

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21242 of 2019

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Kiran Devi W/O Nagendra Prasad Resident of Village-Sonbarsa Bazar, P.S.-
Sonbarsa, Dist.-Sitamarhi.

... .. Petitioner/s

Versus

1. The State of Bihar through Magistrate Sitamarhi, Dist.-Sitamarhi,
2. The District Magistrate Sitamarhi, Dist.-Sitamarhi.
3. The District Education Officer, Establishment Sitamarhi, Dist.-Sitamarhi.
4. The District Program Officer Sitamarhi, District-Sitamarhi.
5. The Block Development Officer, Cum Secretary Block Teacher, Niyojan
Unit Sonbarsa, Dist.-Sitamarhi.
6. The Block Education Officer, Sonbarsa, Dist.-Sitamarhi.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sanjay Kumar Mr. Suresh Kr. Bhwar
For the Respondent/s	:	Mr. Madhaw Prasad Yadav, GP-23 Mr. Rajesh Kr. Sinha, AC to GP-23

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CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

8 03-04-2025 1. Heard learned counsel for the petitioner and learned
AC to GP-23.

2. The learned counsel for the petitioner submits that
petitioner was appointed as Block Teacher in Government
Middle School, Karpuri Nagar, Sonbarsa, District- Sitamarhi on
04.02.2003. The Headmaster of the aforesaid school was
suspended by an order dated 06.01.2011, as such, the petitioner
was appointed as In-charge Headmistress of the said school.

3. The learned counsel for the petitioner next submits
that the respondent authorities had sanctioned construction of



three class rooms in the aforesaid school in the Session 2008-2009, for which Rs. 8,94,200/- was sanctioned, out of which the petitioner received only an amount of Rs. 7,92,630/- i.e. Rs. 6,62,630/- vide Cheque No. 738474 and Rs. 1,30,000/- by cash on 07.06.2013, as would manifest from Annexure- P/16 to the third supplementary affidavit. The petitioner completed the work of three class rooms, thereafter the respondents again in the Session 2011-2012 allowed construction of three more class rooms for which an amount of Rs. 12,37,500/- was sanctioned. It is submitted that since there was no dispute relating to the construction of the earlier class rooms, as such, the authorities again permitted construction of three more additional class rooms.

4. It is further submitted that petitioner out of Rs. 12,37,500/- received an amount of Rs. 9,17,916/- only vide Cheque No. 599793 dated 25.02.2012, as would manifest from Annexure- P/17 to the third supplementary affidavit. It is thus submitted that the total sanctioned amount for both the Sessions for the construction of six class rooms was Rs. 8,94,200+Rs. 12,37,500= Rs. 21,31,700, out of which petitioner received an amount of Rs. 7,92,630+ 9,17,916= Rs. 17,10,546, as such, Rs. 4,21,154/- remained with the authorities.



5. The learned counsel for the petitioner further submits that the petitioner got two class rooms constructed which were sanctioned in the Session 2011-2012 and one room was under construction and the material for the same was lying at the spot. It is further submitted that the suspension of the Headmaster of the school was revoked and he joined the school on 31.03.2011, while the construction of the class room was continuing, the Block Education Officer, Sonbarsa vide his Letter No. 265 dated 24.08.2013 (Annexure- A to the counter affidavit of respondent no. 5) directed the petitioner to give charge of Headmaster both financial and non-financial to Mr. Tez Prakash Shafi, the petitioner thereafter vide Memo No. 272 dated 26.08.2013 ((Annexure- R/B to the counter affidavit of respondent no. 5) issued by the Block Education Officer, Sonbarsa was deputed to Government Primary School, Ambedkar Nagar and was again directed to hand over charge of Headmaster. It is next submitted that the Block Education Officer vide his Letter dated 19.05.2014, requested the SHO, Sonbarsa P.S. to institute an FIR against the petitioner, as she was not handing over charge and defying the orders of the superiors, accordingly, Sonbarsa P.S. Case No. 56 of 2014 dated 22.05.2014 was registered under Sections 409 and 420 of the



