

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13682 of 2021

=====

Yaswant Kumar Singh @ Yashwant Kumar Singh S/o- Madan Singh Resident
of- Dhandhia, P.S.- Koilwar, District- Bhojpur (Arrah).

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Human Resources Development Department, Govt. of Bihar, New Secretariat Patna.
2. The Director, Secondary Education, Government of Bihar, Patna.
3. The District Magistrate, Bhojpur (Arrah), Bihar.
4. The Deputy Development Commissioner-cum- the Chief Executive Officer, Bhojpur (Arrah), Bihar.
5. The District Education Officer, Bhojpur (Arrah), Bihar.
6. The Head Master, Mano Baijnath High School, Kulharia (Bhojpur), P.S.- Koilwar, District- Bhojpur (Arrah).
7. The Head Master, High School, Jitora (Bhojpur), P.S.- Koilwar, District- Bhojpur (Arrah).

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Avinash, Advocate
For the Respondent/s : Mr. Hitesh Suman, AC to SC 13

=====

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 27-03-2025

Heard Mr. Avinash, learned counsel appearing on
behalf of the petitioner; Mr. Hitesh Suman, learned AC to SC 13
for the State.

2. Petitioner has *inter alia* prayed for following reliefs
in the paragraphs No.1 of the writ petition:-

*“That the present application is being
filed for issuance of a writ in the nature of certiorari
or an appropriate writ or writs, order or orders or
direction or directions against the order dt.28-01-
2021 by which Appeal No.25/2020 has been partly
allowed, the petitioner/appellant has filed the said
appeal before the learned State Appellate Authority
for a direction of payment of salary of the*



petitioner/appellant from 07.09.2015 to 09.02.2016 with interest along with other consequential admissible allowance in different heads which is due with respondents for which District Appellate Authority, Bhojpur at Arrah passed order dt. 09.12.2019 in Misc. Case No.11/2019, and rejected the case of the appellant merely relaying upon the guidance of the Director, Secondary Education, Bihar, Patna issued vide letter no.1726 dt.24.11.18 saying that there is 'no work no pay' and leave without pay can be sanctioned, the salary of the said period from 07.09.15 to 09.02.16 has been rejected by wholly ignoring all the facts and circumstances of the case in most arbitrary and absolutist manner because the petitioner/appellant was always willing to perform his duty but he was not permitted to do so."

3. Learned counsel appearing on behalf of the petitioner informs that petitioner was appointed as a physical teacher and he joined on 02.12.2006 in High School Jogata, Bhojpur. He was transferred to Mano Baijnath High School, Kulharia, Bhojpur on 13.03.2013 and thereafter intentionally he was transferred to High School Jitaura, Bhojpur on 04.09.2015. The petitioner gave his joining application on 10.09.2015 to the Headmaster of High School Jitaura, Bhojpur but the headmaster did not accept his joining due to model code of conduct. However, the transfer order was withdrawn by the Deputy Development Commissioner, Bhojpur, Arrah vide Memo No.4841 dated 31.12.2015 (Annexure 6) and the petitioner was directed to join Mano Baijnath High School, Kulharia, Bhojpur. Thereafter, the petitioner went to give his joining to Mano



Baijnath High School, Kulhari on 31.12.2015 and 02.01.2016 but the headmaster refused to accept his joining. In spite of his joining has been accepted on 09.02.2016 by the said headmaster of Mano Baijnath High School Kulhari, the petitioner has not been paid salary from 07.09.2015 to 09.02.2016 during the said period the petitioner was transferred from Mano Baijnath High School Kulhari to High School, Jitaura. Aggrieved by the same, the petitioner represented before the different authorities and lastly he had filed appeal before the District State Appellate Authority. The Authority *vide* order dated 28.01.2021 has partly allowed the appeal, directing for payment of salary to the petitioner only from 02.01.2016 to 08.02.2016, the period he had returned back to the first school at Mano Baijnath High School Kulhari.

4. Learned counsel submitted that petitioner was restrained from performing work at the place of transfer, though he was paid salary only for the period from 02.01.2016 to 08.02.2016. The petitioner filed appeal before the State Appellate Authority and the State Appellate Authority committed error in rejecting the claim of the petitioner to the extent that instead of considering the case of the petitioner on merits has only allowed the salary for the period from



02.01.2016 to 08.02.2016, even having observed that the headmaster of the Jitaura High School should have accepted the joining of the appellant/petitioner and permitted him to discharge his duty as teacher but given finding in respect of the claim of the petitioner for the period from 07.09.2015 to 09.02.2016 which has been rejected by the Director, Primary Education on the ground of leave without pay.

