

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10020 of 2016

=====

Kanti Kumar, S/o Late Saryug Prasad, R/o village - Gonawan, P.O. Gonawan, P.S.
Nawada Town, District - Nawada

.... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Education Department, Bihar, Patna
3. The Director, Primary Education, Bihar, Patna
4. The District Programme officer (Estt.), Nawada
5. The Block Education Extension Officer, Nawada
6. The Panchayat Secretary, Gram Panchayat, Bhadokhra, Nawada
7. The Mukhiya, Gram Panchayat, Bhadokhra, Nawada
8. The Headmaster, Primary School, Pathra English, Nawada

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Sanjay Kumar, Advocate

For the Respondent/s : Mr. D. K. Singh, AC to SC-10

=====

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

Date: 12-03-2018

Heard learned counsel for the petitioner and State.

2. Learned counsel for the petitioner submits that the petitioner is regularly discharging the duty, but not getting arrears and current salary, as Panchayat Teacher.

3. Payment of salary requires factual enquiry whether the appointment of the incumbent is legal and valid and secondly he has worked for the period he is claiming salary. These factual enquiries are to be made by the respondent, in whose custody the relevant records are lying.

4. In the present writ application, the main relief prayed for by the petitioner to pay the current as well as arrears of



salary. The State has not filed counter affidavit to controvert the fact pleaded in the writ application.

5. Ordinarily, the Court is required to proceed in accordance with the doctrine of non-traverse and decide the writ application on the basis of the pleading, but having regard to the fact that matter pertains to payment of salary from public exchequer, this Court direct the respondents to enquire into the legality and validity of the appointment of the petitioner and also verify the record whether the petitioner has worked for the period he is claiming salary. These two enquiries have to be completed by the respondents expeditiously preferably within a period of 60 days from the date of receipt/production of a copy of this order.

6. In the event, the petitioner's appointment is found legal and valid, necessary orders for payment of salary, for the period petitioner has worked, must be issued by the respondents within the time frame indicated hereinabove.

7. So far as the contention of the petitioner that once the appointment is made, the petitioner cannot be disturbed without following the procedure for termination in accordance with law is concerned, the issue is pre-matured, as the issue of termination is not involved in the present writ application, the Court is not inclined to decide this hypothetical issue. Once the first issue decided, the second



issue will become academic.

8. With the aforesaid observations and directions indicated hereinabove, the writ application stands disposed of.

(Anil Kumar Upadhyay, J)

Uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	14.03.2018
Transmission Date	

