

(2012) 03 JH CK 0052**Jharkhand High Court****Case No:** Writ Petition (S) No. 1280 of 2007

Smt. Rekha Baxla

APPELLANT

Vs

The State of Jharkhand and
Another

RESPONDENT

Date of Decision: March 13, 2012**Citation:** (2012) 2 JCR 670**Hon'ble Judges:** Dhirubhai Naranbhai Patel, J**Bench:** Single Bench**Final Decision:** Allowed**Judgement**

D.N. Patel, J

1. Learned Counsel for the petitioner submitted that the petitioner is working as an Assistant Teacher and on a particular day i.e. on 15th April, 2005, the petitioner was late by ten minutes and, therefore, she was put under suspension and ultimately, the order of punishment has been passed at Annexure 5 dated 2nd June, 2005, whereby, two annual increments of the petitioner have been stopped with future effect. The said order dated 2nd June, 2005, passed by the disciplinary authority, was challenged by way of departmental appeal and the departmental appeal, preferred by the petitioner, was also dismissed by an order, passed by the Commissioner, South Chotanagpur, dated 22nd November, 2006, which is at Annexure 8 to the memo of petition. Thus, both the orders, namely, the order, passed by the disciplinary authority, as well as the order, passed by the appellate authority, are under challenge, which are at Annexure 5 as well as Annexure 8 to the memo of petition. Learned Counsel for the petitioner submitted that the punishment imposed upon the petitioner is unnecessarily excessive and shockingly disproportionate to the charges. The petitioner has joined her services as Assistant Teacher on 31st December, 2003 and thereafter, she is working honestly, sincerely, diligently and to the satisfaction of the respondents. Never any show cause notice was given to the petitioner and the late by ten minutes on a particular day was, in fact, because of

the sickness and, therefore, the punishment imposed upon the petitioner is shockingly disproportionate to the charges.

2. Learned Counsel for the respondents submitted that it is not true that the petitioner was late by ten minutes rather the fact is that when the high ranking officer of the State visited the school, in question, the petitioner was found absent on the particular day i.e. on 15th April, 2005 and, therefore, she was put under suspension on 16th April, 2005 and ultimately, the order of punishment was passed to the effect that her two annual increments have been stopped with future effect. The appeal preferred by the petitioner has also been dismissed. Thus, against the concurrent finding of facts, this writ petition may not be entertained by this Court.

3. Having heard Learned Counsel for both the sides and looking to the facts and circumstances of the case, I hereby quash and set aside the order, passed by the disciplinary authority i.e. District Superintendent of Education, Ranchi dated 2nd June, 2005 (Annexure 5) as well as the order, passed by the appellate authority i.e. Commissioner, South Chotanagpur, Ranchi dated 22nd November, 2006 (Annexure 8), mainly for the following facts and reasons:

(i) The petitioner having joined the services on 31st December, 2003 at Primary School, Piragutu at Burmu Block, has started discharging her duties honestly, sincerely, diligently and to the satisfaction of the respondents.

(ii) Thereafter, the petitioner was transferred at Middle School, Ranchi. On 15th April, 2005, it appears the petitioner reached the school ten minutes late, because of some illness, after getting herself treated by the doctor.

(iii) Learned Counsel for the respondents submitted that when the high ranking officer visited the school, she was found absent.

(iv) Be that as it may, the fact remains that even if the case of the respondents is taken on its highest pitch, maximum the petitioner was absent for a day. This is the highest misconduct committed by the petitioner, who is a Teacher.

(v) It also appears from the facts of the case that never any notice was given to the petitioner, nor a copy of the inquiry report has been given to the petitioner nor the second show cause notice was issued to the petitioner. Apart from this aspect of the matter, looking to the order of punishment, passed by the District Superintendent of Education, Ranchi dated 2nd June, 2005 (Annexure 5), it appears that the petitioner's two annual increments with future effect have been stopped. For a day's absentism, this punishment is shockingly disproportionate.

(vi) It further appears from the facts of the case that the petitioner is working since long i.e. from 31st December, 2003 and never any misconduct has been committed by the petitioner.

4. In view of the aforesaid facts stoppage of two annual increments with future effect is unreasonably excessive and I, therefore, quash and set aside the order passed by the District Superintendent of Education, Ranchi, dated 2nd June, 2005, which is at Annexure 5 to the memo of petition, as well as the order, passed by the Commissioner, South Chotanagpur, Ranchi, dated 22nd November, 2006, which is at Annexure 8 to the memo of petition. The contention raised by the Learned Counsel for the respondents that the petitioner was absent for whole of the day is not accepted by this Court, since looking to paragraph no.6 of the order, passed by the appellate authority, highest the petitioner was late by fifty five minutes. Thus, there is no absenteeism even for a day and, therefore, the quantum of punishment inflicted upon the petitioner is shockingly disproportionate to the charges.

5. I, therefore, quash and set aside both the orders dated 2nd June, 2005 as well as 22nd November, 2006, which are at Annexure 5 and 8 respectively, and the matter is remanded to the District Superintendent of Education, Ranchi, for taking a fresh decision upon the quantum of punishment. While taking the decision afresh, it should be kept in mind by the disciplinary authority i.e. the District Superintendent of Education, Ranchi that those, who are working honestly, sincerely, diligently and since long, should not be punished unnecessarily. It must be kept in mind that absenteeism for few minutes on a particular day is not a misconduct. Looking to the reasons of absenteeism, sometime warning is also sufficient. This writ petition is, thus, allowed and disposed of. Consequential benefits will be paid to the petitioner accordingly.