

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7622 of 2019

=====

Safura Ahmad wife of Saiyad Mohammad Shahjahan, resident of Gola Road,
Bakarganj P.S.- Pirbahore, District - Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department,
Government of Bihar, Patna.
2. The Principal Secretary, Education Department , Government of Bihar,
Patna.
3. The Director, Primary Eduation, Bihar, Patna.
4. District Magistrate, Patna.
5. The District Eduation Officer, Patna.
6. The District Programme Officer (Establishment), Patna.
7. The Treasury Officer, Patnacity, Patna.
8. Headmaster, Natinalized High School, Amarpura, Patna.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr.Dharmendra Kumar Raju
For the Respondent/s : Mr.Madanjeet Kumar , GP-20

=====

CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL JUDGMENT

Date : 26-02-2024

Heard learned counsel for the parties.

2. The present application has been filed by the petitioner for payment of salary which has not been paid to her from the date of her joining i.e. 16.11.2009 till 06.05.2015.

3. Learned counsel for the petitioner submits that the petitioner was initially appointed as Assistant Teacher (Urdu) in the year 1997 by the Director, Secondary Education-cum-Special Secretary, Education Department, Bihar, Patna and posted in Nationalized High School, Amarpura, Patna. He submits that the petitioner went on Medical Leave from



03.08.2006 to 30.09.2009 and after fitness, she submitted her joining along with medical certificate on 16.11.2009 which was forwarded by the Headmaster to the District Education Officer, Patna. The petitioner visited the Headmaster of the said school several times as well as the District Education Officer, Patna for allowing her joining in the school but the respondent authorities are sitting tight over the matter. The District Programme Officer (Establishment), Patna has sent letter No. 1026 dated 16.06.2012 to the Director, Secondary Education, Bihar in this regard stating therein that the petitioner is still waiting for her joining in absence of direction. Lastly, the Director, Secondary Education, Bihar, Patna has sent letter no. 1231 dated 06.05.2015 to the District Education Officer, Patna giving approval of joining to the petitioner in the school from the date of issuance of the letter, modifying sanction of leave of 15 days against the petitioner, in view of the provisions of Rule 15 (i) (Kha) of the Notification No. 4575 dated 29.10.1997 of the Department. Therefore, the petitioner again represented the Headmaster for her joining in school on 07.05.2015 which has been duly approved by him. Learned counsel for the petitioner further submits that though the order of acceptance of joining of the petitioner was to be given by the respondents but for one reason



or the other, the petitioner was not allowed to join in the school. The respondent-authorities have sat tight over the matter from 16.11.2009 to 06.05.2015 and lastly the director, Secondary Education vide letter dated 06.05.2015 given order/approval of joining of the petitioner in the school from the date of issuance of letter, which is arbitrary and illegal. Learned counsel for the petitioner has relied upon the judgment of this Court in the case of **Shashi Bhushan Pandey Vs. The State of Bihar & Ors.** reported in 2005 (4) PLJR 575, relevant part of paragraph 8 of which reads thus :-

“..... The respondents, instead of taking immediate action, kept the matter pending and issued the order of posting only when petitioner initiated a proceeding for contempt. Petitioner did not work for the period in question at his own sweet-will but he was not allowed to work as he was not given a place of posting. In such circumstance, I am of the opinion that the principle of no work no pay shall not be attracted. Accordingly, I hold that the petitioner shall be entitled for salary for the period 10.08.2000 to 27.05.2001.”

4. He has also relied upon the Divisional Bench judgment of this Court in the case of **Sidhnath Upadhya Vs. State of Bihar & Ors.** reported in 1991(2) PLJR 148 in which it is reiterated that:



“.....Since the petitioner had submitted his joining on 12.01.1987, after remaining absent for about 19 years, for resuming his duty and the authority did not pass any order for joining rather passed an order for his dismissal on 31.12.1987, we are of the view that the petitioner is entitled to salary from 12.01.1987 till today.”

5. Learned counsel for the State submits that after retirement, the Director, Secondary Education vide order contained in Memo No. 2285 dated 21.09.2022 has initiated a departmental proceeding against the petitioner in view of the provision contained in Rule 7U of the Bihar Service Code whereby and whereunder the RDDE, Patna was appointed as an enquiry officer and DOP (Secondary Education) as presenting officer. He further submits that regarding leave the then DPO (Estb.) vide letter no. 73 dated 08.01.2021 has sought direction from the Director, Secondary Education for sanction of unauthorized leave but when he had not received any direction, vide order contained in memo no. 1858 dated 09.03.2021, the then DPO (Estb.) has sanctioned the unauthorized leave mentioned in the said order.

6. After perusal of the materials available on record and considering the submissions advanced by the learned counsel for the parties, I am of the opinion that the petitioner is



entitled to the salary from the date of her jointing i.e. 16.11.2009 till 06.05.2015. The authorities concerned are directed to pay salary to the petitioner which was not paid to her from 16.11.2009 to 06.05.2015 within a period of four months from the date of receipt/ production of a copy of this order.

7. Accordingly, this application is allowed.

(Anjani Kumar Sharan, J)

devendra/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05.03.2024
Transmission Date	NA

