
(2008) 10 JH CK 0025
In the Jharkhand High Court

Mrs. Kalyani Chaudhary

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 20-10-2008

Acts Referred:

Citation : (2008) 4 JCR 605

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.G.R. Patnaik, J.—Petitioner in this writ application has prayed for quashing the letter dated 15.1.2005 (Annexure-16), by which the salary of the petitioner for the period 10.7.2000 to 17.1.2002 has been denied to her.

2. The decision taken by the respondents-authorities vide the impugned letter has been challenged on the ground that it is illegal, arbitrary and devoid of any justifiable grounds.

3. Petitioner's case in brief is that she was initially appointed on the post of Assistant Teacher in a middle School on 30.3.1987. During, the course of her service, she was transferred to several schools on many occasions. The last transfer was made by order dated 10.7.2000 to Primary School, Kashidih Block, Chauparan. On her being relieved from the School, where she was posted on 10.7.2000, the petitioner submitted her joining at the Primary School, Kashidih Block, Chauparan on 15.7.2000 by submitting her joining letter (Annexure-1). However, the Headmaster of the School did not accept her joining, on the ground that no post was vacant for the petitioner at the said School. The petitioner filed her representation before the District Superintendent of Education, Hazaribagh (Respondent No. 3) on 17.7.2000 informing that she had submitted her joining on 15.7.2000 but the same was not accepted by the Headmaster of the School. The Headmaster of the School had also informed, by his letter dated 17.7.2000 (Annexure-3), the District Superintendent of Education that though the petitioner

had submitted her letter of joining in terms of her transfer orders but the same could not be accepted on account of the fact that there was no vacant post in the School for the petitioner.

Thereafter, the petitioner, by her letters dated 21.7.2000 and 26.7.2000 (Annexures-4 and 4/1) addressed to the District Superintendent of Education (Respondent No. 3), requested for her posting at any suitable place and expecting her posting, the petitioner remained at the Headquarter at Hazaribagh. After keeping her waiting for one and half years till 16.1.2002, the respondents-authorities had offered her posting in the school at Pasai, Kutkamasandi Block, where she joined on 17.1.2002.

Again by another order of transfer dated 9.10.2002 (Annexure-6), she was transferred to the Boys' School, P.S. Kumhartoli, Municipal Block, Kutkamasandi Block.

The further case of the petitioner is that another teacher, namely, Sushila Gupta, along with the petitioner was also kept waiting at the Headquarters for her posting and after a considerable period, she too was given the posting at another school.

The petitioner's grievance is that on the one hand the respondents-authorities paid the arrears of salary to the other teacher, namely, Sushila Gupta for the period during which she remained at the Headquarter without proper posting, but the petitioner's claim for her salary, has been denied to her on the ground that she was "absent from duty" and therefore, she was not entitled to any salary on the principle of "No Work No Pay".

4. The petitioner, thereafter filed a writ petition vide W.P. (S) No. 3311 of 2004. While disposing of the aforesaid writ application by order dated 15.7.2004, this Court had directed the petitioner to file a fresh representation before the District Superintendent of Education, Hazaribagh with a corresponding direction to the D.S.E. to consider the petitioner's representation and pass appropriate orders in accordance with law within a period of six weeks from the date of receipt of the representation.

The petitioner filed her representation before the District Superintendent of Education in accordance with the orders passed by this Court.

It is further stated that after consideration of the representation submitted by petitioner, the District Superintendent of Education, Hazaribagh vide his letters (Annexures-12 and 14) addressed to the Director of Education, has prayed for allotment of funds in order to meet the budget expenses including the arrears of salary payable to the petitioner.

5. Counter-affidavit has been filed on behalf of the respondents. While denying and disputing the claim of the petitioner, the stand taken by the respondent is that while the petitioner was posted in Yadunath Girls Middle School, Hazaribagh, she was transferred to the Primary School, Kasiadih under Circle, Chauparan vide

order dated 30.6.2000 but she did not submit joining at the aforesaid school, where she was transferred and instead, submitted her joining in the office of the District Superintendent of Education, where there was no post of teachers. It was later, when she was transferred and posted at her place of posting from the Primary School, Kasiadih, Chauparan Block to the Middle School, Pasai under Katkamsandi Block vide order dated 17.1.2002, the petitioner had submitted her joining. Later, on her own. representation, the petitioner was transferred from the Middle School, Pasai, Katkamsandi Block to the Boys' School, Kumhartoli on 9.10.2002. It is stated that from 10.7.2000 to 17.1.2002, the petitioner did not perform her duties and therefore she was not found entitled to any salary for the aforesaid period.

6. From the counter-affidavit of the respondents, it appears that though a stand has been taken by them that the petitioner did not report for duty and she was found absent from 10.7.2000 to 17.1.2002, but the stand taken by the petitioner that she had submitted her letter of joining at the School to the Headmaster of the School, where she was transferred to, on 15.7.2000 and that her joining was not accepted by the Headmaster of the School and that even the Headmaster of the School had informed by his letter (Annexure-3) that in absence of any post vacant in the school, he could not accept the petitioner's joining, have not been denied and controverted by the respondents. Furthermore, the petitioner's assertion that another teacher namely, Sushila Gupta who together with the petitioner was also kept waiting at the Headquarters for her posting at an appropriate place, was paid the arrears of her salary for the period during which she was kept waiting, has also not been denied by the respondents. Likewise, the petitioner's assertion that by Annexure-12 and Annexure-14, the District Superintendent of Education had himself written to the Director of Education for allotment of funds, to enable the payment of arrears of salary to the petitioner for the period 10.7.2000 to 17.1.2002 has also not been denied, disputed or explained by the respondents.

It is apparent from the above facts stated by the petitioner, which, in absence of any denial by the respondents, invariably suggests that the petitioner's joining at the school, where she was transferred to, was not accepted on the ground of absence of any vacancy and she was kept waiting at the Headquarters for her posting in spite of the several representations and requests made by her as indicated by the several Annexures to the writ application. It cannot, therefore be said that the petitioner had intentionally absented herself from duty, since no duty was offered to her during the relevant period. It further appears that while similarly placed another teacher, namely, Sushila Gupta, was paid the arrears of her salary for the period she was kept waiting for her posting, the petitioner has arbitrarily been denied her claim for payment of arrears of salary. From Annexure 12 and Annexure-14, it transpires that even the District Superintendent of Education (Respondent No. 3), at the relevant time, had acknowledged the claim of the petitioner for payment of arrears of her salary and had even requested the Director of Education for allotment of funds for making the payments, but

surprisingly, he has made volte-face denying the petitioner's claim. In the facts and circumstances of the case, the principle of "No Work No Pay" cannot be applied to deny the rightful claim of the petitioner.

7. In the light of the above discussions, I find merit in this application and, accordingly, this writ application is allowed.

8. The impugned order (Annexure-16) is hereby quashed. The respondent No. 3 is directed to pay to the petitioner the arrears of salary for the period of 10.7.2000 to 17.1.2002 along with interest @ 6 per cent per annum on the total payable amount, within a period of three months from the date of this order.

Let a copy of this order be given to the learned Counsel for the respondents.