Indian Penal Code (Annexure-1 to the writ application). It is further submitted that the FIR was instituted only to harass the petitioner, as the allegation did not make out any criminal offence. It is submitted that the Block Education Officer, Sonbarsa instead of instituting the aforesaid FIR, could have dealt with the petitioner on administrative side, in the nature of allegation as alleged in the FIR. It is submitted that the petitioner was not being paid her salary, hence, facing difficulty, the petitioner filed CWJC No. 8518 of 2014 seeking payment of her salary. It is submitted that during pendency of CWJC No. 8518 of 2014,, another FIR being Sonbarsa P.S. Case No. 117 of 2015 came to be instituted under Sections 341, 323, 504, 506, 353 and 34 of the Indian Penal Code against the petitioner based on a letter of the Principal of the school namely Tez Prakash Shafi (Annexure R/D series to the counter affidavit of respondent no. 5) alleging that the petitioner did not hand over charge of the Headmaster, as such, the Block Education Officer was directed to hold a departmental inquiry against the petitioner vide Letter dated 25.11.2013, but no departmental proceeding was initiated against the petitioner nor she has given the entire charge of Headmaster nor has joined her transfer school and has kept the records as detailed in the FIR with



herself and always creates ruckus and obstruction in discharge of official duty. The learned counsel submits that prior to institution of Sonbarsa P.S. Case No. 117 of 2015 and during pendency of CWJC No. 8518 of 2014, the District Programme Officer, (Establishment), Sitamarhi vide his Letter No. 1150 dated 20.03.2015 (Annexure R/E to the counter affidavit of respondent no. 5) requested the Block Development Officer, Sonbarsa to issue show cause notice to the petitioner and thereafter terminate her services forthwith.

6. The learned counsel appearing on behalf of the petitioner submits that from perusal of the Letter dated 20.03.2015 issued by the District Programme Officer, (Establishment) addressed to the Block Development Officer, it would manifest that a decision to terminate the services of the petitioner was already taken and the issuance of the show cause was a mere empty formality, on which the learned State counsel submits that the said decision was taken as petitioner was defying the orders of her superiors for which Sonbarsa P.S. Case No. 56 of 2014 was instituted, on the allegation that the petitioner did not hand over charge and defalcated the amount sanctioned for scholarship, uniform, construction of class rooms etc., on which the learned counsel for the petitioner submitted



that the police after threadbare investigation of Sonbarsa P.S. Case No. 56 of 2014 came to a considered conclusion that petitioner was innocent and the case was found to be a mistake of fact, hence, Final Form No. 21 of 2015 dated 17.03.2015 (Annexure- 1/1 to the writ application) was submitted exonerating the petitioner of the charges. It is further submitted that since the police after investigation found the petitioner innocent, as such, the District Programme Officer, (Establishment), Sitamarhi subsequent to submission of the final form on 17.03.2015 issued Letter dated 20.03.2015 directing the Block Development Officer, Sonbarsa to terminate the services of the petitioner.

7. It is submitted that the Block Development Officer, Sonbarsa, in compliance of the order of the District Programme Officer, (Establishment), Sitamarhi issued show cause contained in Memo No. 1859 dated 13.04.2016 (Annexure-2 to the writ application) asking the petitioner to furnish her explanation, as to why the petitioner did not submit her joining at Primary School, Ambedkar Nagar, why she did not hand over the entire charge, further for the year 2011-2012, she was given an amount of Rs. 7,92,630/- for construction of three class rooms, but the work till date has not been completed, further complaint has



been received with regard to the illegality committed by her for misappropriating the fund of scholarship and uniform, as such, the allegations point towards unbecoming of a government servant.

8. The learned counsel appearing on behalf of the petitioner submits that from bare perusal of the contents of the allegations as alleged in the show cause dated 13.04.2016 issued by the Block Development Officer, Sonbarsa, it would manifest that the allegations were cryptic, vague and lacking in essential details i.e. the allegations were ambiguous and lacking clarity. It is next submitted that since District Programme Officer, (Establishment), Sitamarhi vide his Letter dated 20.03.2015 had already directed the Block Development Officer, Sonbarsa to issue show cause and terminate the services of the petitioner forthwith, hence, a show cause dated 13.04.2016 was issued by way of an empty formality, as decision to terminate the services of the petitioner was already taken.