5. *Per contra*, learned counsel appearing on behalf of the State submitted that the petitioner was transferred vide letter no. 637 dated 04.09.2015 (Annexure 1 of the writ petition) issued by the D.D.C.-cum- Chief Executive officer, Nagar Parishad, Ara, Bhojpur on administrative ground for his conduct from Mano Baijnath Higher Secondary School, Kulharia, Bhojpur to High School, Jitore, Bhojpur. He did not join that school and only after cancellation of his transfer order vide 4841 dated 31.12.2015 (Annexure 6 of the writ petition) he gave joining on 02.01.2016 in his earlier school Mano Baijnath Higher Secondary School, Kulharia. It is further submitted that the Director, Primary Education, Bihar *vide* letter no. 1726 dated 24.11.2018 (Annexure 13 to the writ petition) has directed to grant "leave without pay" for the period in question on the principle of "No Work No Pay" as the petitioner has not worked



for that period. The State Appellate Authority too upheld non-payment of salary for the period 07.09.2015 to 01.01.2016 in view of the principle of “No work no pay” vide order dated 28.01.2021.

6. Heard the parties.

7. Having considered the rival submissions made on behalf of the parties and without going into the merit of the case, I find it apt to reproduce the following observation made by the State Appellate Authority:-

“As noticed above, the respondent-DDC-cum-CEO has not appeared in this proceeding to contest the appeal. The DEO, Bhojpur at Ara, has, however, filed a counter affidavit and supported the impugned order. It is submitted by the learned counsel appearing for the State official respondents that the appellant, on being transferred from Mano Baijnath High School, did not care to join the transferred school and work. A false plea was raised by him to seek remedy. He has, however, not disputed the fact that the respondent-DDC-cum-CEO vide an order dated 31.12.2015 (Anneure-7) recalled/cancelled the order of transfer issued on 04.09.2015. In other words, the appellant was allowed to continue after the said order in the school from where he was transferred.

There is no denial of the fact that the appellant had submitted his joining on 02.01.2016 along with the said order of the DDC-cum-CEO before the Head Master of the school. In all fairness, the Head Master of Mano Baijnath High School should have accepted the same and permitted the appellant to discharge his duty as teacher. For the fault of the Headmaster of the school the appellant cannot be allowed to suffer. It is inequitable.

For the reasons noted above, the appeal stands partly allowed. The appellant is directed to be paid his due salary for the period from 02.01.2016 to 08.02.2016. The respondents, particularly, the DEO, Bhojpur at Ara and DDC-cum-CEO, Bhojpur at Ara, shall ensure the payment of salary for the said period is made to the appellant within one month from the date



of production of a copy of the order before them.”

8. From the fact as has been observed by the State Appellate Authority, I find that the Tribunal has committed error insofar as holding that the petitioner is entitled for due salary for the period commencing from 02.01.2016 to 08.02.2016. The fact which has not been considered by the learned Authority in respect of the claim of the petitioner that he is entitled for due payment of salary for the period 07.09.2015 to 01.01.2016 in view of the fact that the order of transfer was issued on 04.09.2015 and the petitioner has claimed in paragraph no.7 of the writ petition that the headmaster of the High school Jitaura, Bhojpur had not accepted his joining and thereafter he represented before the District Magistrate, Bhojpur on 11.09.2015 and 24.09.2015; the Deputy Development Commissioner-cum-the Chief Executive Officer Bhojpur, Arrah on 10.09.2015 and 23.09.2015; the District Education Officer on 10.09.2015 and the Chief Election Officer, Bihar on 15.09.2015. The petitioner had also undergone election training on 12.09.2015 and on 26.09.2015 and duty letter was issued to the petitioner on 11.10.2015. Though the respondents have considered to cancel the transfer of the petitioner, contained in Memo No.637 dated 04.09.2015, on medical ground of illness of his mother for better treatment in presence of the petitioner



but they have not taken to consider the fact that petitioner was restrained by the headmaster of the school. The order of the Tribunal in above mentioned facts and circumstances, requires to be interfered with, considering the fact that petitioner has been denied the salary, not because he had absented from performing duty, rather he was restrained by the headmaster of the school about which he had already brought notice of the higher authority, like the District Magistrate, Deputy Development Commissioner, District Education Officer and other authorities and for no fault of the petitioner, petitioner becomes entitled for due salary for the period 07.09.2015 to 01.01.2016 in accordance with law.

9. The order dated 28.01.2021 passed in Appeal No.25/2020 of the State Appellate Authority is modified to the above extent

10. The writ petition is, accordingly, disposed of.

(Purnendu Singh, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	29.03.2025
Transmission Date	NA

