

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8595 of 2016

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Awadh Kishore Rai, Son of late Jhotil Rai, Resident of Village- Loharpatti, P S
Bettiah Mofassil District West Champaran.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Director, Primary Education, Govt. of Bihar, Patna
3. The Regional Deputy Director of Education, Tirhut, Muzaffarpur
4. The District Magistrate, West Champaran.
5. The District Education Officer, West Champaran , Bettiah.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Prabhu Nath Pathak, Advocate

For the Respondent/s : Mr. Raghwanand, GA-11

Mr. Sanjay Kumar Tiwari, AC to GA-11

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

Date: 16-04-2018

Heard counsel for the petitioner and counsel appearing on
behalf of the respondents.

2. The grievance of the petitioner in the instant writ
application is non-payment of salary for the period 01.01.2006 to
26.06.2011.

3. This case has a chequered history. The petitioner was
appointed on compassionate ground vide latter No. 1498 dated
22.10.1997.

4. The petitioner filed C.W.J.C. No. 1871 of 2000 against



the action of the respondents stopping salary. The said writ application was disposed of on 27.04.2005 with a direction to respondents including the Regional Deputy Director of Education, Tirhut Division, Muzaffarpur to make payment of salary within two months. Petitioner was paid salary for the period of 1996 to 12.12.2001, but after 13.12.2001 he was not paid salary, notwithstanding the specific direction of this Court in C.W.J.C. No. 1871 of 2000 dated 27.04.2005. On 27.12.2005, the Regional Deputy Director of Education, Tirhut Division, Muzaffarpur issued order as contained in Memo No. 1142, whereby the petitioner was terminated. The order of termination dated 27.12.2005 was challenged by the petitioner in C.W.J.C No. 1582 of 2006, which was disposed of 13.05.2011. The relevant part of order dated 13.05.2011 reads as follows:-

“In view of the aforesaid, in my view, it would be appropriate that the impugned order of the Regional Deputy Director of Education, Tirhut Division, Muzaffarpur (Annexure-1) is set aside with a direction to Regional Deputy Director of Education, Tirhut Division, Muzaffarpur to verify the facts aforesaid afresh and after hearing the petitioner pass fresh order on the materials available on records. The order would be passed within three months of production of



a copy of this order before the R.D.D.E. Let it be recorded that the matter being sent for reconsideration does not entitle the petitioner to rejoin but if the R.D.D.E. finds in favour of the petitioner then not only petitioner permitted to rejoin but he would be deemed to be continues service without break.”

5. After the decision in C.W.J.C. No. 1582 in 2006, the petitioner was reinstated with continuity in service. While reinstating the petitioner and granting continuity in service salary of the petitioner for the period of 01.01.2006 to 26.06.2011 was not granted.

6. In the present writ application the petitioner has prayed for a direction to the respondents to make payment of salary for period of 01.01.2006 to 26.06.2011.

7. Learned counsel for the petitioner contends that reinstatement of the petitioner and continuity in service pursuant to the direction of the writ Court in C.W.J.C. No. 1582 of 2006, necessarily mean that the petitioner shall be entitled to back wages, once it is found that the termination of the petitioner was invalid and the respondents pursuant to direction of the writ Court in C.W.J.C. No. 1582 of 2006 held out that the termination was bad and petitioner was reinstated with continuity in service. As a matter of corollary petitioner is entitled to payment of salary for the period, he was



illegally out of service.

8. On behalf of the respondents stand has been taken that the petitioner's claim is not sustainable, as petitioner has not worked for the period, he was granted benefit of reinstatement and continuity in service.

9. Considering the totality of the fact situation, when the respondents have admitted the appointment of the petitioner is valid and reinstated the petitioner with continuity in service, benefit of salary for the period petitioner was kept out of employment due to fault of the respondents, as the termination itself was held to be bad. The natural corollary of reinstatement is payment of back wages.

10. Accordingly, the writ application is allowed and the respondents are hereby directed to ensure payment of the salary for the period petitioner was illegally kept out of employment and he was reinstated pursuant to the direction of the Writ Court by the RDDE. When the RDDE passed fresh order admitting the validity of the appointment of the petitioner and granted the benefit of unpaid salary, which means 01.01.2006 to 26.06.2011.

11. The entire exercise of calculation with regard to back wages shall be worked out within a period of 4 months and shall be paid within a further period of one month from the date of said



calculation.

12. With the aforesaid, the writ application is allowed and disposed of.

(Anil Kumar Upadhyay, J)

Uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.04.2018
Transmission Date	

