

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11342 of 2017

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Shila Kumari @ Shila Mishra W/o Shri Kanti Bhushan Mishra, Resident of Village- Bishambharpur, P.O.- Chanayan, Bandh, Police Station- Majhauria, District- West Champaran, at present residing at New Colony, Dakbungalow Road, Bettiah, Police Station- Bettiah Town, District- West Champaran.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Education Department, Government of Bihar, Patna.
2. The Director, Secondary Education, Education Department, Govt. of Bihar, Patna.
3. The District Education Officer, East Champaran at Motihari.
4. The Principal-in-Charge, Reshma Devi Project Girls High School, Rangarhwa, District- East Champaran

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Harendra Kumar Tiwary
For the Respondent/s : Mr. Prabhakar Jha-GP-27

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

2 13-02-2020 Heard learned counsel for the petitioner and the
counsel appearing on behalf of the State.

The grievance of the petitioner in the present writ application is that at the relevant time petitioner was working in the present school. Later on he joined Bar he submits that now the State Government after the decision of this Court as well as the Apex Court has decided to absorb the teaching and non-teaching employee in the school. He placed reliance on the decision of this Court in C.W.J.C. No. 14182 of 2015 dated 08.09.2015 to submit that in similar situation, this Court has



granted indulgence to a person who was absent from the school. He submits that the petitioner has not resigned though he has joined the bar and as such the case of the petitioner is similar to that of Anjani Banarji case in C.W.J.C. No. 14182 of 2015 without going into the factual details, the writ petition is disposed of with a direction to the respondents to take appropriate decision in accordance with law with regard to claim of the petitioner and while taking decision and the respondents shall consider the observation of this Court in C.W.J.C. No. 14182 of 2015 dated 08.09.2015. Para 2 to 10 which is quoted below:-

“2. Learned counsel for the petitioner has raised two fold submissions. Firstly, he submits that when the order dated 24th June, 2008 was passed with the prior approval of the State Government, the order of termination could not have been passed by the Director, Secondary Education on his own. He has secondly submitted that the issue relating to the project school to absorption of the employees of the project school being pending for more than two decades.

3. He has submits that when this fact is admitted that the petitioner was working in such project school and was also qualified in the sense of being Graduate with Teachers Training course



and was absorbed against the post of Assistant Teacher of Economics, her entire service could not have been discredited only on account of the petitioner joining on the post of teacher in another school while the matter was pending for absorption before the State Government.

4. Learned counsel for the State, on the other hand, has submitted that it was a requirement of the circular of the Government dated 4.2.1989 that the person concerned in order to get the benefit of absorption must remain working of the school and since on 24th June, 2008 the petitioner was not admittedly working in the school, her order of absorption itself was bad.

5. This Court would find it difficult to accept the submission of the learned counsel for the State for more than one reason. Firstly, it is for the credit of the entire service length that a person is being taken over as a teacher of the Project school by way of approval of his/her service. There is no denial of the fact that the petitioner was appointed in the project school in question on 25.6.1984 and had remained working even according to the impugned order dated 7.3.2007 when she is said to have joined another school, namely, Girls High School, Bihariganj, Madhepura.

6. There is nothing on record to show that the petitioner had resigned from her earlier



school, namely, Vijya Asmarak Project Girls High School, Alamnagar, Madhepura. Therefore, at best the absence of the petitioner from 7.3.2007 up to the date of absorption could have been taken to be her absence from duty and probably she may have been disentitled for payment of her salary but cancellation of her absorption made on 24.6.2008 was not justified and that too by the Director, Secondary Education keeping in view that such order dated 24.6.2008 was passed by the State Government.

7. This Court has to take judicial notice of the fact that the qualification laid down for absorption under the Government circular No. 142 dated 4.2.1989 including its paragraph no.3 of continued service has to be viewed as on the date of the circular i.e. 4.2.1989 and it cannot be referable to any other date in future on which the Government has to absorb the service. That will be giving too wide power in the hands of the authority.

8. It has to be also kept in mind that initially the matter was pending before Patna High Court till 2000 and was decided by Full Bench of this Court in the case of Project Uchcha Vidyalaya Shikshak Sangh Vs. State of Bihar reported in 2000(1) PLJR 287. Therefore the matter was gone to the Apex Court. After the order of Apex Court in the year 2006 screening in the light of directions issued in the case of



State of Bihar Vs. Project Uchcha Vidyalaya Shikshak Sangh and others reported in 2006(1) PLJR483(SC) three man Committee was constituted by the State Government to examine the cases of absorption of all the teachers working in the Project School. The name of the petitioner was found and recommended in the three-man Committee reported with having full qualification and eligibility for absorption and that had led to the order dated 24.6.2008 passed by the State Government for absorption of the service of the petitioner. The entire exercise, therefore, in favour of the petitioner could not have been set at naught on mere ipse dixit of the Director, Secondary Education.

9. It has to also kept in mind that there is no dispute that the petitioner was continuing in service in Project School Alam Nagar after 4.3.2010 and was sought to be removed only by the impugned order dated 14.5.2015. The very fact that the petitioner was therein the school for next five years could not have been ignored by the Director.

10. Having thus over all consideration of the matter this Court would find the impugned order dated 14.5.2015 passed by the Director, Secondary Education to be wholly bad both on fact and in law and in fact also without jurisdiction. It would accordingly quash the same and direct the petitioner to be taken back in the



Project school, Alam Nagar but by making it clear that the petitioner shall not be entitled for payment of any salary for the period 7.3.2007 to 4.3.2010 when she was allegedly not present in the school at Alam Nagar.”

Necessary decision in this regard must be taken by the respondents within a maximum period of four months from the date of receipt/production of a copy of this order.

With the aforesaid, the writ application stands disposed of.

(Anil Kumar Upadhyay, J)

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