

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16744 of 2007

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1. Sachindra Nath, Son of late R.K. Lal Srivastava, R/o Quarter No. C.E./3, Dalmianagar, P.S. Dehri, District – Rohtas.
 - 1.(a) Girish Chandra, Son of Sri Sachindra Nath, R/o A/P Plot No. 357, S-2, Sector-5, Vaishali, Gaziabad (U.P.).
 - 1.(b) Priti Saxena, W/o Mukul Saxena, Railway Colony, Zal Nigam Road, Balaganj, Chauraho, Lucknow, U.P.
 - 1.(c) Reeti, W/o Mr. R.K. Srivastava, Kochanpur Gaon, Sector-23, Dwarika, Delhi.

.... Petitioners

Versus

1. Central Board of Secondary Education through its Chairman, Shiksha Kendra, 2-Community Centre, Preet Vihar, Delhi-1100092.
2. The Secretary, Central Board of Secondary Education, Shiksha Kendra, 2-Community Centre, Preet Vihar, Delhi-1100092.
3. The Secretary, Model School Managing Committee, Dalmianagar, Police Station – Dehri, District – Rohtas.
4. The Principal, Model School, Dalmianagar, Police Station – Dehri, District – Rohtas.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Ram Suresh Ray, Sr. Advocate
Mr. Binod Bihari Singh, Advocate
Mr. Abhay Kumar Roy, Advocate
Mr. Anant Kr.Bhaskar, Advocate

For the Respondent No. 3: Mr. Brisketu Sharan Pandey, Advocate

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

08/ 20-02-2015

Heard learned Senior Counsel for the petitioner

and learned Counsel for the Respondent No. 3.

The writ application was initially filed by Urmila Nath, but after her death, the present petitioners were substituted as the legal heirs of the original writ petitioner.

The present writ application has been filed with following reliefs as mentioned in the writ application:-

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- (i) to issue appropriate writ/writs to Respondents to calculate and disburse the amount of Gratuity and difference of D.A. with interest of 18% in favour of petitioner forthwith.
 - (ii) to issue an appropriate writ/writs to Respondents, to calculate and pay the amount of interest arising out of paid officiating allowances and telephone allowances paid on 6.7.2006, from the date the same fell due.

The factual matrix of the case is that petitioner joined as a teacher in Model School, Dalmianagar, Rohtas, registered under the Societies Registration Act, 1860 and affiliated to the Central Board of Secondary Education, Delhi on 04.02.1975. The petitioner superannuated from service, as Headmistress of the Primary Section of the said School on 30.09.2001.

The petitioner filed the present writ application on 18.12.2007, claiming relief, as quoted above.

A supplementary affidavit has been filed on behalf of the petitioner on 17.06.2014, stipulating therein that



Gratuity Case No. 02 of 2010 was filed before the Deputy Labour Commissioner –cum- Controlling Authority, Gaya, Magadh Range, claiming Gratuity amount of Rs.95,019/-. The Deputy Labour Commissioner –cum- Controlling Authority, Gaya, Magadh Range directed vide order dated 17.11.2011 (Annexure-5 to the supplementary affidavit) to the Secretary of Model School, Dalmianagar, Rohtas to make payment of Rs.95,019/- as Gratuity to one of the substituted petitioners namely, Sachindra Nath, within a period of one month from the date of judgment, with 8% interest, calculated from the date the Gratuity amount fell due.

On non-payment of the Gratuity amount, the Deputy Labour Commissioner –cum- Controlling Authority, Gaya subsequently transmitted letter No. 218 dated 22.02.2012 (as contained in Annexure-6 to the supplementary affidavit) to the District Certificate Officer, Rohtas as a requisition for initiating Certificate Proceeding under The Bihar & Orissa Public Demands Recovery Act, 1914 for recovery of the Gratuity amount along with interest, in terms of the order passed in Gratuity Case No. 02 of 2010.

The District Certificate Officer accordingly initiated the Certificate Proceeding vide Certificate Case No. 01 of 2013 (as contained in Annexure-7 to the supplementary affidavit)

by issuing Notice under the provisions of Bihar & Orissa Public Demands Recovery Act, for a certificate of Rs.98,186/-.

The Secretary, Model School, Dalmianagar, Rohtas, appeared in the Certificate proceeding and filed petition under Section 9 of Bihar & Orissa Public Demands Recovery Act. It appears that the said Certificate proceeding is still pending.

The counter affidavit was filed on behalf of Respondent No. 3, with a specific assertion in paragraph nos. 8, 9 and 10 that the petitioner never represented before the Respondents with computed or calculated due amount of gratuity or arrears of D.A. or arrears of allowances. Moreover, the officiating allowance and the telephone allowance have already been paid vide Cheque No. 319171 dated 06.07.2006. It is further contended that the Respondent has not yet been acknowledged by the petitioner, so far as the claim of difference of D.A. amount is concerned, and the Respondent No. 3 is still waiting for the detailed calculation of amount of difference of D.A. which has not been paid.

The petitioners have disclosed the fact of availing remedy at other forum during pendency of the writ application by filing supplementary affidavit after about four years from the date of filing of Gratuity Case No. 02 of 2010 and three

years after the passing of the order in the said case by the Deputy Labour Commissioner –cum- Controlling Authority, Gaya, Magadh Range. In the circumstances, keeping in view that the writ application was filed after more than six years of superannuation from service, primarily for payment of gratuity with interest and with regard to which Gratuity Case No. 02 of 2010 was also filed before a different forum during the pendency of writ application and the said prayer has already been allowed, though the Certificate Case is pending for recovery of the same, this Court is not inclined to interfere or pass any order in favour of the petitioners. Since the major claim of the petitioners has already been redressed by the other forum and other claims have been disputed by Respondent No. 3, the writ application is dismissed.

However, dismissal of the writ application will not preclude the petitioners to represent before the Respondent No. 3, who, in view of the admission made in the counter affidavit, is under an obligation to consider the remaining claims of the petitioners.

(Dinesh Kumar Singh, J)

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