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IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7113 of 2011

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Keshari Nandan Singh, s/o Late Shambhu Prasad Singh, Acting Headmaster, Shri Vidya Sundar High School, Amlori Sarsar, P.S. Mufassil District Siwan

.... Petitioner/s

Versus

1. The State of Bihar
2. The Director, Madhyamik Shiksha, Government of Bihar, Buddha Marg, Patna 800001.

.... Respondent/s

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Appearance :

For the Petitioner/s : Sri Abhimanyu Sharma
Dr. Kamaldeo Sharma
For the Respondent/s : AC to AAG 6

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

CAV ORDER

10 20-06-2016 The petitioner, invoking writ jurisdiction of this Court under Article 226 of the Constitution of India, has prayed for issuance of appropriate writ for quashing of the order contained in memo no. 17 (vidhi) dated 5.1.2011 passed by the Director, Secondary Education, Government of Bihar (Annexure - '1' to the writ petitioner) whereby he has rejected the application of the petitioner for restoration of the Post Graduate scale which he was receiving since the date of his initial appointment i.e. 10.7.1978. The order impugned was passed in view of the order dated 12.7.2010 passed in CWJC No. 5841 of 2002.

The petitioner's case is that he was appointed as Assistant Teacher by the Secondary Education Board in the year 1978. At the time of his appointment he was B.Sc. Hons. Trained and as per extant rules there being no Post Graduate Teacher, he was granted P.G. Scale since he was the only Science Teacher having qualification of B.Sc. Trained Graduate. The petitioner by the order issued under the signature of the District Education Officer, which was issued in consonance with Government Resolution dated 24.3.1967, was granted the P.G. Scale and thereafter he started getting P.G. Scale i.e. Rs. 415 – 745/-, since his initial appointment dated 10.7.1978. Earlier the School, where he was appointed, was recognized. Finally in view of ordinance issued by the Government of Bihar in the year 1980 which subsequently culminated in the Act as Bihar Act No. 33 of 1981, the said School was taken over and all the teachers working in the said school recognized by the Board became Government employees. The petitioner was getting P.G. Trained Scale right from his appointment, however when recommendation of 4th Pay Revision Commission Report was introduced with effect from 1.4.1981, his scale was reduced to the Trained Graduate. Thereafter the petitioner represented to the Additional Director, Tirhut - cum -Saran Division through proper channel

and finally, the Additional Director by its order contained in memo no. 1194-98 dated 17.9.1992 (Annexure - '2' to the writ petition) restored the P.G. Scale of the petitioner. Even difference of pay scale was also directed to be paid, which was paid to the petitioner (Annexure – '2' to the writ petition). However, without any notice to the petitioner, the Director, Secondary Education, vide its memo no. 388 / legal / dated 3.5.1993 (Annexure – '4' to the writ petition) cancelled the order of the Additional Director. It is the case of the petitioner that before issuance of order dated 3.5.1993 the petitioner was not noticed. In the meanwhile, in an identical situation, aggrieved with such action of the authority concerned one Sri Ram Nath Singh and Sri Jailal Shah filed writ petitions bearing CWJC No. 5844 of 1993 and 2144 of 1993 respectively. Whereas the petitioner had not filed any writ petition. The writ petitions filed by the aforesaid two teachers were disposed of and remitted back to the Director for filing fresh representation and only thereafter petitioner also represented before the Director, Secondary Education vide its letter dated 30.10.1993. The Director, Secondary Education thereafter vide its order contained in memo no. 424 dated 16.2.1994 (Annexure – '7' to the writ petition) again restored the P.G. Scale which was

earlier approved and confirmed by the Director and direction was given to make payment of the scale of Post Graduate vide its order contained in memo no. 424 dated 16.2.1994 (Annexure – '7' to the writ petition). It has been claimed by the petitioner that again without any rhyme and reason the same authority i.e. Director, Secondary Education cancelled the order dated 17.9.1992 which was earlier issued by the Additional Director Education, Tirhut Division and order dated 16.2.1994 whereby petitioner's Post Graduate scale was restored. This time the Director, Secondary Education by its order contained in memo no. 1406 dated 24.4.2002 (Annexure – '9' to the writ petition) directed for restoring the order dated 3.5.1993 and directed for realization of excess paid amount in twelve installments. Aggrieved with the order of the Director, Secondary Education i.e. 24.4.2002 the petitioner was constrained to file a writ petition vide CWJC No. 5841 of 2002. It has been stated that at the initial stage itself on 24.6.2002 a bench of this court passed an interim order to the effect that till further orders no recovery could be made pursuant to order dated 24.4.2002 (Annexure – '9' to the writ petition). The said writ petition i.e. CWJC No. 5841 of 2002 was finally disposed of on 12.7.2010 (Annexure – '10' to the writ petition). This court quashed the impugned order i.e. order dated

