

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2124 of 2018

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1. Ram Lalan Kumar, Son of Arjun Singh, resident of Village- Kemra, Police Station- Ariyari, Block- Chewara, District- Sheikhpura, presently working as Panchayat Teacher in Upgraded Middle School, Belkhundi, Block- Chewara, District- Sheikhpura Petitioner

Versus

1. The State of Bihar through Principal Secretary, Department of Education, Bihar, Patna.
2. The Director, Primary Education, Bihar, Patna.
3. The District Education Officer, Sheikhpura.
4. The District Programme Officer (Establishment), Sheikhpura.
5. The Block Development Officer-cum- Member Secretary, Block Teacher Appointment Committee, Chewara, District- Sheikhpura.
6. The Block Education Officer, Chewara, District- Sheikhpura.

.... Respondents

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Appearance :

For the Petitioner : Mr. Arun Kumar, Adv.

For the Respondents : Mrs. Binita Singh, SC XXVIII

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR

UPADHYAY

ORAL ORDER

2 16-02-2018

Heard the learned counsel for the petitioner and the learned counsel appearing for the State.

Petitioner was reinstated pursuant to the order of the State Appellate Authority vide office order, dated 12.08.2017. The grievance of the petitioner is with regard to non-payment of salary for the period January 2015 to December 2016 and from January 2017 to 12th August, 2017.

Mr. Arun Kumar, learned counsel for the petitioner submits that the respondents have not assigned any reason for non-payment of salary from January 2015 to December 2016, thereafter, the petitioner was illegally terminated and, as such, he was kept out



of employment from January 2017 to 12th August, 2017. The petitioner was reinstated when the State Appellate Authority held out that the termination of the petitioner was illegal and pursuant to the order of the State Appellate Authority the petitioner was reinstated vide order, dated 12.08.2017. He submits that the respondents have reinstated the petitioner, but, no order was passed with regard to payment of back wages. So far as back wages for the period January 2017 to 12th August, 2017, is concerned, the petitioner is entitled for payment of back wages for the period he was illegally kept out of the employment. The claim of the petitioner with regard to the payment of arrears from January 2015 to December 2016, no reason is assigned for non-payment of salary by the respondents. If the petitioner has worked during the period January 2015 to December 2016 the petitioner is entitled to payment of salary as taking work and denying salary amounts to begari, which is prohibited under Article 23 of the Constitution of India.

In view of the issue involved in the present writ application, this writ application is **disposed of** with the direction to the respondent-District Programme Officer (Establishment), Sheikhpura, to examine the claim of the petitioner for payment of arrears of salary for January 2015 to December 2016 and if, on



verification of the records, it is found that he actually worked for the period January 2015 to December 2016, the respondent-District Programme Officer (Establishment), Sheikhpura, shall ensure the payment of salary for the aforesaid period. So far the claim of the petitioner of back wages for the period January 2017 to 12th August, 2017, is concerned, there is well settled proposition of law that one can not take advantage of its own illegal decision. Since, the respondents arbitrarily kept the petitioner out of employment, it is their lapse as the action of the respondents was illegal. They can not now deny payment of salary for the period January 2017 to 12th August, 2017, after the decision of the State Appellate Authority.

Mr. Arun Kumar, learned counsel for the petitioner, has placed reliance on the decision of the Apex Court reported in **(2013) 11 SCC 626 (Shivanandan Mahto vrs. State of Bihar & Ors.)** where the Apex Court has examined the entitlement of the appellant for payment of back wages on reinstatement. The Apex Court on consideration of the fact that the appellant was illegally and arbitrarily kept out of service due to the lapse of the respondents and, as such, the Apex Court held out that the appellant is entitled to payment of back wages. The Apex Court even granted 9% interest from the period the appellant was kept out of service till the reinstatement.



However, in the peculiar facts and circumstances of this case when the reinstatement was immediately after the adjudication by the State Appellate Authority, the Court does not find a case for payment of interest. Further, relying upon the principle laid by the Apex Court in various judgments, including in the case of **Shivanandan Mahto** (supra) it is directed to the respondent-District Programme Officer (Establishment), Sheikhpura, to take final decision with regard to the payment of arrears for the period indicated here-in-above within a maximum period of sixty days, from the date of receipt/production of a copy of this order, along with a copy of the order of this Court. If the payments are not made within the time frame, the arrears of salary as well as the back wages will carry interest at the rate of 9% per annum.

(Anil Kumar Upadhyay, J)

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