

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7068 of 2021

1. Mithilesh Kumar Singh Son of Paras Nath Singh Resident of Village- Hasanpur, Nayatola, P.S.- Sidhwalia, District- Gopalganj, Presently working as Block Teacher, Upgraded Middle School, Balara, Block- Barauli, District- Gopalganj.
2. Rinki Kumari Wife of Punit Kumar Thakur Resident of Village- Hasanpur, Nayatola, P.S.- Sidhwalia, District- Gopalganj, Presently working as Block Teacher, Upgraded Middle School, Balara, Block- Barauli, District- Gopalganj.
3. Kumari Kiran Wife of Pramod Kumar Resident of Village- Hasanpur, Mathiya, P.S.- Sidhwalia, District- Gopalganj, Presently working as Block Teacher, Upgraded Middle School, Hasanpur Mathiya, Block- Barauli, District- Gopalganj.

... .. Petitioner/s

Versus

1. The State of Bihar through the Director, Primary Education, Govt. of Bihar, New Secretariat, Patna.
2. The District Education Officer, Gopalganj.
3. The District Programme Officer (Establishment), Gopalganj.
4. Block Development Officer, Barauli, P.O. and P.S.- Barauli, District- Gopalganj.
5. Block Education Officer, Barauli, P.O. and P.S.- Barauli, District- Gopalganj.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Bipin Bihari Singh, Adv. Mr. Shyama Kant Singh, Adv.
For the State	:	Mr. Prabhakar Jha, G.P.-27

CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL ORDER

5 29-08-2024 Heard learned counsel for the petitioners and learned counsel for the State.

2. By filing the present writ application, the petitioners have prayed for issuance of an appropriate writ/writs, order/orders, direction/directions commanding and directing the



concerned Authority for the payment of wages/salary from 19.02.2007 to 29.09.2010 for intervening period of dismissal in view of the order passed by the District Teacher Employment Appellate Authority, Gopalganj dated 30.10.2009.

3. The fact of the case, in brief, is that initially the petitioners were appointed as Panchayat Shiksha Mitra on 10.05.2005. Thereafter the services of the petitioners were absorbed as Panchayat Teacher on 01.07.2006 and posts of Pachayat Shiksha Mitra were abolished. But all of a sudden, under controversial circumstances, the District Magistrate, Gopalganj vide Memo No. 470C dated 19.02.2017 terminated the service of the petitioners as Panchayat Shiksha Mitra and directed the Block Development Officer, Barauli to take necessary steps for recovery of the honorarium paid to them.

4. Learned counsel for the petitioners contended that being dissatisfied with their termination, the petitioners challenged the order of termination in C.W.J.C. no. 2726 of 2007, which was disposed of vide order dated 08.09.2009 with a liberty to file appropriate application before the concerned Authority. Pursuant to the aforesaid order, the petitioners moved before the District Appellate Authority, Gopalganj. After hearing the parties, the final order was passed on 30.10.2009 with a



direction to the Panchayat Secretary to pay the honorarium/salary to the petitioners for their working period, but the aforesaid order of the District Appellate Authority was not complied by the concerned respondent.

5. Having no alternative, they again moved before this Court and preferred C.W.J.C. No. 11148 of 2010, which has been allowed vide order dated 13.09.2010 by holding that:

“Having considered the matter, in my view, the order of the District Magistrate-cum-Collector, as aforesaid, cannot be sustained. The order of the Tribunal may be right, wrong or in different, it is the final order. The District Magistrate-cum-Collector may be the Magistrate of the District but has no power to superintendence over the Appellate Tribunal. The Tribunal may have wrongly set aside the order of the District Magistrate but so long as the order of the Tribunal continues to operate the District Magistrate or that any authority of the State has no authority to set aside the said order of the Tribunal. In that view of the matter, I am unable to sustain the order of the District Magistrate-cum-Collector, Gopalganj, as contained in Annexure-8 aforesaid, being order dated 20.05.2010,



which is accordingly set aside and the order of the Tribunal is restored. If anyone is aggrieved by the order of the Tribunal he has remedy as against that but surely the District Magistrate-cum-Collector has no jurisdiction to interfere in the matter.”

6. Pursuant to the order of this Court, the petitioners had represented their matter by a detailed and exhaustive representation along with judicial order with request to its compliance. Consequently, the District Superintendent of Education, Gopalganj had issued order vide Memo No. 343 dated 11.02.2011 for acceptance of joining of the petitioners w.e.f. 30.09.2010 and payment accordingly.

7. Learned counsel for the petitioners submits that the petitioners have fought their legal battle, managed to come back in the system and reinstated on the post of Panchayat Teacher.

8. Learned counsel further submits that after due consideration, the order of the concerned respondent was nullified with the order of reinstatement, then the continuity of service with wages are under the normal rules, which cannot be denied without any fault of the petitioners, merely on instance of illegal order of the concerned authority. In such circumstances, the petitioners are entitled for their remuneration.



9. Per contra, learned counsel for respondent no.3 submits that the petitioners are not holder of permanent post or position. They are not government servants. There is a contractual hiring and they are not paid wages or salary, but a fixed honorarium every month for the period of work done by them. It is further submitted that there is a contract for service, therefore, whatever remuneration, which has been fixed, will be available to such a person provided service has been rendered by such person on the basis of contract for service. If for whatever reason, such a person, whose services has been hired by the authorities, does not render service even if it can be the case of being prevented from rendering service for reason fair and foul, he/she cannot expect to be compensated by payment of honorarium for the period of no service as well.

10. Considering the facts abovementioned, it is admitted fact that the petitioners have not worked from 19.02.2007 to 29.09.2010 i.e. the period of dismissal to date of reinstatement. Therefore, the petitioners are not entitled for payment of wages for the period abovementioned on the ground of “*No Work, No Pay*” as well as in light of the judgment dated 05.05.2017 passed by the Division Bench of this Court in L.P.A. no. 1467 of 2014 (Annexure-A of the counter affidavit).



11. In view of the facts aforesaid, the Court is not impressed with the submission of the learned counsel for the petitioners for the payment of wages/salary for intervening period of dismissal i.e. from 19.02.2007 to 29.09.2010.

12. However, the concerned Authority is directed to consider the case of the petitioners for continuation of their services by including the period during which the petitioners have not rendered their service, the period of dismissal to date of reinstatement i.e. from 19.02.2007 to 29.09.2010.

13. With the aforesaid, this writ application stands disposed of.

(Anjani Kumar Sharan, J)

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