

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7781 of 2014

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Sanjay Kumar Ambastha

.... Petitioner/s

Versus

Rajesh Kumar Mishra & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Anil Kumar Singh, Advocate
Mr. Surinder Kumar, Advocate
Mr. Sanjay Kumar Singh, Advocate
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

10 25-02-2016

Heard learned counsel Mr. Anil Kumar Singh for the petitioner and the learned counsel Mr. Ashutosh Ranjan Pandey, for the respondent No.1.

The petitioner has filed this application under Article 227 of the Constitution of India for quashing the order dated 07.03.2014, passed by Sub-Judge-I, Civil Court, Munger in Title Suit No. 208 of 2013, whereby the Court below while hearing an interlocutory application directed the school authorities to pay the salary of the plaintiff since August, 2013 to November, 2013 and also subsequent months as per service rules applicable on regular basis within fifteen days of the order.

The respondent no.1 filed the aforesaid suit claiming the relief that on adjudication of the instant suit, the learned Court be pleased to declare that the plaintiff's service as Teacher Pr.T.



Grade in D.A.V. School be treated from his earlier date of appointment, i.e., from 11.04.1995 in favour of the plaintiff and against the defendants. That on adjudication of the instant suit, the learned Court below be pleased to direct the defendants to release all claims of the plaintiff viz. claim of dues and remaining subsistence allowance and other allied benefits, etc. up to date in accordance with the prevailing and guiding statute in favour of the plaintiff. That the learned Court by an interim order be pleased to direct the defendants to release the monthly salary of the plaintiff at once for the months of August, September, October and November for the year 2013. That the learned Court below be further pleased to restrain the defendants from dismissing the plaintiff from his said post of Teacher Pr.T. Grade of D.A.V. Public School till his retirement by granting ad interim injunction during the pendency of the instant suit and other reliefs. At paragraph-24 of the plaint, the plaintiff valued the suit at Rs. 1,00,536/- being the salary for the month of August, September, October and November of the year, 2013 and Rs. 4,000/- for the injunction.

Thereafter, an interlocutory application was filed by the respondents in the Court below for directing the school authorities to pay the salary for the aforesaid month i.e. August,

September, October and November, 2013. Rejoinder was filed by the petitioner.

By the impugned order the Court below directed the petitioner to pay the salary for the aforesaid four months and also the subsequent months.

Learned counsel for the petitioner submitted that this is one of the reliefs claimed in the suit and the same could have been granted only after the suit is decreed but the Court below while hearing the interlocutory application, in fact, has allowed a part of the relief claimed in the suit for which the suit was filed. Further the Court below has directed the petitioner to pay the future salary also without specifying as to what will happen, if the respondent no.1 will not come to the school and will not work. Since by the order the Court below has directed to pay the salaries of subsequent months, the plaintiff is now not coming to school and is not working.

On the other hand, the learned counsel Mr. Pandey for the respondent no.1 submitted that on the basis of the materials, the Court below has rightly directed the petitioner to pay the monthly salary and in fact, in the written statement no where the petitioner has stated about how many days the respondent no.1 has worked. The Court below after perusing the evidences and

recorded finding that the petitioner is teacher and still in service and, therefore, has rightly passed the impugned order.

Admitted fact is that departmental proceeding is going on against the respondent no.1. It is admitted fact that the petitioner directed the respondent no.1 to produce the B.Ed Certificate, as at the time of appointment, the respondent no.1 claimed himself to be B.Ed trained candidate. The respondent no.1 did not produce the same and, therefore, departmental proceeding was initiated and then his salary was withheld, as stated above this payment of salary for four months is itself in disputes in the suit and the suit has been valued on the basis of these four months salary and the relief no.3 has been claimed by the plaintiff as quoted above. Therefore, unless the suit is decreed, this relief claimed by the plaintiff in relief no.3, which is the basis for filing the suit and valuation thereof is calculated on the basis of the salary, in my opinion, the Court below could not have passed the impugned order as it amounts to allowing the suit itself at the interlocutory stage. Further it appears that the Court below has also not considered regarding the objection of the petitioner to the effect that for how many days he worked and for how many days he did not work which is the main dispute between the parties. Likewise there is no relief claimed for future salaries and there is

dispute as to whether he is working or not.

In view of the above fact, the Court below wrongly decided an issue which is involved in the suit and while deciding the issue, the Court below also passed orders directing to pay future salaries which are not in issue between the parties.

Therefore, the impugned order is set aside and the writ application is allowed.

(Mungeshwar Sahoo, J)

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