

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12322 of 2016

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Nasim Bano, W/o Late Adil Ali Khan, resident of village -Akbarpur, P.O.
Akbarpur, P.S.- Akbarpur, District - Rohtas

.... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Human Resources Development Department,
Government of Bihar, Patna
3. The District Magistrate, Rohtas
4. The District Education officer, Rohtas
5. The District Programme officer (Establishment), Rohtas
6. Block Education Extension Officer, Rohtas

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Subodh Kumar Jha, Advocate

For the Respondent/s : Mr. D. K. Verma, AC to SC11

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

Date: 13-02-2018

Heard learned counsel for the petitioner and State.

2. The grievance of the petitioner in the present writ application is non-payment of salary for the period 11.01.2007 to November, 2013.

3. Mr. Subodh Kumar Jha, learned counsel appearing on behalf of the petitioner submits that the instant writ application is a peculiar case where before the date of appointment, the respondents have cancelled the employment of the petitioner.

4. Mr. Jha, learned counsel for the petitioner submitted that aggrieved by the order creating impediment in the working of the petitioner as Panchayat Teacher the petitioner filed



C.W.J.C. No. 10412 of 2007 and the writ application was disposed of vide order dated 04.08.2009 and the petitioner was relegated to the forum of the appellate authority under the Rule. The petitioner thereafter filed appeal before the Appellate Authority, Rohtas, Sasaram being Case No. 626 of 2009. The Appellate Authority after hearing the parties and after enquiry into the matter held out that the cancellation of the appointment of the petitioner is anterior to the date of appointment, which is *per se* illegal and as such directed the competent authority to accept the joining of the petitioner forthwith. A review petition was filed for review of order of the Appellate Authority dated 25.05.2010 and the same was dismissed by the Appellate Authority vide order dated 13.07.2010. The writ petitioner thereafter approached the Writ Court in C.W.J.C. No. 3315 of 2012 and vide order dated 22.02.2012 a Co-ordinate Bench of this Court disposed of the writ application with direction to all concerned including the Mukhiya and Panchayat Secretary to comply the order of the Appellate Authority dated 25.05.2010. Thereafter the petitioner filed M.J.C. No. 2938 of 2012 for initiating contempt proceeding against the erring officer, who created hurdle in the implementation of the order of the Writ Court and only during the pendency of the contempt proceeding the respondents accepted the joining of the petitioner, thereafter the Court disposed of the contempt proceeding



vide order dated 18.12.2013.

5. Mr. Jha submits that after the order dated 18.12.2013 the respondents have regularly paid salary to the petitioner, but the petitioner has not been paid salary prior to 18.12.2013.

6. Learned counsel for the respondents submits that the petitioner cannot claim salary anterior to the date of joining on 18.12.2013, as her appointment itself was under cloud. Having regard to the peculiar facts and circumstances of the case, counsel appearing on behalf of the State submits that when the petitioner approached the Appellate Authority and while deciding the appeal the Appellate Authority has not whispered about the payment of arrears of salary as evident from Annexure-7 to the writ application. He further submits that neither the Appellate Authority nor the High Court has issued any direction for payment of back wages and as such no relief can be granted to the petitioner in the present proceeding.

7. After hearing the parties and on perusal of the order of the Appellate Authority (Annexure-7) and the order passed by the Writ Court it is apparent that the Appellate Authority after hearing the parties held out that the appointment of the petitioner was made pursuant to the proceeding dated 20.12.2006 and as such the cancellation of the employment of the petitioner in the proceeding



dated 12.03.2006 is beyond imagination and as such it is void, *ab initio* and on that basis the Appellate Authority directed the respondents to accept the joining of the petitioner within a period of 15 days. The order of the Appellate Authority was subject matter of review filed by the respondent authorities and the Appellate Authority rejected the review. Thereafter the petitioner approached this Court for a direction to the respondents to accept the joining. The Writ Court considering the peculiar facts and circumstances directed to all concerned including the Mukhiya and Panchayat Secretary to accept the joining of the petitioner forthwith and only during the pendency of the contempt proceeding the respondents have accepted the joining of the petitioner on 18.12.2013.

8. The Court find substance in the contention of the learned counsel for the petitioner that for no fault of the petitioner, the respondents cannot deny salary for the period petitioner was illegally and arbitrarily kept out of employment. Once the decision as to cancellation of the employment of the petitioner was held out to be void, the natural consequence of such decision is reinstatement with back wages. However, on going through the order as contained in Annexure-12 where the petitioner has made specific averment before the Court that the petitioner has been allowed to join only after about 10 months but she is not being paid her salary so far. There is no



whisper in the order dated 18.12.2013 as to the admissibility of the salary, it was left by the instigation by opposite party no.7 i.e. the Mukhiya of the Gram Panchayat Raj, Akbarpur, District Rohtas, who was directed to examine the admissible salary of the petitioner and a direction was issued for payment of the same forthwith.

9. To that extent, counsel appearing on behalf of the State is justified that this Court has not adjudicated the entitlement of the salary either in the writ proceeding or in the contempt proceeding. The Court directed the Mukhiya of the Gram Panchayat to take final decision as to the entitlement of the petitioner, however, there is no decision by the Mukhiya one way or the other as to the entitlement of the salary of the petitioner and as such the respondents cannot take the plea that the Court has not passed any order determining the entitlement of payment of salary, therefore, the petitioner is not entitled to payment of salary is devoid of merit.

10. After considering the rival submissions and on going through the record, the Court finds that the petitioner cannot be made to suffer for the lapse of the respondents in restraining the petitioner arbitrarily, illegally from functioning as Panchayat Teacher. At the same time the Court has to strike a balance between competing interest of payment of salary without work in the peculiar facts of this case and the right of petitioner of receiving salary for the period the



petitioner was illegally deprived of working as Panchayat Teacher.

11. In the peculiar facts and circumstances of the case, the Court may deem fit and proper to direct the respondents to pay 50% of the salary for the period the petitioner was kept out of job illegally and arbitrarily. However, the respondents are required to count the period of service with effect from the initial date of joining i.e. 11.01.2007 for seniority and other purposes.

12. With the aforesaid, the writ application stands disposed of.

(Anil Kumar Upadhyay, J)

Uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	15.02.2018
Transmission Date	NA

