

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9594 of 2017

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Shanti Devi W/o Sri Vishwanath Singh Resident of Mohalla- Sri Krishna
Nagar, P.O.- Motihari, P.S Motihari town, District East Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary Department of Education Govt. of Bihar, Patna.
3. The Director Primary Education Govt. of Bihar, Patna.
4. The District Education officer, East Champaran Motihari.
5. The District Programme Officer, East Champaran Motihari.
6. The Area Education Officer, Motihari.
7. The Convenor, Managing Committee of Bangla Middle School Near town
Hall Motihari, Pin 845401
8. The Head Master Bangla Middle School Near Town Hall, Motihari , Pin
-845401

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Sangeet Deokuliar

For the Respondent/s : Mr.Madanjeet Kumar- GP 20

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 28-03-2023

Heard Mr. Sangeet Deokuliar, learned counsel appearing on behalf of the
petitioner and Mr. Madanjeet Kumar, GP 20 appearing for the respondents.

2. Learned counsel appearing on behalf of the petitioner submitted that the
petitioner has not been paid her salary in between 01.09.1989 and 31.12.1991, in
spite of the fact that services had been approved by the State Government on the
recommendation of the Managing Committee.

3. Learned counsel further submitted that there is clear observation of this
Hon'ble Court in CWJC No.10189 of 1995 vide order dated 15.11.1996 read with C.



Rev. No.242 of 1996 disposed of, vide order dated 11.7.1997 that “the petitioners including the present petitioner will move before the concerned forum and make claim for their salary for the period, they have actually performed their duties” but in spite of clear direction of this Court in favour of the petitioners, respondents have not paid due salary of the petitioner for the period from 1.9.1989 to 31.12.1991 during which period, the petitioner had worked continuously.

4. Learned counsel appearing on behalf of the petitioner further submitted that after the petitioner having been appointed as Niyojit Teacher, the salary for the period from 10.09.2013 till date of her superannuation i.e. 31.12.2016 has already been paid.

5. Learned counsel on behalf of the State further submitted that the petitioner was appointed by the State Government as Niyojit Teacher in the year, 2008 and from the date of her joining i.e. 10.12.2002 till she superannuated on 31.12.2016, the salary applicable from time to time for the post of Niyojit Teacher and thereafter she was selected on the post of Assistant Teacher, have already been paid. So far as claim of the petitioner with respect to non-payment of salary by the State Government between 1.9.1989 and 31.12.1991 is concerned, she was not the state government employee and any relief/claim for payment of the salary relates to the Managing Committee, which was solely responsible to make payment of such salary as claimed by the petitioner. He further clarified that vide order dated 15.11.1996 passed in CWJC No.10189 of 1995 and its modification by order dated 11.7.1997 passed in C. Rev. No.242 of 1996, this Court had given liberty to the



petitioner to move before the concerned forum for payment of her salary and observed that the claim of the petitioner for payment of salary for the aforesaid period is misconceived and the same deserves to be rejected.

6. Having considered the rival submissions of the parties and the record, it reveals that the petitioner was appointed in the minority headed school, namely Bangla Middle School, Motihari, a linguistic minority school on 30.8.1989 and she had given her joining on 1.9.1989 on the post of Assistant Teacher, which was created by the Managing Committee on 26.8.1989 and thereafter the same was approved by the District Education Planning Committee on 1.1.1992.

7. The petitioner had moved before this Court for similar relief by filing CWJC No.12152 of 1993 along with other teachers of the said School and this Court, vide order dated 22.5.1995, after discussing the entire facts of the case observed, as under :

“It would thus appear that there is divergence of stand in the two counter affidavits filed by the same authority. This is a matter which has to be resolved before the other aspect can be gone into. It is clear that if the posts have not been duly created and are in existence the question of observance of the prescribed procedure in making appointment becomes inconsequential. If, however, the assertion of Sri Sanjiv Suman that the units in question have been transferred from the nationalised school be true, his assertion that no appointment could be made against the except by the District Education Establishment Committee, prima facie, appears to be correct.

So far as the second point is concerned according to the respondents the Managing Committee of private aided school (including minority schools) are no doubt competent to make appointment but that can be done only in accordance with the procedure laid down in circular No. 709 dated 4.3.93. The circular provides for advertisement inviting applications from trained candidates, constitution of Selection Committee consisting of an officer of the Education Department as mentioned therein, preparation of merit list and appointment according to seniority



from the same. It also provides that salary etc. can be paid only after the approval of the Director, Primary Education

Counsel for the petitioners contended that appointment having been made in 1989 itself the aforesaid circular has no application. I find no substance in this argument. The circular has been issued to simplify the procedure. It appears that earlier appointments were made from the waiting list prepared at the district level. After exhaustion of the waiting list the school authority often found difficulty in making appointment. To obviate the difficulty the Managing Committee of such schools were authorized to make appointment subject to their observing the prescribed procedure. It appears from letter no. 1626 dated 21.7.83 that even earlier the appointments in the aided minority schools could be made only after observing, the procedure prescribed by the state Government, The circular dated 4.3.93 does not say something new. It merely embodies the well accepted norms of appointments to public posts.

