

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14700 of 2011

=====

Sharwan Kumar, S/o Late Suresh Sharma, R/O Vill.- Barara, P.S.- Nursarai,
Distt.- Nalanda, At Present Clerk Posted in the office of the Inspectoress Of
School -Cum- Deputy Directoress Of Bihar Dakbungalow Road, Patna

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Department Of Human Resource Development,
Government Of Bihar, Vikash Bhawan, Patna
3. The Director, Secondary Education, Human Resource Development
Department, Government Of Bihar, Vikash Bhawan, Patna
4. The School Inspectoress-Cum-Deputy Directoress, Education Government
Of Bihar, Dakbungalow Road, Patna
5. The Director, State Education, Research and Training Council, Bihar,
Mahendru, Patna
6. The Director, Primary Education, Government Of Bihar, Vikash Bhawan,
Patna
7. The Deputy Director, Primary Education Government Of Bihar, Vikash
Bhawan, Patna

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Bishnu Kant Dubey, Advocate Mr. Sanjeev Kumar, Advocate
For the Respondent/s	:	Mr. Kameshwar Kumar, GP-17 Mr. Sanjay Kumar, AC to GP17

=====

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 25-04-2019

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

In this case, the petitioner has claimed the relief for
arrears of salary for the period from 27.01.1999 to 04.03.2005 and
for the period from 01.03.2008 to 06.05.2010 and also he is
challenging the order contained in Memo No. 540 dated
11.03.2016 whereby and whereunder the claim made by the



petitioner for salary of the aforesaid period has been rejected on the ground that he has not worked during that period, so he is not entitled for the same.

This case has chequered history, not only once, but several times, petitioner approached this Court for different reliefs and time to time, he was also granted the relief. The present case is only with respect to the claim of salary during the period as mentioned above.

The story of this case starts that certain vacancies to the post of clerk was available and the petitioner filed a representation for his appointment for that post, not only addressed the application to the officer but also to the State Government, accordingly, the file was processed and the Government issued an order, appointing the petitioner along with Shri Benu Mishra, Science Supervisor in Government Women Training College, Ranchi, Rabindra Singh and several others in Government Teachers Training College, Turki, Muzaffarpur, but vide letter bearing no. 186 dated 20.05.1982, the Regional Deputy Director, Education informed the Director, Secondary Education that no vacancy was available in his office. Again file of the petitioner was processed in the office of Director, Research and Training, who was competent to appoint the person on Class – III and Class-IV



posts and it appears that the office order contained in Memo No. 2142 dated 28.10.1981 issued by the Education Commissioner, Bihar whereby work has been distributed. The Director, Secondary Education-cum-Special Secretary, Department of Education, Bihar sent a letter to the Director, Research and Training for appointment of the petitioner in Government Women Teachers Training College, Bariyatu, Ranchi. Accordingly, the matter was examined at the level of the State Government and the Director, Research and Training issued an office order contained in Memo No. 96 dated 20.05.1982 appointing the petitioner to the post of clerk and posted him in the Government Women Teachers Training College, Bariyatu, Ranchi. Accordingly, the petitioner joined his post on 29.05.1982, started working sincerely and honestly to the satisfaction of all the persons including the public who were associated with the work of the petitioner.

While the petitioner was discharging his duty in the Women Teachers Training College, Bariyatu, Ranchi, the Joint Secretary to the Government of Bihar vide letter contained in Memo No. 94 dated 22.01.1985, transferred the petitioner from Ranchi to the office of Regional Deputy Director of Education, Darbhanga Division, Darbhanga. The petitioner, was not satisfied in the manner he was dealt with, filed a writ petition bearing



