

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1330 of 2014

=====

Shambhu Mishra S/O Late Jagarnath Mishra Resident Of Parsauni Baij,
P.S- Piprahi, District- Sheohar.

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Director, The Primary Education, Bihar, Patna.
3. The District Magistrate, Sitamarhi.
4. The District Education Officer, Sitamarhi.
5. The District Programme Officer, Primary Education And Sarv Siksha
Abhiyan, Bihar Shiksha Pariyojna, Sitamarhi
6. The District Programme Officer, Establishment, Sitamarhi.
7. The Account General, Bihar, Patna.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Tara Nath Jha, Adv

For the Respondent/s : Mr. SC-12 P.K.Singh

=====

CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA

ORAL JUDGMENT

7 07-04-2015 Heard learned counsel for the parties.

2. The prayer of the petitioner in this writ
application reads as follows:-

“directing the respondents to fix the final pension and gratuity of the petitioner and to make the payment of the same will all consequential benefits and further for issuance of writ in the nature of certiorari for quashing the letter vide its memo no. 945 dated 4.7.2013 issued under the signature of Respondent no. 5 under which Rs. 169038/- held to be recoverable and also the part of the order which was communicated to the petitioner under its memo no. 4487 dated 9.9.2013 issued under the signature of respondent no. 6 under which direction has been issued to deduct the amount of Rs. 169038 (Rupees on lakh sixty nine thousand and thirty eight) from the gratuity amount payable to the petitioner and further for issuance of an appropriate writ/order/direction directing the respondents to make the payment of full gratuity as

made payable to the petitioner against the gratuity amount and further for issuance of an appropriate order/direction directing the respondents to refund/return to the petitioner the amount of Rs. 169038/-."

3. Mr. Tara Nath Jha, learned counsel for the petitioner has submitted that during the pendency of the writ application the petitioner has already been paid all his retirement benefits and his grievance now remain confined to deduction of sum of Rs. 1,69,038/-. Mr. Jha, explains that this recovery of Rs. 1,69,038/- from the payable amount of gratuity to the petitioner is wholly unreasonable, inasmuch as, no show cause notice was issued by the authorities before deducting the said amount.

4. Learned counsel for the State on the other hand having filed the counter affidavit has submitted that the petitioner was entrusted building fund of Rs. 4,50,000/- for construction of rooms in the Middle School, Rigagaon and whatever building work was done by the petitioner on evaluation it was found to be worth Rs. 3,



39, 282/-. He has also submitted that subsequently the evaluation of the work done by the petitioner was done under the order of Bihar Education Project as contained in letter no. 3048 dated 10.05.2013 and in course of evaluation undertaken by the competent authority the work done by the petitioner on the construction of the room of the School was re-evaluated and it was found that total amount recoverable from the petitioner was only Rs. 1, 09, 857/- and in fact on the basis of such re-evaluation the petitioner was also refunded sum of Rs. 59, 181/- by cheque dated 05.07.2014. Let it be noted that all these events had taken place after filing of this writ application including refund of the aforesaid amount.

5. The only submission of Mr. Jha that before deducting of such amount from gratuity the petitioner was never given any show cause notice nor the inquiry was made in his presence would need no better answer but from the provisions of Bihar Financial Rules, which



lays down that any Government servant having been advanced any amount has to be properly account for the amount in absence whereof the same can be recovered from his any payable amount. In this case, there is no dispute that the petitioner was paid Rs. 4,50,000/- for construction of the school building. The plea of the petitioner that he got the work done much more than the amount drawn by him or the fact that the authorities did not take into account the cost of the materials used in construction are all the matter of detail which the petitioner has to explain by approaching the authorities and giving full account.

6. As of now, this Court would find that the authorities were at least candid enough to refund sum of Rs. 59,181/- in course of inquiry by them since there was some sort of explanation for the said amount of Rs. 59,181/- as with regard to the matter relating to accounting. Thus if the petitioner would still explain to the competent authority that he had spent the entire



amount of Rs. 4, 50, 000/- and if the respondents are satisfied that such amount spent was correct on the construction of the school building, the rest of the amount recovered from the gratuity of the petitioner will also be required to be refunded.

7. In that view of the matter, this Court would only give liberty to the petitioner to approach the competent authority with full explanation of the accounts of the building fund and if the petitioner furnish such explanation, the District Programme Officer (Establishment), Sarv Shiksha Abhiyan, respondent no. 5, shall decide the issue and also pass a reasoned order meeting the claim of the petitioner.

8. It goes without saying that if the authority comes to a finding that the petitioner is entitled for any amount, the amount already recovered from the gratuity of the petitioner would be also refunded by the concerned authority.

9. The said order will be passed by respondent

no. 5 within a period of three months from the date of filing of the representation alongwith evidence of his spending the said amount given to him under the building fund.

10. With the aforementioned observation and direction, this application is disposed of.

(Mihir Kumar Jha, J)

Ranjan/-

U			
---	--	--	--