

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16289 of 2006

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Mohan Prasad Yadav, son of late Kusum Lal Yadav, resident of village Mainahi,
P.S. Laukahi (Andhramath) District - Madhubani

.... Petitioner/s

Versus

1. The State of Bihar,
2. The District Magistrate, Madhubani,
3. The Director Secondary Education, Govt. of Bihar, New Secretariat, Patna
4. The District Education Officer, Madhubani
5. The Treasury Officer, Jhanjharpur, District – Madhubani
6. The Headmaster cum drawing and disbursing Officer, High School Narhiya,
District - Madhubani

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. RAM SUBHAS SINGH
Mr. Arvind Kumar, Advocates

For the Respondent/s : Mr. Sarvesh Kumar Singh, AAG 13
Mr. Intekhab Hassan
Mr. Ravi Kumar, AC to AAG 13

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date: 27-01-2017

Learned counsel for the petitioner is permitted to make
necessary correction in paragraph 1 of the writ application, as prayed
for.

Heard learned counsels for the petitioner and the State.

The present writ application has been preferred by the
petitioner to make payment of arrears of salary along with interest for
the period 14.12.2004 to 25.8.2005 while he was posted on the post of
Clerk in the office of the District Education Officer, Madhubani.

The factual matrix would unveil that the father of the



petitioner was an Assistant Teacher in Primary School, Chhajana, Ghoghardiha in the District of Madhubani who died in harness on 7.8.2003. Susequently, the District Compassionate Committee, Madhubani in its meeting dated 2.9.2004 decided to appoint the petitioner on the post of Clerk and consequently, the District Magistrate, Madhubani vide letter no. 1054 dated 6.9.2004 and 1319 dated 27.10.2004 issued appointment letter to the petitioner and thereby the petitioner was appointed on Class III post of Clerk in the pay scale of Rs.3050-4590 and was posted in High School Khutauna from the date of joining. Consequently, letter no. 1587 dated 13.12.2004 as contained in Annexure 1 was issued. The petitioner went to the said school after getting the letter of joining, as contained in Annexure 1, but the Headmaster of the school in question did not accept the joining of the petitioner on the ground that the post of Clerk in the school in question is not vacant and a communication was made to that effect to the District Education Officer, Madhubani. Thereafter, on 14.12.2004 the petitioner submitted his joining in the office of the District Education Officer, Madhubni and started working there. Thereafter, vide memo no. 1775 dated 6.9.2005 (Annexure 2) issued under the signature of District Education Officer, Madhubani the petitioner who was waiting for posting in the office of the District Education Officer, Madhubani, was posted in the High School,



Narahiya, Madhubani on the post of Clerk and was directed to join the said post. The petitioner was initially not relieved from the office of the District Education Officer, but ultimately he got relieved on 6.12.2005, and thereafter the petitioner joined at Narahiya. The petitioner was made payment of salary from 26.8.2005 but has not been paid the salary from 14.12.2004 to 25.8.2005. Hence, the present writ application.

It is submitted by learned counsel for the petitioner that the appointment of the petitioner is not in question. The petitioner was directed to join in the High School, Khutauna on 13.12.2004 vide letter, as contained in Annexure 1, issued under the signature of District Education Officer, Madhubani, but since the post was not vacant he joined in the office of the District Education Officer, Madhubani on 14.12.2004 and the said fact that the petitioner was waiting for posting in the office of District Education Officer, Madhubani is admitted by the District Education Officer, Madhubani, which finds mention in the letter contained in Memo no. 1775 dated 6.9.2005 (Annexure 2) whereby the petitioner was posted in High School, Narahiya. Under such circumstances, the petitioner claims that his salary for the period 14.12.2004 to 25.08.2005 has been wrongly withheld.

It is submitted by Mr. Ravi Kumar, Assistant Counsel to



learned AAG 13 that since the petitioner was adjusted against the vacancy, of clerk in the High School, Narahiya with effect from 26.8.2005, hence the petitioner has been made payment of salary from that day onwards and not prior to that.

Supplementary counter affidavit has been filed on behalf of respondent no. 4 wherein in paragraph 11 it is admitted that the petitioner remained posted in the office of the District Education Officer till the vacancy occurred in the school in question where he submitted his joining as per Annexure 2 but he has been paid salary from 26.8.2005, the date on which the vacancy occurred and in that view of the matter, there appears to be no illegality in the order impugned. Paragraph 11 of the supplementary counter affidavit reads as follows:

“That it is submitted that it is not in dispute that the petitioner remained in the office of DEO, Madhubani till vacancy is caused in the concerned school where he was posted and directed to submit his joining and though he was posted vide annexure -2 on 06.12.2005 but, he has been paid salary from 26.8.2005, as the vacancy was caused on the said date and in that view of the matter, there appears to be no illegality in the eye of law and as such the claim of the petitioner is fit to be rejected and the writ application is fit to be dismissed having no substance.”



Considering the rival submissions of the parties, this is not in dispute that the petitioner was appointed on compassionate ground vide memo no. 1587 dated 13.12.2004 (Annexure 1) issued under the signature of District Education Officer, Madhubani and vide memo no. 1775 dated 6th September, 2005. He was posted in the High School, Narahiya but he could join there only after being relieved on 6.12.2005, since he could not join High School, Khutauna as the post of clerk was not vacant there, whereafter he joined the office of the District Education Officer, Madhubani on 14.12.2004. The letter, as contained in Annexure 2, dated 6th September, 2005 stipulates that the petitioner was waiting for posting in the office of the District Education Officer, Madhubani from 14.12.2004 and he was directed to join on the conditions mentioned in memo no. 1587 dated 13.12.2004 (Annexure 1). The said fact has also been averred in paragraph 11 of the supplementary counter affidavit. Under such circumstances this Court finds that the petitioner is entitled for the salary of the period from 14.12.2004 to 25.8.2005, in view of the fact that the petitioner was kept waiting for posting only due to official lapses and for the same, the petitioner cannot be deprived of the salary due to him for the period of waiting for posting.

Accordingly, respondent no. 4, the District Education Officer, Madhubani is directed to make payment of salary of the



petitioner for the period from 14.12.2004 to 25.8.2005 within a period of four weeks from the date of receipt/production of a copy of this order.

With the aforesaid observation/direction, this writ application stands disposed of.

(Dinesh Kumar Singh, J)

Anil/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