9. It is submitted that the petitioner, in compliance of the show cause dated 13.04.2016, submitted her explanation dated 16.04.2016 (Annexure- 3 to the writ application) denying the charges. It is submitted that there is no provision of transfer of *Niyojit* Teacher from one school to another, further the



petitioner was not relieved nor the Headmaster of the school took financial charge from the petitioner and the petitioner had raised her grievances before the District Magistrate, Sitamarhi also, further the petitioner got three class rooms constructed sanctioned in the Session 2008-2009, further one class room was completed and two class rooms were under construction sanctioned in the Session 2011-2012 and the material for constructing the class room was lying at the spot and her salary since 24.08.2013 was stopped as the Headmaster did not send her absentee. The learned counsel submits that the petitioner was never suspended for the allegations alleged, rather to harass her, a police case was instituted in which final form was submitted, finding the case to be a mistake of fact during the course of investigation. It is submitted that the Block Development Officer vide his Memo No. 70 dated 22.11.2016 (Annexure-4 to the writ application) terminated the services of the petitioner by a cryptic order without considering the explanation furnished by the petitioner and even without giving her any opportunity of being heard and without holding a departmental proceeding. The learned counsel for the petitioner, thereafter, draws the attention of the Court to Annexure- 4 to the writ application and submits that the Block Development



Officer, Sonbarsa recorded in the order dated 22.11.2016- “That recommendation of the District Education Officer contained in Letter No. 1150 dated 23.03.2015 has been received wherein it has been directed to hold a departmental proceeding against the petitioner and to terminate her service, in pursuance whereof show cause dated 13.04.2016 was issued in pursuance whereof petitioner submitted her explanation which was found unsatisfactory, further petitioner did not join Primary School, Ambedkar Nagar and from 26.08.2013 to 12.11.2016, the petitioner remained absent from school without information and has not submitted charge and the construction of school building is incomplete, thus, the services of the petitioner stand terminated with approval of the members. The learned counsel submits that the order terminating the services of the petitioner is cryptic, it is next submitted that the show cause dated 13.04.2016 did not even remotely suggest that the petitioner remained absent from school from 26.08.2013 to 12.11.2016, as such, no opportunity was given to the petitioner to furnish her explanation that as to whether the petitioner was absent during the period or not, but then the said ground was also taken to terminate her services. It is further submitted that as recorded hereinabove, the petitioner had earlier moved this Court by



filing CWJC No. 8518 of 2014 wherein a prayer was made to release the salary of the petitioner for the period aforesaid on the ground that her absentee is not being sent to the authority competent by the Headmaster.

10. The learned counsel for the petitioner next submits that CWJC No. 8518 of 2014 was disposed of by an order dated 23.11.2016 (Annexure- 7 to the I.A. No. 01 of 2023) with a direction that the District Education Officer, Sitamarhi will accept the accounts tendered by the petitioner. The petitioner has an obligation to sit with the District Education Officer and explain the accounts and vouchers and if accounting stands satisfactorily explained, then steps will be required to payment of salary etc. to the petitioner, in the opinion of the Court three months' time should be enough, provided the petitioner fully cooperates in the exercise.

11. It is submitted by the learned counsel appearing on behalf of the petitioner that prior to the order dated 23.11.2016 in CWJC No. 8518 of 2014, the service of the petitioner was terminated by a cryptic order dated 22.11.2016 passed by the Block Development Officer, Sonbarsa in complete breach of the Principles of Natural Justice and without considering her reply as recorded hereinabove.



12. It is submitted that the petitioner in compliance of the order dated 23.11.2016 in CWJC No. 8518 of 2014 submitted a detailed representation giving the accounts to the District Education Officer, but the District Education Officer did not take any action which led to filing of MJC No. 2484 of 2017, during pendency of the MJC No. 2484 of 2017, the District Education Officer rejected the claim of the petitioner for payment of salary without considering the petitioner's representation and the accounts furnished by his order dated 21.06.2018 (Annexure-8 to the I.A. No. 01 of 2023). It is submitted that thereafter MJC No. 2484 of 2017 was disposed of by an order dated 13.03.2019 (Annexure-9 to the I.A. No. 01 of 2023) with liberty to the petitioner to challenge the order dated 21.06.2018 passed by the District Education Officer rejecting her claim for salary, as such, the instant I.A. No. 01 of 2023 has been filed in the present writ application challenging the order dated 21.06.2018 passed by the District Education Officer rejecting the claim of the salary of the petitioner.

13. The I.A. No. 01 of 2023 is allowed for consideration.

14. The learned counsel for the petitioner further submits that the order dated 21.06.2018 was passed in haste



during pendency of MJC No. 2484 of 2017 without considering the explanation furnished by the petitioner and without giving her an opportunity of being heard.

