

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8875 of 2011

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1. Nand Kishor Bharti Son Of Late Rajbanshi Bharti Resident Of Post- Ekma,
P.S.- Ekma, District - Chapra

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Human Resource Development Department, Govt. Of Bihar, Patna
3. The Director, Secondary Education, Human Resource Development Department, Govt. Of Bihar, Patna
4. The District Superintendent Of Education, Siwan
5. District Education Officer, Siwan
6. The Headmaster, Highs School, Deendayalpur, District Siwan

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Tej Bahadur Singh, Sr. Advocate.
Mr. Brisketu Sharan Pandey, Advocate.
For the Respondent/s : Mr. Nirbhay Kr.Singh, GP-26
Mr. Manoj Kumar Jha, AC to GP-26

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CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI

ORAL JUDGMENT

Date: 14-01-2015

The petitioner superannuated in the month of October, 2008, as a Headmaster, High School, Deendayalpur, Siwan.

2. During the petitioner's tenure as Headmaster of the said school, one Krishna Murari Yadav was found working since 1986 and he had been paid his stipend till 1993. However, taking the view that his appointment was illegal, when his service was terminated by the Government, the said Krishna Murari Yadav came to this Court with a writ petition made, under Article 226 of the

constitution of India, which gave rise to CWJC No. 14328 of 2010, seeking issuance of appropriate writ.

3. By order, dated 03.10.2012, passed in CWJC No. 14328 of 2010, the writ petition was partly allowed directing reinstatement of the said Krishna Murari Yadav in service making it clear, however, that he would be entitled to salary only from the date he rejoins his duty. In terms of the direction so given by the order, dated 03.10.2012, passed in CWJC No. 14328 of 2010, Krishna Murari Yadav rejoined his duty and, then, claimed payment of arrears of salary from 14th September, 1993, till he resumed duty by virtue of the order, dated 03.10.2012. Having resumed his duty, the said Krishna Murari Yadav raised claim for payment of his arrears on the ground that the respondents were required to make payment to the said Krishna Kumar Yadav, they have issued an order, contained in Annexure-1 to the writ petition, directing recovery of the amount, which the said Krishna Murari Yadav claimed as his arrear, the direction for recovery having been made on the ground that it was during the time of the petitioner's tenure that the salary fell in arrear.

4. It is, however, admitted before this Court that



the order, dated 16.06.2010, contained in Annexure-1 to the writ petition, has been passed by the respondents without serving, upon the writ petitioner, any notice to show cause against the said recovery. This is wholly impermissible in law inasmuch as the petitioner cannot be saddled with recovery of money without giving him an opportunity to have his say in the matter.

5. Situated thus, it is clear that the order, dated 16.06.2010, issued by respondent No.3, and the consequential order of recovery, dated 14.04.2011, issued by respondent No.5, are not sustainable in law.

6. In the result and for the foregoing reasons, the impugned order, dated 16.06.2010, issued by respondent No.3 and the consequential order of recovery, dated 14.04.2011, issued by respondent No.5, are hereby set aside and quashed.

7. The respondents are, however, given the liberty to proceed, if they are so advised, with the process of recovery after serving notice to show cause on the petitioner and if the petitioner gives reply to such a notice of show cause, the same shall be taken into account and, then, necessary speaking order shall be passed in

accordance with law.

8. If the petitioner feels aggrieved by the order, which may be passed by the respondents, or by the decision, which may be taken by the respondents, the petitioner shall remain at liberty to take recourse to the appropriate provisions of law.

9. In terms of the above observations and directions, this writ petition shall stand disposed of.

10. No order as to costs.

(I. A. Ansari, J.)

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