

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9591 of 2016

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Rambha Devi Wife of late Birendra Kumar Rao Resident of Village-
Jagannathpur, PO Jagannathpur, Police Station-Gopalpur District West
Champaran Bettiah.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Education Department,
Government of Bihar, Patna
2. The Director, Primary Education, Bihar, Patna
3. The Divisional Commissioner, Tirhut Range, Muzaffarpur
4. The District Magistrate , West Champaran at Bettiah.
5. The Regional Deputy Director of Education, Tirhut Division, Muzaffarpur
6. The District Education Officer, West Champaran at Bettiah.
7. The District Programme Officer (Establishment) West Champaran at
Bettiah.
8. The District Treasury Officer, West Champaran at Bettiah
9. The Block Education Officer, Sikta, District- West Champaran
10. The Headmaster, Govt. Middle School Sargitia, Block Sikta, District West
Champaran (Bettiah).
11. The Drawing and Disbursing Officer of Govt. of Middle School Sargatia
Block Sikta District West Champaran (Bettiah).

... .. Respondents

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Appearance :

For the Petitioner : Mr. Umesh Kumar Mishra, Advocate
For the Respondents : Mr. Vinay Kumar Mishra, AC to AAG 15

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

7 25-02-2021 Heard Mr. Umesh Kumar Mishra, learned counsel

 appearing on behalf of the petitioner and Mr. Vinay Kumar

 Mishra, learned counsel appearing on behalf of the State on the

 interlocutory application as well as the writ application.

For the reasons mentioned in I.A. No. 01 of 2020, the

interlocutory application is allowed and the heirs and legal



representatives of Late Birendra Kumar Rao mentioned in paragraph 1 of the interlocutory application be treated as party respondents in the present case.

On various occasion, this Court issued direction to the respondents on the issue of non-payment of salary of husband of the petitioner for the period October, 1996 to 16th September, 1998.

Despite specific direction of this Court vide order dated 05.10.2020, additional counter affidavit has not been filed in this regard.

Earlier husband of the petitioner filed CWJC No. 5410 of 2013 which was disposed of vide order dated 19.06.2014 and this petitioner represented the R.D.D.E, Muzaffarpur pursuant to the order dated 19.06.2014 for payment of salary admissible to the husband of the petitioner for the period October, 1996 to 16th September, 1998. The R.D.D.E, Muzaffarpur vide memo no. 663 dated 07.04.2016 (Annexure-17) rejected the claim stating therein that the District Education Officer, West Champaran vide memo no. 541 dated 28.06.2014 has rejected the claim of the husband of the petitioner for payment of salary and therefore, R.D.D.E rejected his claim.

The Court has indicated that husband of the petitioner



has worked for the relevant period and the State cannot be allowed to say that there is illegality in appointment of the husband of the petitioner as teacher in place of Class IV and therefore, payment shall not be admissible for the period October, 1996 to 16th September, 1998 but no affidavit has been filed on behalf of the respondents in response to the order dated 05.10.2020.

In the aforesaid circumstances, the Court is constrained to allow the writ petition and quash the order of the Regional Deputy Director of Education, Muzaffarpur as contained in Annexure-17 and the order of the District Education Officer, West Champaran vide memo no. 541 dated 28.06.2014 whereby the claim of the petitioner's husband has been rejected.

Taking work from any person and not paying salary is in violation of the mandate provided under Articles 21 and 23 of the Constitution of India.

In the instant case, since there is absolutely no finding that the husband of the petitioner committed any fraud and if there was any irregularity or illegality in the matter of appointment of the husband of the petitioner, he cannot be denied salary for the period he has worked as Assistant Teacher.



Accordingly, respondents are directed to calculate the salary of Assistant Teacher for the period October, 1996 to 16th September, 1998 and ensure payment of claim to the heirs of late Birendra Kumar Rao, if not already paid, within a period of four months from the date of receipt/production of a copy of this order. Payments of due salary are to be distributed amongst the heirs of late Birendra Kumar Rao in equitable manner by the District Education Officer, West Champaran.

The writ application is allowed to the extent as indicated above.

(Anil Kumar Upadhyay, J)

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