

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.914 of 2014
IN
Civil Writ Jurisdiction Case No. 18930 of 2013**

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1. Gayatri Dubey, wife of Late Ravi Kant Dubey
 2. Siddharth Bhardwaj, son of Late Ravi Kant Dubey
 3. Shivam Bhardwaj, son of Late Ravi Kant Dubey
 4. Krishna Bhardwaj, son of Late Ravi Kant Dubey

All are resident of Mohalla - Gurdwara Road, Punjabi Mohalla , Civil Lines,
P.S. - Buxar, District - Buxar.

.... Appellants

Versus

1. The State of Bihar through the Principal Secretary, Education Department, Government of Bihar, Patna.
2. The Joint Secretary, Education Department, Government of Bihar, Patna.
3. The Director, Higher Education, Education Department, Government of Bihar, Patna.
4. The Director, Bhojpuri Academy, Shastri Nagar, Patna.

.... Respondents

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Appearance :

For the Appellant/s : Mr. Sunil Kumar Singh, Advocate
For the State : Mr. Lalan Kumar, AC to G.P.-9

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**CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
and
HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

Date: 18-11-2016

I.A.No.2659 of 2015

The interlocutory application has been filed for substituting the heirs and legal representatives of the writ petitioner-appellant, who is stated to have died on 15.2.2015.

On a consideration of the facts and circumstances, it is directed that the name of the appellant shall be deleted and in his



place his heirs and legal representatives as mentioned in paragraph-4 of the I.A. shall be substituted.

I.A.No.2659 of 2015 is, accordingly, disposed of.

Heard learned counsel for the appellants and learned counsel for the State.

The appeal is directed against the order dated 8.1.2014 passed by a learned Single Judge of this Court in CWJC No.18930 of 2013 by which the writ application has been dismissed.

The original appellant Prof.(Dr.) Ravi Kant Dubey was appointed as Chairman of the Bhojpuri Academy, Arrah, Bihar by order dated 14.9.2010. He was at that time holding the post of Associate Professor-cum-Head of the Department, Political Science in M.V. College, Buxar, which is a constituent unit of Veer Kunwar Singh University, Arrah. By order dated 10.10.2011 issued by the Government of Bihar in the Human Resources Development Department it was provided that Rs.15,000/- per month was to be paid as honorarium to the non-Governmental Chairmen of the different Academies and Institutes, including Bhojpuri Academy. Prior to the said date the original appellant as the Head of the Executive Committee had got a Resolution passed for being given an honorarium of Rs.4,000/- per month. Pursuant to the said Government Order dated 10.10.2011 the writ petitioner also started drawing an



honorarium of Rs.15,000/- per month but it appears that from March, 2012 the same was stopped by orders of the Government. The writ petitioner by letter dated 18.10.2012 addressed to the Joint Secretary, Education Department, Government of Bihar-cum-Director, Bhojpuri Academy, Patna, after stating his views on the matter that the writ petitioner was not a Government servant, raised his objection to the stoppage of the said honorarium and requested that the honorarium for eight months from March, 2012 be paid. At the foot of the said letter the writ petitioner gave an undertaking in writing stating that if at any time it was found that the payment of honorarium was wrong then he was always prepared to return the said amount. The payment of honorarium was thereafter released and the writ petitioner received the same till February, 2013, whereafter it was again stopped. After the writ petitioner had demitted his office in August, 2013, by letter dated 22.8.2013 the Joint Secretary, Government of Bihar wrote to the Director of the Academy stating that the writ petitioner being the Head of the Department of the Post Graduate Department of Political Science in M.V.College, Buxar and in receipt of the payment of salary, etc. from the amounts released by the Government, therefore, he was not entitled to any honorarium in terms of the bye-laws of the Academy and further directed that since the honorarium was not payable, if any amount was still to be paid the same should not be



paid and whatever amount was paid should be recovered. Thereafter the impugned letter dated 24.8.2013 was issued by the Director, Bhojpuri Academy addressed to the writ petitioner stating that the writ petitioner was not entitled to the honorarium and referring to the undertaking given by him in his letter dated 18.10.2012 to return the amount, he was requested to return the amount of Rs.3,02,645/- in terms of the direction issued by the Government. Aggrieved by the same the writ application had been filed.

The stand of the writ petitioner before the learned Single Judge was that the recovery was bad as there was no misrepresentation or fraud while receiving the money. It was further stated that the writ petitioner had taken permission from the University for appointment on the said post and it was stipulated that the salary would be paid by the University. The order was also challenged on the ground that the writ petitioner had already paid tax liability on the said honorarium. It was further sought that the honorarium paid was for meeting the expenses incurred by the incumbent for the said post under various heads.

Learned counsel for the writ petitioner-appellant has sought to raise the same issue again but feebly accepts that the original appellant being the Chairman of the Academy cannot raise any ground of fraud or misrepresentation. The only contention raised



is with regard to the fact that the writ petitioner was not a Government servant and the Government order dated 10.10.2011 had fixed the honorarium for all non-Governmental Chairmen of Academies and the writ petitioner being an Associate Professor in the University it could certainly not be said that he was holding any Governmental position.

Learned counsel for the State, on the other hand, submits that the rejection of the plea of fraud or misrepresentation, as rightly held by the learned Single Judge, is wholly justified as the writ petitioner was officiating as Head of the Institution. Reference is also made to the undertaking given by the writ petitioner.

A plea has also been raised by learned counsel for the writ petitioner-original appellant with regard to violation of the principles of natural justice.

We have considered the submissions of learned counsel for the appellant and for the State respondents. So far as the plea of violation of the principles of natural justice is concerned, the present is not a case where the writ petitioner was unaware of the fact that drawing of honorarium by him is open to objection. It was on account of such stoppage of honorarium for a period of eight months that the writ petitioner had given an undertaking that in case it was found that the payment was wrong then he was always prepared to return the



said amount. Moreover, whatever ground the writ petitioner had raised, the same is answered by his letter dated 18.10.2012 in which he had given the undertaking and thus it cannot be said that he was taken by surprise and further opportunity of being heard was to be given in the matter.

In the aforesaid circumstances, we are of the view that any such plea of violation of natural justice cannot be taken by the writ petitioner as the principles of natural justice cannot be used as a mere formula. The writ petitioner was fully aware of the dispute when he was drawing the honorarium and had made his views known to the respondents in the matter. Thus, it is not a case where the order has been passed behind his back without his being given the opportunity of putting forward his case.

So far as the plea of fraud or misrepresentation is concerned, it has rightly been held by the learned Single Judge that the writ petitioner being Chairman of the Academy was not entitled to raise any such plea.

Regarding the writ petitioner-appellant having paid income tax on the honorarium, the same cannot be a ground for wrongful drawal of honorarium.

It is evident that even after the appointment of the writ petitioner as the Chairman of the Academy his salary and allowances



as Associate Professor and Head of the Department had been protected and the salary and allowances are being paid to the University teachers and employees by the State Government under the provisions of the Bihar State Universities Act; thus, it is not open to the appellants to raise the hyper technical plea that the decision of the State Government regarding payment of honorarium would apply only to Government employees but not to the writ petitioner.

Thus, in the light of the aforesaid discussions, we do not find any merit in the appeal. It is, accordingly, dismissed.

(Ramesh Kumar Datta, J)

spal/-

(Rajendra Kumar Mishra, J)

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CAV DATE	
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