

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20176 of 2019

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Kamlesh Roy S/o Shakaldeep Roy resident of Mohalla Minapur, P.S. Nagar
Hajipur, District- Vaishali.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Education Department, Govt. of Bihar, Patna.
2. The Director Primary Education Department, Govt. of Bihar, Patna.
3. The District Programme Officer (Establishment), Vaishali.
4. The District Education Officer, Vaishali.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shashi Bhushan Kumar, Advocate.
For the Respondent/s : Mr. Rajesh Kumar Sinha, AC to G.P.-23

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

2 15-10-2019 Heard learned counsel for the petitioner and counsel
for the State.

The issue involved in the writ petition is non-payment of arrears of salary for the period petitioner is illegally kept out from service. Petitioner has earlier approached this Court in C.W.J.C. No. 11867 of 2014, vide order dated 29.08.2018 the court passed the following orders;

“In view of the dispute raised that
the petitioner was never appointed under the
disable category, the matter is remitted back
to the authorities to examine whether the
petitioner was appointed under the disable



category and if it is found that he was not appointed under the disable category but on the basis of merits, the respondents may pass appropriate order considering merit position of the petitioner. In case he was appointed under the disable category and he does not fulfill the required criteria, the order contained in Annexure-1 need not be disturbed.

Since, the matter has been remitted back to the authority concerned, the order as contained in Annexure-1 shall be kept in abeyance till final decision in the matter. The consequential benefits will abide by the final outcome of the decision afresh by the authority concerned. The decision in this regard must be taken by the respondents within a 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.”

The respondents have rectified their mistake and



reinstated the petitioner. In the process the petitioner was kept out the payment for the period from 01.11.2013 to 21.02.2019. Now the petitioner has filed present writ application for direction to the respondents for payment of arrears of salary for the aforesaid period.

Counsel appearing on behalf of the respondents submits that petitioner has not worked for the aforesaid period and therefore, no work no pay principle is applicable.

It is true that petitioner has not worked for the aforesaid period, but not on his own volition rather he was restrained from discharging the duty by the respondents on wrong premise of fact. After order of this court, the respondents have rectified their mistake and as such the respondents have restrained the petitioner from discharging the duty from 01.11.2013 to 21.02.2019. Elaborating the submission and the aforesaid circumstance there is no difficulty in directing the respondents to count the continuity of the service for the aforesaid period during which petitioner was illegally kept out from his services i.e. 01.11.2013 to 21.02.2019.

On the issue of payment of arrears of salary, having regard to the computing interest of the petitioner as well as State the Court directs that 50 per cent amount shall be paid to the



petitioner for the aforesaid period within a period of three months from the date of receipt/production of a copy of this order. Failing which the arrears will carry interest at the rate of 9 per cent per annum.

With the aforesaid, the writ petition stands disposed of

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(Anil Kumar Upadhyay, J)

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