
Transmission Date	N.A.

(Chakradhari Sharan Singh, J)

