

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.203 of 2022

In
Civil Writ Jurisdiction Case No.4251 of 2021

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Amit Kumar S/o Sri Karm Lal Yadav R/o Village and P.O.- Manikpur, P.S.-
Madhepura, District- Madhepura.

... .. Appellant/s

Versus

1. The State of Bihar through Principal Secretary, Education Department.
2. The Director, Primary Education, Education Department, Bihar, Patna.
3. The District Magistrate, Madhepura.
4. The District Education Officer, Madhepura.
5. The District Program Officer (Establishment)
6. The Block Education Officer, Madhepura.
7. The Panchayat Secretary, Panchayat Education Employment Unit Manikpur,
District- Madhepura.
8. The Headmaster, Primary School Arahara, Yadav Tola, Ward No.12.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Prabhakar Singh, Advocate
For the Respondent/s	:	Mr. Ajay Kr. Rastogi, AAG-10
		Mr. Prabhat Ranjan Singh, AC to AAG-15

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HARISH KUMAR)

Date : 20-03-2024

The challenge in the present letters patent appeal is made to an order of this Court dated 30.03.2022 passed by the learned Single Judge in CWJC No. 4251 of 2021, whereby the writ petition is disposed of with an observation that if an appeal is preferred before the District Appellate Authority/State Appellate Authority the same shall be taken up at the earliest



and preferably decided within a period of three months.

2. The learned Counsel for the petitioner-appellant, assailing the order of the learned Single Judge has submitted that the writ petition was filed for directing the respondent authorities to ensure payment of salaries with interest from the month of June, 2016 till date, which has not been paid to the petitioner without any reason, however, relegating the petitioner to the District Appellate Authority for payment of salary was wholly unsustainable as the District Appellate Authority was established by the State Government to decide the dispute in relation to appointment or any other service matter, however, in the present matter in absence of any dispute or any order to be questioned before the District Appellate Authority, the petitioner ought not to be relegated before the District Appellate Authority.

3. Learned Counsel for the petitioner-appellant further argued that adhering to the rule of law, after completing the entire selection process the competent authority issued an employment letter in favour of the petitioner-appellant way back in the year 2010 vide Letter No. 08 dated 18.08.2010, whereupon he submitted his joining as Panchayat Teacher in Primary School, Maruaha Harijan, Madhepura. After submitting his joining to the said post, he has been rendering his services



sincerely to the satisfaction of the concerned higher authority and accordingly, pay fixation of the petitioner was also done vide Notification No. 527 dated 20.07.2015. Besides the aforesaid contention, learned Counsel further contended that the learned Single Judge has failed to consider that the post of the concerned Appellate Authority is still vacant and thus, the right of the appellant to get his rightful claim of salary is at peril.

4. This Court having considered the grievance of the petitioner-appellant that he is still continuing as a Teacher, but his salary has been withheld, directed the Government officials to place an affidavit, the reason for withholding his salary, if any, in view of Annexure – 6, a general order issued by the Government specifically instructing its officers not to withhold the salary unless an employee is either suspended or against whom a disciplinary proceeding is pending.

5. In compliance with the order of this Court, a counter affidavit duly sworn by the District Programme Officer, Establishment, Madhepura has been placed on record. The official respondents categorically averred that with regard to the claim of the petitioner, an enquiry was conducted and the averments made in the writ petition has been found to be wrong and misleading as the Principal of the school, namely, Primary



School, Maruaha Harijan, Madhepura vide his letter contained in Letter No. 12 dated 04.09.2023 has informed that no teacher by the name of the appellant has ever tendered his joining in the school, in question. The aforesaid letter also reveals that the appellant being a fake teacher has managed to depute himself in some other school by showing himself as teacher, duly tendered his joining at the Primary School, Maruaha Harijan, Madhepura. Further the claim of the petitioner regarding fixation of his pay has also been enquired and the same is found to be factually wrong and misleading.

6. From the record, it further reveals that the Block Education Officer, Madhepura vide order contained in Memo No. 527 dated 20.07.2015 posted the appellant at Primary School, Arraha Yadav Tola, Ward – 12, however, again the Principal of the said primary school has informed that no teacher by name of the appellant has been posted in the school during his tenure and subsequent thereto, it came to light that the appellant has been deputed in Primary School, B. P. Mandal Kamat, Machhwakhara, Madhepura, which falls in different Panchayat Recruitment Unit. Despite the unauthorized transfers and posting, as referred hereinabove, the answering respondent came to know that the appellant has made his attendance in the



B. P. Mandal Kamat, Primary School from 11.04.2016 to 26.07.2016 and thus, on the basis of such attendance report, direction has been issued for payment of honorarium/salary of the aforesaid period without questioning the validity of the appointment of the appellant.

7. In the aforesaid premise, the official respondents concluded that since the appellant has served as teacher for 3 months 15 days till date, and the appointment of the petitioner-appellant is under a cloud, he has been paid only for such period as the matter requires proper enquiry.

8. After having carefully gone through the materials available on record, especially, the counter affidavit filed on behalf of the official respondents, this Court can not acced to the prayer of the petitioner-appellant, as the case of the petitioner-appellant is, prima facie, based upon incorrect and misleading facts, which requires proper enquiry.

9. Needless to observe that right to salary is a statutory right emanating from a valid appointment and for rightful discharge of duties. In the case in hand, apart from the very appointment of the petitioner-appellant being under cloud, it is informed to this Court that the petitioner-appellant has discharged only 3 months 15 days in his entire service, i.e. for



the period of 11.04.2016 to 26.07.2016. In such view of the matter, this Court doesn't find any merit in the present appeal and accordingly, the same stands dismissed reserving the liberty to the official respondents to enquire into the matter afresh in respect to the claim of the petitioner and take appropriate action, in accordance with law.

(K. Vinod Chandran, CJ)

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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