

**(2012) 07 JH CK 0043**

**Jharkhand High Court**

**Case No:** Writ Petition (S) No. 1405 of 2012

Nirmal Kumar Dubey

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

**Date of Decision:** July 27, 2012

**Citation:** (2012) 4 JCR 386

**Hon'ble Judges:** Dhirubhai Naranbhai Patel, J

**Bench:** Single Bench

**Advocate:** Vishal Kumar Tiwary, for the Appellant; Ajit Kumar, AAG and Prem Pujari Roy and JC to GA for the State, for the Respondent

**Judgement**

@JUDGMENTTAG-ORDER

D.N. Patel, J.

Learned counsel for the petitioner submitted that the petitioner is challenging the order at Annexure-10 to the memo of the petition, whereby, the present petitioner has been transferred from "Utkramit Madhya Vidyalaya Hesabero, Goilkeria" to "Utkramit Madhya Vidyalaya, Chandrarajiki, Chakradharpur" vide order dated 23rd/24th December, 2011. Previously also, order of transfer of the year 2009 was challenged by way of W.P. (S) No. 4794 of 2009 and this Court passed an order dated 8th June, 2011 (Annexure-6) and direction was given to the State to consider the matter and because of earlier order in the writ petition, order of transfer dated 23rd/24th December, 2011 has been passed. It is further submitted by learned counsel for the petitioner that as stated in paragraphs 17 and 18 of the memo of this petition, there is no such school like "Utkramit Madhya Vidyalaya, Chandrarajiki, Chakradharpur" and some persons are already working on the said post. Be as it may, but the fact remains that the petitioner had gone to resume the duties and he was not allowed. Moreover, the petitioner is not getting salary since last three years, as stated in paragraph 25 of the memo of this petition and, therefore, the order of transfer at Annexure-10 may be quashed and set aside and the respondents may be directed to make the payment of salary for the period of three years, as stated in

paragraph 25 of this petition. Learned counsel for the State is seeking time to file counter-affidavit.

2. It is submitted by learned counsel for the State that immediately upon receiving the memo of the petition on 13th March, 2012, a letter was written on 14th March, 2012 to the Secretary, Human Resources Development Department, Government of Jharkhand, Ranchi and to such other persons, who are party respondents in this case, but, nobody has replied, till today.

3. Learned counsel for the State further submitted that the Nodal Officer, who has been appointed by the State, namely, Shri Anil Kumar Jaiswal had talked with the Director, Primary Education, who is respondent No. 3, whose phone number is 0651-2401797, today i.e. on 27th July, 2012 at 11:47 hours.

4. It is now high time for the State of Jharkhand to think their own proper case management. Without there being a proper case management, such situation will be repeated, time and again. Earlier, vide order dated 29th June, 2012 in W.P. (S) No. 1866 of 2012, this Court has directed the Chief Secretary of the State to adopt the proper case management policy. In paragraph 6 onwards of the aforesaid order, detail case management of the Government side has been pointed out by this Court stating clearly what is the National Litigation Policy. Jharkhand State Litigation Policy has also been referred in the aforesaid order. It has also been pointed out in the aforesaid order that approximately 70% of the total litigations in the High Court, the State of Jharkhand is a party and in paragraph 7, detail proper case management has been pointed out.

5. In the facts of the present case, a handicapped teacher, who is suffering from approximately 40% to 45% handicappedness due to Polio (Certificate is at Annexure-2), is not getting his salary since last three years. He is ready and willing to join the post, but, as stated in paragraphs 17, 18 and 20 that either there is no school or some teachers are already working on the said post, as per the Headmaster of the said school. The Government has not denied these paragraphs. Lethargic officers of the respondent- State, who are joined as party respondents in this case, are not filing their counter-affidavit. Despite the aforesaid letter was written by the Advocate General's office and despite the Nodal Officer has informed the Government officer, nobody is responding to the Government side lawyer, who is helpless to argue out the case and, therefore, he is seeking time.

6. As stated in order dated 29th June, 2012 in W.P. (S) No. 1866 of 2012 that it has been stated in the National Litigation Policy that frequent adjournments are resorted to by the Government lawyers and it has been stated in point No. 3 of Clause (iv) of the Jharkhand State Litigation Policy that the State of Jharkhand is also serious to adopt the process that the cases or the counter-affidavits must be filed with all necessary and relevant documents.

7. In the facts of the present case, a copy of the writ petition was served to the respondents on 13th March, 2012 and no reply has been filed. I therefore impose a cost of Rs. 10,000/- (Rupees ten thousand only), which will be initially paid by the State and, thereafter, the same will be recovered from the erring officer's salary by holding proper inquiry, if the counter- affidavit is not filed on or before the next date of hearing. The cost of Rs. 10.000/- will be deposited in this Court, on or before the next date of hearing.

8. For grant of adjournment and for filing the affidavit, officers of the respondent-State must be sensitive enough, in such type of matters, where, handicapped teacher is sent from pillar to post and is not paid salary since last approximately three years.

9. Time to file counter-affidavit is granted.

10. If the counter-affidavit is not filed on or before the next date of hearing, I hereby direct respondent No. 2 to remain personally present before this Court on the next date of hearing at 10:30 a.m. or he may depute a responsible officer, who is well conversant with the facts and law of the case, to remain personally present before this Court on the next date of hearing at 10:30 a.m.

11. This order will be conveyed by learned counsel for the State to the concerned officers of the respondents.

12. The Nodal Officer, appointed by the State is present in the Court and he will also convey this order to the concerned officers of the respondents.

13. The matter is adjourned to be listed on 13th August. 2012. Meanwhile, I hereby stay the execution, operation and implementation of an order passed by respondent No. 5 dated 23rd/24th December, 2011, which is at Annexure-10 to the memo of the petition, till the next date of hearing.