It the instant case, it does not appear from the minutes of the proceeding of the Managing Committee that any advertisement was made or merit list was prepared. According to the petitioners however, their names find mention in the panel prepared by the District Education Establishment Committee at serial nos. 341, 41 and 173.

The facts are not very clear to me at least on the first point. It would be only just and proper to refer the second point also for consideration by the authority. In the absence of proper assistance by the counsel for the parties it is better to err on the right side. Accordingly, I would permit the petitioners to make representation in respect of their claim before the Director, Primary Education within three weeks from today along with a copy of this order. In that event the Director will consider the matter and after giving opportunity of hearing to the petitioners through their representative, pass an appropriate order in accordance with law within three months of the representation.”

8. The petitioner thereafter filed a representation but the claim of the petitioner was rejected by the respondent Director, Primary Education, Government of Bihar, after discussing that the claim of the petitioner for payment of salary during the aforesaid period was rejected, vide order dated 22nd September, 1995. The petitioner being aggrieved by the said order filed CWJC No.10189 of 1995 and vide



order dated 15.11.1996 passed in CWJC No.10189 of 1995, this Court found the petitioner not entitled for the salary for the aforesaid period, however, gave an opportunity to the petitioner to move before the appropriate forum for such salary from the concerned persons. The operative part of the order is reproduced hereinafter :

“It would be evident from the impugned annexure 16, and it is also accepted by the learned counsel for the petitioners, that, certain posts were taken out from the Government School and were made available to the School in question on 13th January, 1990. Such being the position as on 30th August, 1989, when the petitioners were appointed, admittedly there was no post vacant to make appointment of the petitioners. From these facts, it is evident that the petitioners have failed to show that on the 30th August, 1989, when they were appointed and gave joining, any post was vacant against which their joining could have been accepted. Such being the position this Court is not inclined to interfere in the matter and grant any relief to the petitioners. The petitioners have also not brought any document on the record to show that they were subsequently absorbed against the posts which were created in January, 1990.

Accordingly, this writ petition is dismissed. However, so far as salary is concerned, it will be open to the petitioners to move before the appropriate forum for such salary from the concerned persons.”

9. The petitioner filed a Review Application before this Court for review of the order dated 15.11.1996 passed in CWJC No.10189 of 1995 by filing C.Rev.No.242 of 1996. The said Review petition was dismissed, however, order dated 15.11.1996 has been modified giving liberty to the petitioner to move before the concerned forum for her salary and the petitioner may bring the proceedings dated 13.1.1990 before such authority and may claim for the salary for the period, she has actually performed duty. The operative part of the order is reproduced hereinafter :

“However, as this Court gave liberty to the petitioners to move before the concerned forum for their salary by the order dated



15th November, 1996, the petitioner may bring the proceeding dated 13th January, 1990 aforesaid before such authority and may claim for salary for the period they have actually performed the duty. In that case, the order passed in this review application will not stand in the way of petitioners as this Court has not decided the claim on merit.”

10. The petitioner has filed present writ petition seeking mandamus to treat the total service of the petitioner from 1.9.1989 to 31.12.2016 as Assistant Teacher in different schools for the purpose of calculating the same for granting payment of total dues of the petitioner including pension thereupon and other reliefs as prayed for in paragraph no.1 of the writ petition.

11. It is admitted that the State Government has given all the retiral dues to the petitioner from the period, the petitioner was appointed as Assistant Teacher i.e. from the date of appointment on 1.1.1992 till the date of her superannuation i.e. 31.12.2016, however, the petitioner in misconceived manner has again claimed her salary with respect to the period from 1.9.1989 to 31.12.1991, for which this Court had passed order dated 15.11.1996 passed in CWJC No.10189 of 1995 and modification order dated 11.7.1997 passed in C.Rev. No.242 of 1996. The review application of the petitioner was dismissed by observing that the proceeding dated 13.1.1990 was not on the record of the writ petition bearing CWJC No. No.10189 of 1995. Therefore, it can not be stated that this Court erred in coming to a wrong conclusion on the basis of wrong factual aspect and further observed that the petitioner may bring the proceeding dated 13.1.1990 before such authority and may claim for salary for the period, they have actually preformed duty.



12. In spite of order dated 15.11.1996 passed in CWJC No.10189 of 1995, which was modified by order dated 11.7.1997 passed in C.Rev. No.242 of 1996, the petitioner instead of approaching the Managing Committee of the School has filed the present writ petition and the reliefs for the said purpose can not be sustained.

13. In view of the fact that the petitioner was appointed as Niyojit Teacher by the State Government in the year, 2008, this Court finds that any dues payable to the petitioner after her appointment as Niyojit Teacher till the date of her superannuation has already been paid during the pendency of the present writ petition.

14. Accordingly, the petitioner, if so advised, may approach the concerned authority, in view of the liberty already given to the petitioner, vide order dated 15.11.1996 passed in CWJC No.10189 of 1995, which was later on modified vide order dated 11.7.1997 passed in C.Rev. No.242 of 1996.

15. Accordingly, the present writ petition is disposed of.

(Purnendu Singh, J)

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AFR/NAFR	NAFR
CAV DATE	28.03.2023
Uploading Date	03.04.2023
Transmission Date	03.04.2023

