

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2843 of 2020

Ashish Kishore S/o Nand Kishore Yadav, Resident of Village Shashtri Nagar,
Police Station- Kashimbazar, District- Munger.

... .. Petitioner/s

Versus

1. The State of Bihar through The Principal Secretary Education Department,
Govt. of Bihar, Patna.
2. Deputy Development Commissioner, Munger.
3. Regional Deputy Director of Education Munger.
4. District Education Officer Munger.
5. Head Master Higher Secondary Lohchi Munger P.S. Haveli Kharagpur
District Munger.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Ms. Sweta Raj, Adv. Mr. Binoy Kumar Singh, Adv.
For the Respondent/s	:	Mr.Kameshwar Kumar (GP17)

CORAM: HONOURABLE MR. JUSTICE AJIT KUMAR
ORAL ORDER

8 25-11-2025 Heard Ms. Sweta Raj, learned counsel for the
petitioner and learned counsel for the State.

2. Learned counsel for the petitioner submits that this petitioner was appointed by the Zila Parishad, Munger as Assistant Teacher in Higher Secondary School, Lohchi in the district of Munger. The petitioner is said to have continued in the service till 2012 but owing to certain medical exigency had to go on medical leave from 14.03.2012 to 25.05.2012 and the said leave was granted by the competent authority of Zila Parishad. It is next submitted that pursuant to the fitness certificate obtained from the doctor, he filed a petition before



the concerned authority on 26.05.2012 to submit his joining and the same was accepted and the petitioner was permitted to resume his duties. Again on 23.08.2016, the petitioner submitted an application for medical leave before the Headmaster of the school in question upto 02.10.2017 and on medical fitness obtained from the doctor, when he attempted to submit joining on 03.10.2017, the same was not accepted and he continued to remain out of service till 01.10.2018.

3. Counsel for the petitioner, at this stage, submits that again for certain period he was allowed to work and thereafter, he was not permitted to join the service.

4. Be that as it may, this Court, in the peculiar facts and circumstances, finds that these are the matters to be inquired into by the competent authority by referring to the records and as also the certificates, which are said to have been produced by this petitioner for ventilating his grievances for payment of salary and since it is a case of this petitioner that despite medical fitness certificate having been obtained and the petitioner attempted to resume the duties by submitting joining, the same has not been accepted for reasons unexplained and there is no averment in the counter affidavit to that respect as to why such denial was made, where the law is already settled that for an



unauthorized absence the Government employee can only be subjected to departmental proceeding and a final order with regard to unauthorized absence can be passed when it is found that these acts are deliberate but without resorting to any established procedure, no authority has any right to deny joining of any government employee, who attempts to submit joining after medical leave is over and is found fit to resume duties.

5. Keeping in line the judicial dictum rendered by the Hon'ble Apex Court in the case of ***KRUSHNAKANT B. PARMAR Versus UNION OF INDIA AND ANOTHER*** reported in ***(2012) 3 Supreme Court Cases 178 wherein it has been held as follows:-***

“17. If the absence is the result of compelling circumstances under which it was not possible to report or perform duty, such absence cannot be held to be wilful. Absence from duty without any application or prior permission may amount to unauthorised absence, but it does not always mean wilful. There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalisation, etc., but in such case the employee cannot be held guilty of failure of devotion to duty or behaviour



unbecoming of a government servant.

18. In a departmental proceeding, if allegation of unauthorised absence from duty is made, the disciplinary authority is required to prove that the absence is wilful, in the absence of such finding, the absence will not amount to misconduct.”

6. In that view of the matter, this Court finds it proper that this matter be relegated to District Development Commissioner, Munger/Secretary Zila Parishad Munger to take a final call with regard to the grievances of the petitioner on submission of detailed representation by the petitioner and if need be, the records may be called for and appropriate necessary order may be passed with regard to the claim of this petitioner by adjudicating the same within a period of eight weeks and necessary order so passed with the benefits for which he is found entitled, shall also be extended within the same time, communicating the same to him.

7. The petition stands disposed of.

(Ajit Kumar, J)

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