24.4.2002 and remitted back the matter to the Director, Secondary Education with a direction to issue notice to the petitioner and hear him and pass a fresh order. Thereafter, the impugned order has been issued i.e. Annexure - '1' to the writ petition and claim of the petitioner for restoration of his Post Graduate scale has been rejected. During the pendency of the writ petition the petitioner superannuated with effect from 31.7.2011. Even after filing of the writ petition the District Programme Officer, Siwan after issuance of authority letter from the Accountant General, Bihar regarding pension , gratuity etc. by its letter no. 2216 dated 12.6.2012 directed the Treasury Officer, Siwan to adjust Rs. 4,99,765/- on the ground that the petitioner had received excess pay. Thereafter the petitioner by way of filing an interlocutory application vide I.A. No. 5569 and 2013 has brought on record the order of the District Programme Officer dated 12.6.2012 as Annexure - '13'. Again by filing supplementary affidavit the petitioner has brought on record pension payment order to substantiate that from the death – cum-retiral gratuity i.e. Rs. 7,46,378/- the Treasury Officer has already deducted Rs. 4,99,765/- and only payment to the tune of Rs. 2,46,613/- has been made to the petitioner. Meaning thereby, that during the pendency of the writ petition even though the order

dated 24.4.2002 issued by the Director, Secondary Education was set aside by this court vide its order dated 12.7.2010 in CWJC No. 5841 of 2002 without passing any separate order for restoring the earlier order, the District Programme Officer illegally and un-authorizedly during the pendency of the writ petition has recovered huge amount i.e. Rs. 4,99,765/-, from his retiral dues.

Sri Abhimanyu Sharma, learned counsel, who was assisted by Sri Kamaldeo Sharma, by way of referring to Annexure - 'R' to the rejoinder filed by the petitioner at page no. 69, 70 submits that at the time of initial appointment in the year 1978 the petitioner was rightly provided the Post Graduate pay scale as per resolution of the Government of Bihar dated 24.3.1967 (Annexure – 'R'). He has further argued, by way of referring to the averment made in the writ petition, supplementary affidavit and rejoinder to the counter affidavit, that petitioner had never misrepresented or committed any fraud in obtaining the higher pay scale. Right from the very beginning, in view of eligibility, the petitioner was getting Post Graduate Trained pay scale. He has further argued that once the Director, Secondary Education vide its order dated 16.2.1994 (Annexure – '7' to the writ petition) had itself restored the pay scale of Post Graduate and

directed for payment, at subsequent stage the same authority i.e. Director, Secondary Education was having no any authority to review or recall its earlier order. Learned counsel for the petitioner has further argued that the said order i.e. order dated 24.4.2002 was subsequently quashed by this court on 12.7.2010 in CWJC No. 5841 of 2002. It is true that the matter was remitted back to the Director, Secondary Education to hear and pass order afresh and in compliance of the order, the petitioner filed representation, which has been turned down by the Director, Secondary Education vide Annexure - '1' to the writ petition, the Director, Secondary Education even by the impugned order has not directed to restore the order dated 24.4.2002 (Annexure – '9') and as such, in absence of any specific order cancelling the Post Graduate scale of the petitioner, the District Programme Officer was having no authority to ask the Treasury Officer to adjust such a huge amount from his retiral dues. Learned counsel for the petitioner further submitted that in absence of any allegation of misrepresentation or fraud the respondents were not at all authorized to recover the huge amount on the plea that petitioner was paid excess. On this very point he has placed reliance on **(2015) 4 SCC 334 (STATE OF PUNJAB AND OTHERS *Versus* RAFIQ MASIH (WHITE WASHER) AND**

OTHERS).

