

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11746 of 2010

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Shiv Kumar Singh S/O Sri Dev Lal Singh, R/O Vill.- Dharandespur, P.S. Desari,
Distt.- Vaishali At Hajipur

.... Petitioner/s

Versus

1. The State of Bihar, through the Chief Secretary, Govt. of Bihar, Patna
2. District Magistrate, Distt.- Vaishali at Hajipur
3. District Superintendent of Education, Distt.- Vaishali at Hajipur
4. Executive Engineer, Distt.- Vaishali at Hajipur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dr.Om Prakash 'OM'

For the Respondent/s : Mr. Kamal Kumar Sinha, AC to AAG-2

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA

ORAL JUDGMENT

Date: 24-03-2015

Heard the parties.

The petitioner is aggrieved by the order dated 31.07.2009 (Annexure-1) passed in Miscellaneous Case No. 47 of 2008-09 (Shiv Kumar Singh vs. The District Superintendent of Education-cum-District Programme Co-ordinator, Hajipur), whereby the aforesaid case filed by the petitioner has been dismissed by the respondent District Magistrate, Vaishali on the ground that the petitioner was absent consecutively on five dates from 06.03.2009 to 08.09.2009.

By order dated 28.07.2010 the respondents were directed to file their counter affidavit. However, despite passage of more than 4 ½ years, counter-affidavit has not been filed on their behalf.

Though no valid explanation has been furnished by the petitioner in the whole writ petition for his non-appearance on five consecutive dates, yet learned counsel appearing on behalf of the petitioner submits that for the ends of justice, the petitioner may be given one more chance, so that the matter is decided on its own merits. According to him, claim raised on behalf of the petitioner in

the aforesaid miscellaneous case has not been rejected on merit, rather merely on technical ground i.e. on account of non-appearance of the petitioner on the dates fixed.

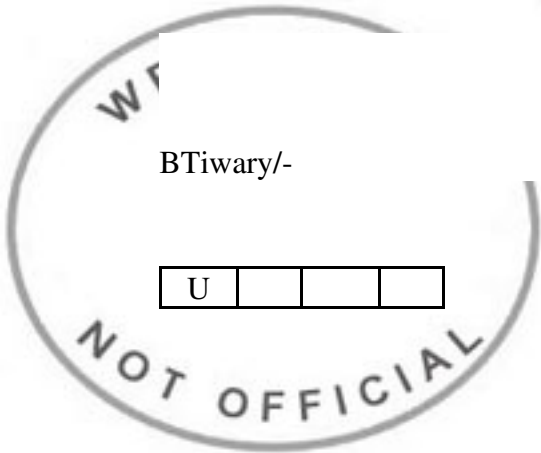
In the facts and circumstances of the case, this Court is inclined to give one more opportunity to the petitioner for getting the issues/ claims raised by him decided on merits in the aforesaid miscellaneous case, as evidently the claims raised on behalf of the petitioner have not been taken into consideration while passing the impugned order, but for laches on the part of the petitioner he must pay some cost to the State.

For the reasons recorded above, the impugned order dated 31.07.2009 passed in Miscellaneous Case No. 47 of 2008-09 (Annexure-1) by the respondent District Magistrate, Vaishali is hereby set aside and quashed and the matter is remitted back with a direction to the respondent District Magistrate to decide the aforesaid miscellaneous case filed by the petitioner on merits after giving an opportunity of hearing to both sides. However, this order is subject to deposit of Rs. 5000/- (Rs. Five thousand), by way of costs by the petitioner with the District Legal Services Authority, Vaishali at Hajipur within a period of one month from today.

It is clarified that if the aforesaid costs is not deposited by the petitioner within the aforesaid period of one month from today and the petitioner does not appear before the respondent District Magistrate, Vaishali at Hajipur with a certified copy of the present order as also the receipt showing deposit of the costs, within a period of six weeks from today, then it shall be construed that the present writ petition stood rejected on account of non-compliance of the Court's order.

The writ petition stands allowed to the extent indicated

above, but with the observations and directions made above.



(Birendra Prasad Verma, J)