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Nirmal Kumar Dubey Vs State of Jharkhand and Others

Writ Petition (S) No. 1405 of 2012

Court: Jharkhand High Court

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, Goilkera" to "Utkramit Madhya Madhya

Vidyalaya, Chandrajariki, 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, Chandrajariki, 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.