

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1467 of 2014
IN
Civil Writ Jurisdiction Case No. 8072 of 2013**

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Renu Kumari, W/o Shri Ambika Saran Singh, Resident of Village Brahampura,
P.O. Asharhi, P.S. Hilsa, District Nalanda, Bihar.

.... Appellant

Versus

1. The State of Bihar through the Secretary cum Commissioner, Human Resource Development Department, Government of Bihar, Patna.
2. The District Magistrate, Nalanda.
3. The District Education Superintendent, Nalanda.
4. The Block Education Officer, Hilsa, District Nalanda.
5. Mukhiya, Asharhi Gram Panchayat, Block Hilsa, District Nalanda.

.... Respondents

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Appearance :

For the Appellant/s : Mr. Sheela Sharma, Advocate

For the Respondent/s : Mr. Jitendra Kumar Roy-1, SC-13

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**CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 05-05-2017

Since the writ application of the present appellant was dismissed by the learned Single Judge on 08.08.2014 refusing to give any direction upon the respondent authorities to pay her honorarium for the period she was removed till she was reinstated, the present intra-court appeal has been preferred.

The appellant was a panchayat teacher, who under certain controversial circumstances came to be removed. She fought her legal



battle, managed to come back in the system and “reinstated” on the post of panchayat teacher but that did not satisfy her desire and demand for payment of her remuneration i.e. the honorarium between the period she was removed till she was reinstated.

Submission of the learned counsel representing the appellant is that the learned Single Judge had misapplied the law and the principle, by placing reliance on the decision of the Hon’ble Apex Court in the case of *Union of India Vs. K.V. Jankiraman* reported in *AIR 1991 SC 2010*, and applied the principle of “no work no pay” which has no applicability to the present set of facts. It is the case of the appellant that she was illegally prevented from working and it was not a case of voluntary refusing to work, therefore, the order of the learned Single Judge should be interfered with.

The learned Single Judge in the concluding portion of the order had observed :

“In the present case, it is clear that the petitioner was reinstated not on the ground that her appointment was perfectly legal and valid and strictly in accordance with the guidelines and rules. It was only reinstated on the ground that it was not a case of fraud or misrepresentation.”

Before going into the merits of the argument made on behalf of the appellant the very concept of appointment on the so



called post of panchayat teacher has to be understood in the correct perspective.

The panchayat teachers are not government servant. There is a contractual hiring and they are not paid wages or salary but a fixed honorarium every month for the period of work done by them. It is a case of contract for service and not of service. If this is the status of a panchayat teacher then the expectation, which the appellant has to be treated at par with a government servant and extend the principles which have been decided by various courts in matter of award of payment of back wages or salary in the event of dismissal being set aside as illegal, does not apply *mutatis mutandis* in cases of a panchayat teacher.

Since the appellant by virtue of being a panchayat teacher, is working on a fixed honorarium, he/ she is entitled for that amount, provided work is performed by such a candidate. The Court has already noticed above that it is a contract for service, therefore, whatever remuneration, which has been fixed, will be available to such a person provided service has been rendered by such person on the basis of contract for service. If for whatever reason, such a person, whose services has been hired by the authorities, does not render service even if it can be the case of being prevented from rendering service for reason fair and foul, he/ she cannot expect to be



compensated by payment of honorarium for the period of no service as well.

The appellant is not the holder of a permanent post or position. Her services are liable for termination in terms of the contract, and, therefore, the Court is of the opinion that none of the judgments, which are applied to the cases of permanent employees in case of the order of termination being set aside, can apply or the principle extended to the cases of panchayat teachers. The learned Single Judge may have not appreciated the issue in this perspective, keeping in mind the nature of hiring and engagement as well as the status of the appellant, but he was not wrong in coming to a conclusion that no direction is required to be issued for the period when the appellant was “out of service” on account of termination order dated 06.11.2007.

The expectation of the appellant to demand and beget payment of salary or wages is a misnomer because no panchayat teacher is paid wages or salary, but only an honorarium. The Court is not in agreement with the submission of the learned counsel for the appellant that the law being what it is, laid down by the Hon’ble Apex Court, some of which have also been taken note by the learned Single Judge, will have any applicability to cases of panchayat teachers in matters of demand of back “wages”.



The appeal, therefore, has no merit. It is dismissed with the clarification on the principles of law which governs such issue.

Before parting learned counsel for the appellant as a last ditch effort submitted that there will be discrimination because in some cases learned Single Judge has allowed some relief. It is left open to the State to challenge such orders in appeal so that the correct law is laid down by the High Court in the right perspective of whatsoever observed with regard to the status of so called teachers which have been indicated in earlier part of the judgment. In fact, it will be obligatory upon the State to prefer appeal.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

Rajesh/-

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