Learned AC to AAG No. 6 by way of referring to the averments made in the counter affidavit has opposed the prayer of the petitioner. He submits that since irregularity regarding pay scale of Post Graduate in favour of the petitioner was noticed the same was rightly cancelled by the Department vide its memo no. 388 dated 3.5.1993 and direction was also issued to recover the excess amount which was subsequently modified by the Director, Secondary Education vide its memo no. 424 dated 16.2.1994 however, same was subsequently cancelled vide memo no. 1406 dated 24.4.2002. He further submits that it is true that the order contained in memo no. 1406 dated 24.4.2002 was quashed by this court but the matter was remitted back to the Director, Secondary Education for passing order afresh after giving opportunity of hearing. He submits that the order impugned i.e. Annexure – '1' assigns detailed reason to deny the claim of the petitioner for grant of Post Graduate Scale. According to learned state counsel there is no infirmity either in the order contained in Annexure – '1' dated 5.1.2011 issued by the Director, Secondary Education or letter no. 2216 dated 12.6.2012 whereby the District Programme Officer, Siwan had asked the Treasury Officer, Siwan to deduct Rs. 4,99, 765/- from the retiral dues of

the petitioner.

Besides hearing learned counsel for the parties, I have also perused the materials available on record. The claim of the petitioner that right from his initial appointment he was provided with the pay scale of Post Graduate Trained Teacher has not been disputed by the respondents. However, from time to time the respondents have come out with decisions to cancel such pay scale of the petitioner. Subsequently the Director, Secondary Education vide Annexure – '7' to the writ petition had restored the Post Graduate scale and directed for payment. Once the Director, Secondary Education vide its order dated 16.2.1994 had restored the Post Graduate Scale in favour of the petitioner, certainly, at subsequent stage, the same authority i.e. Director, Secondary Education was having no any authority to cancel the said order of restoration. While acting as Director, Secondary Education he was not required to act as an Appellate Authority of his predecessor Director, Secondary Education. However, the order dated 24.4.2002 passed by the Director, Secondary Education (Annexure – '9') was already set aside by this Court vide its order dated 12.7.2010 passed in CWJC No. 5841 of 2002. It is true that the matter was remitted back to the Director, Secondary Education for passing order afresh. Even thereafter,

though the Director, Secondary Education vide Annexure – '1' to the writ petition had rejected the representation of the petitioner claiming restoration of his Post Graduate scale, the Director, Secondary Education by a specific order had not restored the earlier order, which was set aside by this Court. In the impugned order there was no direction for recovery, but to the reasons best known to the District Programme Officer, after authorization issued by the Accountant General, he asked the Treasury Officer, Siwan to deduct huge amount i.e. Rs. 4,99,765/- from the retiral dues of the petitioner. Thereafter, in compliance with the letter of the District Programme Officer (Annexure – '13') the Treasury Officer deducted the said amount from D.C.R.G. of the petitioner, which is evident from Annexure – '14' to the writ petition. The Court is satisfied that the respondents have unnecessarily from time to time have come out with plea that petitioner was un-authorizedly getting the pay scale of Post Graduate. However, from time to time the respondents have also passed order for restoring Post Graduate Scale of the petitioner. Fact remains that respondents have not come out with a case that petitioner had got the pay scale of Post Graduate by misrepresentation. Since the date of his initial appointment from 1978 the petitioner had got the pay scale of Post Graduate that too

without any misrepresentation, at subsequent stage, the respondents were not at all authorized to recover such a huge amount i.e. Rs. 4,99,765/-from the retiral dues of the petitioner. Learned counsel for the petitioner has rightly relied on the Apex Court judgment in **Rafiq Masih Case (Supra).** Accordingly, in view of the law settled by the Apex Court recently in the aforesaid case, the Court is of the opinion that the action of the respondents to deduct Rs. 4,99,765/- on the plea that the petitioner had got excess pay, from the D.C.R.G. of the petitioner is quite unreasonable and illegal. Accordingly, the order contained in Annexure – '1' to the writ petition as well as the order contained in Annexure – '13' to the writ petition are hereby set aside.

The writ petition stands allowed with a direction to the respondents to refund the deducted amount i.e. Rs. 4,99,765/- to the petitioner within a period of two months from the date of receipt / production of a copy of this order, failing which, the petitioner shall be entitled to get interest at the rate of 9% per annum on the deducted amount which is to be calculated from the date of deduction till the date of payment. In that event, the interest amount shall be recovered from the pocket of the officer / employee responsible for non-implementation of the order of

this court within time.

The writ petition is allowed.

(Rakesh Kumar, J)

Praful/-

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