15. The learned State counsel rebutting the said submission of the learned counsel appearing on behalf of the petitioner submits that petitioner has not annexed the representation filed by her furnishing the accounts to the District Education Officer, Sitamarhi in terms of the orders of this Court in CWJC No. 8518 of 2014, or else it would have been clear that as to whether the petitioner has furnished the vouchers with regard to the expenditure made by her, as the District Education Officer, Sitamarhi in his order dated 21.06.2018 has recorded that the petitioner in her 19 pages representation dated 05.05.2017 has not produced the concerned vouchers, it is next submitted that the petitioner in I.A. No. 01 of 2023 has also not disputed the said observation of the District Education Officer as recorded in the order dated 21.06.2018, it is further submitted that the District Education Officer has also recorded that the petitioner withdrew an amount of Rs. 17,10,546/- for construction of class rooms, but work of Rs. 10,55,420/- was only done, as such, the petitioner was left with Rs. 6,55,126/-, but in the account only Rs. 62,156/- is available, which amply



demonstrates that rest of the money was withdrawn by the petitioner, but then no vouchers with regard to the same has been made available, it is also submitted that the petitioner has not denied the said finding in the order dated 21.06.2018 in her I.A. No. 01 of 2023, on which the learned counsel appearing on behalf of the petitioner submits that since construction of two class rooms was underway and materials were lying at the spot, as such, the petitioner offered to return the rest amount available with her, but she was not permitted to deposit the left over money nor the Headmaster was willing to take financial charge.

16. After hearing the learned counsel for the parties, the facts which manifest are that the District Programme Officer, (Establishment), Sitamarhi vide his Letter dated 20.03.2015 had directed the Block Development Officer, Sonbarsa to issue a show cause to the petitioner and thereafter to terminate her services forthwith which amply demonstrates that a decision was already taken by the superior authorities of the petitioner to terminate her services, as such issuance of a show cause was a mere formality, further from perusal of the allegations as alleged in the FIR instituted by Mr. Shafi i.e. Sonbarsa P.S. Case No. 117 of 2015, it would manifest that the same records that the Block Education Officer, Sonbarsa was



directed to hold a departmental inquiry against the petitioner vide Letter dated 25.11.2013, but then no departmental proceeding was initiated, rather based on a cryptic show cause containing vague charges, the services of the petitioner stood terminated. The petitioner was a Block Teacher and was appointed in terms of the rules, as such if the services of the petitioner had to be terminated in that event a departmental proceeding was required in terms of Bihar Panchayat Elementary Teacher (Appointment and Service Condition) in terms of Rule 15 (Cha) of the Rules, 2012, but then no departmental proceeding was initiated which further vitiates the order terminating the services of the petitioner, further a particular stand was taken by the petitioner that *Niyojit* Teachers cannot be transferred to a different school, but on the said issue there is no finding in the order terminating her services, further the charges contained in the show cause were vague and thus was lacking clarity and in absence of clarity with regard to charges, it is difficult for a delinquent to answer the charges, further a charge which was not made part of the show cause with regard to absence of duty of the petitioner from the school was also made a ground for terminating the services of the petitioner, which further vitiates the order impugned, as far as



the withheld salary of the petitioner is concerned, for that the petitioner had earlier moved before this Court by filing CWJC No. 8518 of 2014 and the same was disposed of by an order dated 23.11.2016 in terms whereof the petitioner had submitted her representation showing that how the amounts were spent along with the vouchers, but then her explanation was not considered in right perspective rather it appears that under fear of contempt, the representation of the petitioner, filed in terms of the order passed in CWJC No. 8518 of 2014, came to be rejected, it is also the stand of the petitioner that after the Headmaster of the school joined he was not willing to take financial charges for which the petitioner had complained to the superior authorities even but then no action was taken as such some amount was lying with the petitioner which she had offered to deposit in the account of the government, but she was not permitted.

17. After going through the pleadings made in the writ application and the counter affidavit along with the supplementary affidavits, the Court comes to a considered conclusion that the order contained in Memo No. 70 dated 22.11.2016 passed by the Block Development Officer, Sonbarsa cannot be sustained for the reason that the same is cryptic and



does not take into consideration the explanation furnished by the petitioner to the show cause dated 13.04.2016 and the order of termination was based merely on a show cause without resorting to departmental proceeding and in complete breach of the Principles of Natural Justice, further the order dated 21.06.2018 passed by the District Education Officer, Sitamarhi rejecting the claim of the petitioner for salary **is also quashed** and the matter is remanded back to the authorities to proceed afresh in accordance with law.

18. It is made clear that the petitioner would be reinstated back in service forthwith and the authorities are not precluded to proceed against the petitioner in accordance with law which will also include that as to whether the petitioner is entitled for her salary for the period 26.08.2013 to 12.11.2016 or not.

19. The writ application is allowed.

(Satyavrat Verma, J)

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