C.W.J.C. No. 631 of 1985 challenging the order of transfer. The said challenge was made on the ground that pursuant to the notification of the Education Department bearing no. 3435 dated 13.08.1974, the cadre has been bifurcated as the petitioner is member of another cadre he cannot be transferred from one cadre to another cadre without his consent, vide order dated 21.03.1985, the Division Bench of this Court, after examining all the facts relating to the case of the petitioner, directed the State Government to examine the grievance of the petitioner as to whether the petitioner could have been transferred from Chhotanagpur division to Darbhanga division as no such policy has been taken into consideration for transfer from Chhotanagpur to Darbhanga division, the decision was to be taken within two months. Thereafter, the matter relates to the appointment of the petitioner as also his transfer from Chhotanagpur division to Darbhanga division was examined at the State level and after consideration the order of transfer was cancelled and the Regional Deputy Director of Education, South Chhotanagpur division, Ranchi was directed to post the petitioner in any office under his division and in pursuance thereof, the office order contained in Memo No. 916 dated 28.12.1985 was issued. On account of the transfer, the petitioner was not paid salary, though the Regional Deputy



Director of Education, South Chhotanagpur division, Ranchi vide letter contained in Memo No. 2331-32 dated 13.06.1985 directed the Principal, Government Women Teachers Training College, Bariyatu, Ranchi for making payment of salary to the petitioner and to send the compliance report. The salary of the petitioner was illegally stopped, though he was working, whereupon he filed a writ application before the Ranchi Bench of Patna High Court vide C.W.J.C. No. 314 of 1985 and after discussion, the Court passed the order for payment of salary. Again on the order of the State Government, the petitioner was posted in the office of Deputy Inspector, Gumla, but as there was no vacancies available so his joining was not accepted. In view of the order of this Court, an order was passed for payment of salary, but the Principal of the Training College informed that since the institution was under the control of the Director, Research and Training, Patna, so she would carry out the order of the Director, Research and Training and, in that circumstances, a request was made by the Regional Deputy Director of Education to the Director, Secondary Education-cum-Additional Secretary vide order no. 5713 dated 28.12.1989 for making arrangement for rehabilitation of the petitioner. In view of the notification contained in Memo No. 454 dated 03.08.1987, distribution of work made earlier was changed, later on the



Teachers Training College was again brought under the control of Director, Secondary Education and, to that effect, a notification was issued under the signature of Commissioner-cum-Secretary, Department of Education, Bihar, Patna and whereafter the Director, Secondary Education-Additional Secretary vide its order contained in Memo No. 46 dated 05.02.1990 posted the petitioner on the post of clerk in Government Women Teachers Training College, Ranchi, whereafter the petitioner was brought from Ranchi to Patna for discharging the duty in Legal Section of the Education Department. In the meantime, the Establishment Committee was constituted at the level of the Directorate bearing no. 201 dated 15.06.1990 for the purpose of transfer and posting of clerk / peon from one division to another division and, in pursuance thereof Establishment Committee held its meeting on 18.06.1990 under the Chairmanship of the Additional Commissioner-cum- Special Secretary, Department of Human Resources Development, transferred the petitioner and others from one place to another place and, accordingly, the petitioner was transferred to State Education Research and Training Institute and later on the Director, Secondary Education issued a letter contained in Memo No. 209 dated 25.06.1990 by which the petitioner and others were transferred from one place to another



place and, accordingly, the petitioner was posted in the office of State Education Research and Training Council, Bihar, Patna. But the transfer order was not materialized on account of illegal and arbitrary action of the Director, Research and Training College, who was in connivance with the Principal of the Training College, Ranchi, who was instrumental to the earlier transfer and posting of the petitioner, the petitioner was posted on the post of clerk in the office of Inspector of School, Bihar vide Memo No. 401 dated 30.10.1990. The petitioner was not paid the salary for the period from 01.08.1984 to 24.01.1985, the issue for non-payment of salary was taken into consideration by the Legal Cell of the State Government and the Special Officer-cum-Joint Secretary, after examining all the facts, submitted his report to the Commissioner, Department of Education stating therein that appointment of the petitioner was made validly and he had worked during that period and, as such, he was not at fault, but arbitrarily, the payment was not made despite filing of representation, which compelled the petitioner to approach this Court by filing C.W.J.C. No. 662 of 1992 and this Court vide order dated 06.07.1992 directed the Government to pay the salary to the petitioner and to file a counter affidavit and, in compliance of the said order, vide Memo No. 291 dated 09.07.1993, the order for payment of salary was passed by



