

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16391 of 2021

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Upendra Yadav, Son of Late Ramadhin Yadav, Resident of Village - Bhaddi,
Police Station - Sour Bazar, District - Saharsa.

... .. Petitioner/s

Versus

1. The State of Bihar, Bihar, Patna.
2. The Additional Chief Secretary, Education Department, Bihar, Patna.
3. The Director, Primary Education, Bihar, Patna.
4. The Regional Deputy Director of Education, Saharsa.
5. The District Programme Officer (Establishment), Saharsa.
6. The Block Education Officer, Sonbarsa, District - Saharsa.
7. The Headmaster, Primary School, Dih Tola, Mangwa, Block - Sonbarsa,
District - Saharsa.
8. The District Treasury Officer, Saharsa.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Pramod Kumar, Advocate
For the Respondent/s : Mr.Kumar Kamal Nayan, Advocate

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 05-05-2025

Heard learned counsel appearing on behalf of the
petitioner and the learned counsel for the State.

2. The present writ petition was filed in the year,
2021. The petitioner has sought following relief(s) in paragraph
no.1 of the writ petition : -

*“That this is an application for issuance of a writ in
nature of certiorari to quash the order as contained
in Memo No. 608 dated 20/7/2020 issued under the
signature of the Director, Primary Education, Bihar,
Patna whereby and where under the legitimate claim
of the petitioner for payment of arrears of salary has
been rejected by a cryptic order on the nonest
ground without applying mind and without
considering the order passed by this Hon'ble Court*



in similar matter.

And for issuance of a consequential Writ in the nature of mandamus commanding and directing the respondent authorities to pay the arrears of salary to the petitioner with effect from the date the other similar persons have been given or at least with effect from the date on which the services of the petitioner has been approved and direction was issued for payment of salary by the Director, Primary Education i.e. with effect from 27/7/1988 to February 2006 and to give all other consequential benefits such as statutory interest on the arrears of salary which has been withheld by the respondents without any reason along with cost of litigation.

And/or issue any other appropriate Writ/Writs, direction/directions, order/orders which the petitioner may be found just and proper for the ends of justice in the facts and circumstances stated hereunder.”

3. The claim of the petitioner is that his case is covered by the order dated 01.08.2014 passed in CWJC No.8903 of 2010 and order dated 28.07.2010 passed in CWJC No.1489 of 2010. Both the orders have been brought on record by way of **Annexure ‘15’** and **‘15/1’** respectively.

4. I have perused both the orders, on which the petitioner is relying. The case of the petitioner is identical to the petitioner of CWJC No.1489 of 2010, wherein a direction was issued to the Director, Primary Education to pass necessary order for payment of arrear of salary for the period in question.

5. The petitioner has also claimed that his appointment is prior to 01.01.1971. He had joined the School on



17.11.1969 and as per the provision of Bihar Non-government Elementary School (Taking Over of Management and Control), Act, 1976 (hereinafter to be referred as the 'Act, 1976'), the approval of the service of the petitioner was required. The petitioner had represented before the District Education Officer that he had given his joining in the concerned School on 17.11.1969 but the said representation has not been considered. On these grounds, the petitioner seeks interference of this Court that he is also entitled to be given the similar relief in terms of CWJC No.1489 of 2010.

6. Counter affidavit has not been filed.

7. Mr. Kumar Kamal Nayan, learned counsel has represented the State Government and he has taken notice of Memo No.1720 dated 27.07.1988, which was communicated to the Regional Deputy Director of Education, Koshi Division, Saharsa in respect of the cut of date and from the impugned order contained in Memo No.608 dated 20.07.2020, which has been taken into consideration by the Director, Primary Education, who has also appreciated the fact that the petitioner has given his joining on 17.11.1969, however, in want of approval of the State Government, as per the provisions of Act, 1976, the case of the petitioner was rejected.



