

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12246 of 2015

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Ram Krishna Dubey, S/o Late Jai Nandan Dubey, R/o Village Thikahan, P.S.
Vaishali, District Vaishali.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Director, Secondary Education, Bihar, Patna.
3. The District Education Officer, Vaishali, Hajipur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ajay Kumar Singh, Advocate Mr. Santosh Kumar, Advocate
For the Respondent/s	:	Mr. Niraj Kumar, AC to GA-10

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT

Date : 29-11-2018

Heard learned counsel for the petitioner and the State.

2. The petitioner is aggrieved by the action of the respondents in denying 50% salary for the period the petitioner was kept out of employment arbitrarily and illegally by the respondents.

3. Referring to the circular of the Circular of the General Administrative Department stand has been taken by the respondents that the petitioner would be entitled to only 50% of the salary for the period petitioner was kept out of employment.

4. It is now well settled that one cannot take advantage of its own wrong, if the respondents were responsible for illegal and arbitrary termination of the petitioner, the petitioner cannot be denied full salary, unless it is established that during the aforesaid



period the petitioner was gainfully employed. From the pleadings, it appears that there is no *lis* that the petitioner was not gainfully employed during the period he was kept out of employment and once the petitioner's termination was held to be wrong and he was reinstated as per the order of L.P.A. Court, the petitioner would be entitled to full salary on reinstatement.

5. Learned counsel appearing on behalf of the respondents opposes the prayer of the petitioner on the ground that the decision of the State was approved by the writ Court, although he admits that the order of the writ Court was set aside in appeal and affirmed in S.L.P. He submits that notwithstanding the order of the writ Court was set aside by the L.P.A. Court and the respondents are justified their action of withholding of 50% salary saying that the decision was approved by the writ Court.

6. The Court cannot approve such absurd proposition in view of the fact that the order of the writ Court was set aside and the order merged in the order of the L.P.A. Court.

7. Under the aforesaid circumstances, the Court cannot approve the order dated 24.01.2014 whereby the petitioner was only paid 50% salary for the period the petitioner was kept out of employment. Accordingly, Annexure-3 is quashed and the writ application is allowed to the extent that instead of 50% of salary,



the petitioner will be entitled to 100% salary for the period the petitioner was restrained from working due to illegal and arbitrary decision of the respondents and thereafter the petitioner was reinstated in service.

8. Remaining 50% of salary must be paid to the petitioner by the respondents within a maximum period of four months from the date of receipt/production of a copy of this order.

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

(Anil Kumar Upadhyay, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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