the Director, Secondary Education. The aforesaid writ application bearing C.W.J.C. No. 662 of 1992 was heard again on 30.09.1992 and, after examining all the aspects of the matter, the Court held that as the petitioner was not at fault why he had to suffer for these years together and, accordingly, the Court directed for payment of salary including 10 percent interest. In the said writ application, apart from the payment of salary, relief was also sought for grant of first time bound promotion and, after considering the claim of the petitioner, his service book was also called for by the Director, Secondary Education which was again after examining entire aspect of the matter returned back vide letter no. 305 dated 16.07.1992, whereafter, the Deputy Director, Secondary Education vide letter no. 374 dated 28.07.1992 directed the Inspector of School, Bihar, Patna to send the proposal for granting the first time bound promotion to the petitioner after completion of all formalities, whereafter the Inspector of School, Bihar, Patna vide letter no. 738 dated 09.09.1992 sent the service book of the petitioner for the purpose of granting him first time bound promotion along with up to date entry made in the service book and it has further been said that there was no allegation of any pendency of departmental proceeding or was any contemplation of



the same, accordingly, recommendation was made for the time bound promotion to the petitioner.

The petitioner was deprived of the salary, but ultimately on the intervention of this Court, he was paid salary along with interest. When the petitioner failed to get the order of confirmation, he filed a writ application bearing CWJC No. 1960 of 1994, wherein he sought the relief of his confirmation in service. The Court has recorded that though the case has been filed in the year 1994, but no counter affidavit has been filed on behalf of the State to disclose under what circumstance, the petitioner was not confirmed in service, however, learned counsel for the State made an unsuccessful efforts to grant indulgence of adjournment for sometime to file a counter affidavit, but the prayer made by the State counsel was rejected. In that backdrop, the Court directed the Director, Secondary Education to examine the grievance of the petitioner and pass an appropriate order in accordance with law within a period of four weeks from the date of receipt/production of a copy of the order. It has further been added that failure to comply the order on the part of the Director within the time fixed shall be viewed as disobedience and necessary steps would be taken. The petitioner filed a representation attaching the order dated 03.01.1997 passed in



CWJC No. 1960 of 1994 making a prayer for grant the relief of confirmation as well as payment of salary which has not been paid as by way of difference of salary of first time bound promotion, when the order passed by this Court was not implemented, then the respondents were apprehensive that they may land in the proceeding of contempt, the representation of the petitioner was rejected vide Memo No. 339 dated 04.03.1997 passed by the Director, Secondary Education. Later on, the petitioner was served an office order as contained in Memo No. 95 dated 27.05.1999 (Annexure-4) whereby and whereunder appointment of the petitioner was found doubtful and fraudulent, ultimately the appointment of the petitioner was cancelled. The order of termination of the service was passed after consideration of the explanation preceded by issuance of letter vide letter no. 4549 dated 26.12.1997. Against the order of termination, the petitioner filed a writ application bearing CWJC No. 1185 of 1999 in which the point was raised that the manner and method adopted for cancelling the appointment letter of the petitioner does not satisfy the test of fairness as well as following the principle of natural justice, as it is required that before declaring an appointment letter to be a fake, it was incumbent upon the Disciplinary Authority to follow the due procedure before finally setting at naught a letter of



