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SHIV NANDAN MAHTO

v.

STATE OF BIHAR & ORS.
(Civil Appeal No. 5306 of 2013)

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JULY 8, 2013

[SURINDER SINGH NIJJAR AND RANJAN GOGOI, JJ.]

Service Law:

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Back wages - Appointment as a clerk - In a school - During an inspection, name of the appellant inadvertently shown as 'Librarian' - School taken-over by State - Services of the appellant not taken-over, because the post of 'Librarian' was not approved - On representation, directions by the competent authority to adjust the appellant against the post of clerk in a school - Due to lack of vacancy, was not posted in any school - Writ petition seeking reinstatement and consequential benefits - Single Judge of High Court though directed his reinstatement with continuity of service, but denied remuneration for the period when he had not worked -

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Order of Single Judge confirmed in writ appeal, by Division Bench of High Court - Held: The appellant was entitled to full back wages for the period, he was illegally kept out of service, due to a mistake - Direction to pay the entire full backwages from the period, he was kept out of service till reinstatement

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with 9% interest.

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5306 of 2013.

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From the Judgment and Order dated 03.08.2011 of the High Court of Judicature at Patna in L.P.A. Bo. 1859 of 2010.

Dinesh Chandra Pandey for the Appellant.

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Chandan Kumar (for Gopal Singh) for the Respondents. A

The following order of the Court was delivered

O R D E R

1. We have heard learned counsel for the parties. B

2. Leave granted.

3. The appellant was appointed against a permanent post of Clerk in the Raj Kishore Balika High School, Narhan, Samastipur, Bihar on 31.12.1978. He joined on the said post on 1.1.1979. Subsequently, the aforesaid school was granted permission by the Directorate of Secondary Education vide office memo No. 31346 dated 19.11.1981 for establishment of the aforesaid school. The school was inspected by the special Board on 6.8.1982. In the inspection report, the name of the appellant was inadvertently/wrongly shown as a Librarian. On coming to know of the aforesaid wrong entry, the appellant submitted a representation before the Directorate of Secondary Education seeking correction thereof. On 1.5.1983, the inspection committee submitted its report and confirmed that the appellant had been working as a clerk since the very beginning in the aforesaid school. The school was taken over by the Government of Bihar on 2.8.1983 in terms of the provisions of Section 3 of the Bihar Non-Government Secondary Schools (Taking Over of Management and Control) Act, 1981. The services of the appellant were not taken over, as his name was wrongly shown against the post of Librarian, which post was not approved. Aggrieved by the action of the respondent, the appellant submitted a representation before the Director, Secondary Education, Patna on 17.11.1983 and the Director issued directions to adjust the appellant against the post of Clerk in a school in the aforesaid District. On 3.2.1984, the Director, Secondary Education, Patna directed the posting of the appellant as Clerk in the High School, Virhan, C D E F G

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- A Madhubani upon transfer of another teacher. However, it later transpires that there was no vacancy on the post of Clerk in the District. Therefore, directions were issued to adjust the appellant as and when vacancy is available. Since there was no post of Clerk in the High School Virhan, Madhubani, the
- B appellant was made to join the office of the District Education Officer, Virhan with effect from 3.3.1984 and allotted duties and work in the aforesaid office. Subsequently, directions were issued to post the appellant as a Clerk in a different school. It appears that due to lack of vacancy, the appellant was not
- C posted in any school for some time. The appellant again protested to the Director for not being given posting orders on the post of Clerk. It appears that the appellant was made a rolling stone for long period of time being shunted from school to school in an effort to locate a vacancy for him. In the
- D meantime, the appellant had not received any salary from any source. Ultimately, the appellant moved the High Court by way of Civil Writ Petition No. 516 of 1990 with a prayer seeking reinstatement and consequential benefits.

4. The learned single Judge of the High Court, upon noticing the entire fact situation, accepted the plea of the appellant that he had been duly appointed as Clerk and wrongly shown as a Librarian. Consequently, directions were issued to reinstate the appellant forthwith. It was also noticed that the removal of the appellant from service was not for any fault of his. He was also directed to be given the benefit of continuity of service and other benefits. However, surprisingly, the learned single Judge directed that he will not be entitled to any remuneration for the period when he was not in service on the ground that he had not worked. The respondent did not challenge the finding of fact recorded by the learned single Judge. In fact, it was the appellant who challenged the judgment of the learned single Judge on the ground that he ought to have been granted full backwages for the period he had been kept out of service. The appeal was dismissed by the High Court in limine with the following observations :-

"Upon hearing learned counsel for the appellant, we dismiss this appeal for the reasons that it is settled law that no work no pay. Therefore, learned single Judge is correct in not ordering for salary during which the appellant was under suspension.

However, since reinstatement of the appellant, he shall be paid salary regularly as directed by the learned single Judge."

5. Having heard learned counsel for the parties, we are constrained to observe that the High Court failed to examine the matter in detail in declining the relief to the appellant. In fact, a perusal of the aforesaid short order passed by the Division Bench would clearly show that the High Court had not even acquainted itself with the fact that the appellant was kept out of service due to a mistake. He was not kept out of service on account of suspension, as wrongly recorded by the High Court. The conclusion is, therefore, obvious that the appellant could not have been denied the benefit of backwages on the ground that he had not worked for the period when he was illegally kept out of service. In our opinion, the appellant was entitled to be paid full backwages for the period he was kept out of service.

6. Consequently, the appeal is allowed. The order passed by the Division Bench is quashed and set aside. The appellant has already been reinstated in service. The respondents are, however, directed to pay to the appellant the entire full backwages from the period he was kept out of service till reinstatement. The full backwages shall be paid to the appellant with 9% interest. Let the amount be paid to the appellant within a period of three months from the date of receipt of copy of this order.

K.K.T.

Appeal allowed.