

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4252 of 2017

1. Rajesh Kumar Poddar,
 2. Rakesh Kumar,
- Both are son of Nand Kishore Poddar, residents of Village-
Hathra, Police Station- Kusheshwar Asthan, District- Darbhanga.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Department of Human Resources, Govt. of Bihar, Patna.
3. The District Programme Officer (East) Darbhanga.
4. The Block Education Officer Kusheshwar Asthan P.S. Kusheshwar Asthan District Darbhanga.
5. The Block Development Officer Kusheshwar Asthan P.S. Kusheshwar Asthan District Darbhanga.
6. The Prakhanda Teaches Employment Committee through Executive Officer cum B.D.O. Kusheshwar Asthan, P.S.- Kusheshwar Asthan, District- Darbhanga.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Jagdish Prasad Singh, Advocate
For the Respondent/s	:	Mr. S.C. MISHRA-SC16

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

3 15-02-2018 Heard learned counsel for the petitioner and learned
counsel appearing on behalf of the State.

The petitioner is aggrieved by the part of the order as
contained in Annexure-9 dated 27.01.2014.

Learned counsel for the petitioner submits that the
appellate authority while declaring the cancellation of the
employment of the petitioner as illegal has committed error in
directing the respondents to only grant benefit of increment and
continuity in service and 'no work no pay' is applicable with



regard to payment of salary before the date of reinstatement of the petitioner.

From the order impugned dated 27.1.2015 it is evident that the appellate authority has found the action of the respondents as illegal and arbitrary and as such it directed reinstatement of the petitioner with retrospective effect. Once the tribunal has passed order of reinstatement, the tribunal has committed error in directing the respondents not to pay salary before the date of reinstatement on the principle of ‘ no work no pay’.

Back wages on reinstatement is a matter of rule. The appellate authority has not considered the case of the petitioner in proper perspective. Once the Tribunal has held out cancellation of employment of the petitioner illegal and directed reinstatement from retrospective effect, as a matter of corollary the petitioner was entitled to payment of back wages. Since the petitioner was kept out of employment arbitrarily and illegally by the respondents from 29.5.2012 to January, 2015, the respondents cannot take advantage of their own wrong. The right of the petitioner to back wages cannot be frustrated on account of the fact that the petitioner was restrained from working due to the illegal and arbitrary action of the respondents. However, considering the interest of the petitioner



for grant of back wages and Government exchequer, the Court deem it fit and proper to direct the respondents to consider payment of back wages at the rate of 50%.

With the aforesaid modification in the order dated 27.1.2015 of the appellate authority, the writ petition is disposed of with a direction to the respondents to work out payment of salary for the period 2012 to January, 2015 on the basis of 50% of the salary which shall be paid to the petitioner within a maximum period of four months from the date of receipt/production of a copy of this order.

With the aforesaid the writ petition stands disposed of.

(Anil Kumar Upadhyay, J)

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