appointment, which has not been done and, accordingly, the order vide Memo No. 95 dated 27.05.1999 (Annexure 4) was set aside, but liberty was given to proceed in the matter afresh in accordance with law after giving sufficient opportunity of hearing to the petitioner. Thereafter, the petitioner submitted his joining along with the order passed in the aforesaid writ application in the office of the State Education Research and Training Council and on consideration of the order passed by this Court, the Director, Secondary Education Bihar vide Memo No. 164 dated 04.05.2005 read with letter no. 144 dated 14.03.2005 allowed to give his joining in the State Education Research and Training Council, Patna (Annexure 6) and, accordingly, the petitioner had given his joining in the office of Director, State Education Research and Training Council, Patna, which was accepted and communicated to the Director, Secondary Education, Bihar, Patna vide letter no. 248 dated 05.04.2005 and asked the guidelines about the payment to be made to the present petitioner and, later on, the petitioner was sent on deputation to the office of Director Administration-cum- Joint Secretary in Section No. 13 of Directorate, which is apparently clear from the Memo No. 2696 dated 21.11.2007 (Annexure 9). Again the petitioner was sent on deputation to the Legal Cell of the Primary Education of Directorate vide Memo



No. 22 dated 08.01.2008 (Annexure 10) and, accordingly, he started discharging the duty in the Legal Cell, but again vide office order bearing no. 360 dated 20.02.2008 issued under the signature of Deputy Secretary, the petitioner was authorized to work in the Assembly Session starting from 22.02.2008 and again by another office order bearing no. 901 dated 24.06.2009, which was issued under the signature of the Deputy Secretary, he was authorized to work in the Assembly for the session starting from 26.06.2009, accordingly, he started working there and in pursuance of the order and direction in CWJC No. 1185 of 1999, wherein the liberty was given to take decision with regard to cancellation of appointment but after hearing both sides, the Director, Secondary Education, Bihar, Patna vide Memo No. 163 dated 04.03.2008 again revisited the issue with respect to the cancellation of appointment and arrived to a finding that though the appointment of petitioner cannot be declared to be forged and fabricated, but certainly his entry in service is not in accordance with law as before his recruitment the essential element for entry in service has not been followed as he has not been selected and recruited against the post advertised or any persons were allowed to participate in the selection process, as the selection of the petitioner is completely back door and in that event his service cannot be confirmed



vide order contained in Memo No.163 dated 4.03.2008 (Annexure-11) and accordingly passed the order of termination of services of the petitioner. As per the petitioner, he has stated in paragraph 44 of the petition that the order of termination was never communicated to the petitioner nor the same was communicated to the controlling authority of the petitioner where the petitioner was working on deputation in the office of Deputy Director, Primary Legal Cell, but after coming to know about the order contained in Memo No. 163 dated 04.03.2008 (Annexure 11), he filed a representation before the Principal Secretary of the Department, Director, Secondary Education itself bringing to his knowledge about the entire factual matrix including past action taken against the petitioner inasmuch as similarly situated persons were working in the Department, but when they have not given any heed, then he wrote letters to different Authorities including before the Hon'ble Minister of the Department and, thereafter, the matter was referred to the office of Advocate General, on the advice of the Advocate General, vide Memo No. 2304 dated 04.05.2010 (Annexure-12), the letter of termination was withdrawn and the petitioner was reinstated, accordingly direction was given to make payment, as per the claim of the petitioner that he continued to discharge the duty for the period from 04.03.2003 to 04.05.2010 in



the office of Legal Cell of the Director, Secondary Education, as the order was not communicated either to the petitioner or to the Director, Secondary Education, so he was never forbidden to discharge his duty as was assigned to him. In pursuance of the order dated 04.05.2010 (Annexure 12), the petitioner gave his joining on 06.05.2010, but the same was not accepted by the Director on the ground of no vacancy, that would result to non-payment and the recommendation was made for his adjustment to another place, posting accordingly. Taking into consideration letter no. 878 dated 07.05.2010, the order of posting was revised, the petitioner was posted in the office of Inspector of School vide letter no. 457 dated 06.07.2010 (Annexure 14). In pursuance of the said letter dated 06.07.2010 (Annexure 14), the petitioner gave his joining in the office of Inspector of the school, which was not accepted rather vide memo no. 127 dated 12.07.2010 (Annexure 16), the joining given by the petitioner was rejected and, thereafter, vide letter dated 17.08.2010 issued by the Director, Secondary Education, a show cause was issued to the Inspector of the School as to why the joining of the petitioner was not accepted and if the same would not be accepted, the matter would be reported at the Government level and, accordingly, the explanation was submitted by the Inspector of School, which was considered