8. Heard the parties.

9. Having considered the rival submissions made on behalf of the parties, I find that the order impugned contained in Memo No.818 dated 13.05.2016 has not considered that the case of the petitioner is covered by the order passed in CWJC No.1489 of 2010, in which this Court considering the fact that before taking over of the school, the petitioner of the said writ petition was being regularly paid salary by the Managing Committee of the School similar is case of the petitioner, who is also performing his duties continuously after the Act, 1976 came into effect.

10. This Court taking into consideration the inaction on the part of the State Government and relying on the judgment passed in *M/S Hindustan Sugar Mills. Vs. The State of Rajasthan and Ors.* reported in *AIR 1981 SC 1681* and reproducing the observation made by the Chief Justice Chagla in the case of *All India Groundnut Syndicate Limited vs. Commissioner of Income Tax, Bombay City*, reported in *AIR 1954 Bombay, 232*, which proposition has recently been upheld by the Hon'ble Supreme Court in the case of **Municipal Committee Katra & Ors. vs. Ashwani Kumar** [Civil Appeal No(s) 14970-71 of 2017]. The Apex Court in **Paragraphs**



No.18 and 19 of the judgment **dated 09.05.2024** has held as under :

“18. The situation at hand is squarely covered by the latin maxim ‘nullus commodum capere potest de injuria sua propria’, which means that no man can take advantage of his own wrong. This principle was applied by this Court in the case of Union of India v. Maj. Gen. Madan Lal Yadav observing as below :

"28....In this behalf, the maxim nullus commodum capere potest de injuria sua propria meaning no man can take advantage of his own wrong-squarely stands in the way of avoidance by the respondent and he is estopped to plead bar of limitation contained in Section 123(2).

In Broom's Legal Maxim (10th Edn.) at p. 191 it is stated:

"... it is a maxim of law, recognised and established, that no man shall take advantage of his own wrong; and this maxim, which is based on elementary principles, is fully recognised in courts of law and of equity, and, indeed, admits of illustration from every branch of legal procedure."

The reasonableness of the rule being manifest, we proceed at once to show its application by reference to decided cases. It was noted therein that a man shall not take advantage of his own wrong to gain the favourable interpretation of the law. In support thereof, the author has placed reliance on another maxim frustra legis auxilium invocat quaerit qui in legem committit. He relies on Perry v. Fitzhowe [(1846) 8 QB 757:15 LJ QB 239].

At p. 192, it is stated that if a man be bound to appear on a certain day, and before that day the obligee puts him in prison, the bond is void. At p. 193, it is stated that "it is moreover a sound



principle that he who prevents a thing from being done shall not avail himself of the non-performance he has occasioned". At p. 195, it is further stated that "a wrong doer ought not to be permitted to make a profit out of his own wrong". At p. 199 it is observed that "the rule applies to the extent of undoing the advantage gained where that can be done and not to the extent of taking away a right previously possessed".

“19. It is beyond cavil of doubt that no one can be permitted to take undue and unfair advantage of his own wrong to gain favourable interpretation of law. It is a sound principle that he who prevents a thing from being done shall not avail himself of the non-performance he has occasioned. To put it differently, 'a wrong doer ought not to be permitted to make profit out of his own wrong'. The conduct of the respondent-writ petitioner is fully covered by the aforesaid proposition.”

11. In the facts of the present case, I find that the petitioner was initially appointed as Assistant Teacher by the Managing Committee in Primary School, Thadhi, Saharsa, which was subsequently taken over under the provisions of Act, 1976 but this fact has not been considered by the Regional Deputy Director of Education, Koshi Division, Saharsa, as such, the impugned order requires to be interfered with. On these grounds, the order dated 20.07.2020 contained in Memo No.608 is set aside and quashed and the Regional Deputy Director of Education, Koshi Division, Saharsa is directed to pass a fresh order in accordance with law considering the law



laid down by the Apex Court, as well as, observation made by this Court in CWJC no.1489 of 2010.

11. With the above observation/direction, the present writ petition stands disposed of.

(Purnendu Singh, J)

chn/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	13.05.2025
Transmission Date	NA

