

IN THE HIGH COURT OF ORISSA AT CUTTACK

WPC (OA) No. 1187 of 2011

Jayanti Kumar Mishra

.....

Petitioner

Mr. S.R. Pati, Adv.

Vs.

State of Odisha and others

.....

Opposite Parties

Mr. S. Jena, Standing Counsel S&ME

CORAM:

DR. JUSTICE B.R. SARANGI

ORDER

13.10.2022

Order No.

01.

This matter is taken up through hybrid mode.

2. Heard Mr. S.R. Pati appearing on behalf of Mr. R. Achary, learned counsel for the petitioner and Mr. S. Jena, learned Standing Counsel for School and Mass Education Department.

3. The petitioner has filed this writ petition seeking direction to the D.I. of Schools, Balasore-1 to allow her to work as primary school teacher against an available vacancy under his control and further issue direction to the said opposite party to pay her salary components as due and admissible from the date of her posting in Aghiria U.P. school by including her name in the gradation list for her promotional avenue.

4. Learned counsel for the petitioner contended that the petitioner was remained absent for some day and thereafter when she wanted to join, she was prevented to work in the school. Therefore, the petitioner could not render her service and as a consequence thereof she has filed this writ petition seeking aforesaid relief.

5. Mr. S. Jena, learned Standing Counsel for School and Mass Education Department contended that the petitioner was remained unauthorized absent from duty for years together and after lapse of

more than 20 years, she has filed this writ petition seeking aforesaid relief which is not permissible. It is contended that the petitioner is estopped from making any claim to work as primary school teacher, as in her place opposite party no.4 had already joined vide order dated 09.04.1992. It is contended that the petitioner was posted on 16.07.1992 as Asst. Teacher in Aghiria Primary School under Sadar Block Balasore with a direction to join by 31.07.1992 positively. The petitioner joined at Aghiria Primary School on 12.08.1992 and continued till 31.08.1992. Thereafter, w.e.f. 01.09.1992 she remained absent from her duties un-authorizedly, as has been reported by the BEO, Sadar Balasore, vide letter dated 04.04.2014. It is contended that the petitioner was remained un-authorized absent w.e.f. 01.09.1992 and thereby her claim to allow her to continue in service does not arise. As such, remaining unauthorized absence for a quite long time amounts to abandonment of service, in view of the judgment of the apex Court in the case of *Vijay S. Sathaye v. Indian Airlines Ltd.* (SLP (C) No. 24220-24221 of 2007 disposed of on 06.09.2013), by which the apex Court held that absence from duty in the beginning may be a misconduct but when absence is for a long period, it may amount to voluntarily abandonment of service and in that eventuality, the bonds of service come to an end automatically without requiring any order to be passed by the employer. Thus it is contended that the petitioner cannot claim the benefit, as has been prayed in the writ petition.

6. Having heard learned counsel for the parties and after going through the records, this Court finds that the petitioner was remained un-authorized absent for a quite long time, which

amounts to abandonment of service. But a plea has been taken by the petitioner that she was prevented from discharging her duty. In that case, the same amounts to dismissal from service. As such, the petitioner has to prefer appeal at that relevant point of time. But now she cannot claim to get employment and, as such, due to long absence from service, which amounts to abandonment of service, continuance of service comes to an end automatically without requiring any order of the employer. Consequentially, the relief sought by the petitioner is not admissible.

7. Accordingly, the writ petition merits no consideration and the same is hereby dismissed.

Ashok



(DR. B.R. SARANGI)
JUDGE