and was rejected vide Memo No. 4823 dated 07.12.2010 (Annexure 18) and reiterated the joining of the petitioner be accepted and whereafter the petitioner has again gone to the office of the Inspectress of School-cum- Deputy Director, Education and gave his joining on 07.12.2010 (Annexure 19). Again the petitioner made a representation to the Inspectress of School-cum-Deputy Director, Education requesting her that the joining of the petitioner should be accepted and he should be allowed to mark the attendance, but the joining of the petitioner was not accepted, which was communicated vide Memo No. 209 dated 07.12.2010 making a request that petitioner should be posted at another place, which was rejected and again direction was given to accept the joining of the petitioner and ultimately, the joining of the petitioner was accepted on 14.12.2010 in the office of Inspectress of School when Smt. Prabhauti Kumari was replaced and one Kiran Kumari was made in-charge Inspectress of School, thereafter, the petitioner started discharging the duty.

Whereafter the petitioner filed a representation to the Hon'ble Minister for grant of salary for the period from 27.01.1999 to 04.03.2005 and difference of salary for the period from 05.03.2005 to 28.02.2008, as he has been granted the basic salary for period from 01.03.2008 to 06.05.2010 and salary for the



period from 10.05.2010 to 07.12.2010, but the petitioner has confined his prayer for the salary for the period from 27.01.1999 to 04.03.2005 and from 01.03.2008 to 06.05.2010 the period the petitioner remained under termination, he submits that as the termination of the petitioner was set aside, hence, he is entitled to payment of salary for back period for the period from 01.03.2008 to 06.05.2010 as has been claimed by the petitioner that though the order of termination was passed, but it was never communicated either to him or to the controlling authority, so he continued to discharge the duty, which was assigned to petitioner.

Learned counsel for the petitioner submits that he cannot be deprived of the salary for the aforesaid period as claimed by the petitioner as the rejection letter for the aforesaid period vide Memo No. 540 dated 11.03.2016 (Annexure 27) is wrong in the sense that the petitioner could not discharge the duty as he was illegally terminated. The principle of no work no pay does not apply when the question of termination comes into consideration, that principle only applies when the Government servant or the Government employee fails to report to the duty and remain absent and, in that circumstance only, the principle of no work no pay does not apply as he has submitted that he was always ready to discharge the duty, it is the State Government,



who prevented to join and discharge the duty, though he was always intending, whereas, learned counsel for the State submits that the petitioner was remained under termination for the period he has not discharged any duty and has not made any contribution to the work of the State, hence, the petitioner cannot be allowed the salary for the period it has been claimed.

Having considered the rival contention of the parties, the basic principle of no work no pay does apply in a situation when the Government servant or any employee does not report to his duty or either they go on strike or pen down strike or in any manner when there is no bar or prevention to discharge the duty but remained absent, in such circumstances, the principle of no work no pay does not apply, but in the present case when the Government servant was terminated from the service and reinstated later on having found the termination was illegal, in such circumstances, the principle that has been stated by the counsel for the State does not apply, but looking to the entire facts and circumstances that during that period he must be earning somewhere and his contribution to the work of the State is nil and it is also important to point, if the person would remain under suspension, he would be entitled for subsistence allowance at the rate of 50 percent of the salary, but in the present case, the



petitioner has remained under termination, so he has been paid nothing.

So, taking a holistic view and entirety, this Court directs the payment of salary for the period as aforesaid at the rate of 75 percent that will meet the ends of justice.

Accordingly, this petition is allowed to the aforesaid extent.

(Shivaji Pandey, J)

V.K.Pandey/
S. Katyayan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	02.05.2019
Transmission Date	NA

