IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10535 of 2016

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Raghib Hassan Son of Late Nasimuddin Resident of Mohalla- Aliganj Road No 1 P.S- Town, District - Gaya.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary cum Commissioner, Secondary and Primary Education, Government of Bihar, Patna.
2. The Director Secondary Education Government of Bihar Patna.
3. The Secretary Finance Department, Government of Bihar Patna.
4. The District Education officer, Samastipur.
5. The District Education Officer, Gaya.

.... Respondents

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Appearance :

For the Petitioner/s : Md. Naseem Mukhtar, Advocate

For the Respondent/s : Mr. Arvind Ujjwal- SC-4

Mr. Maruth Nath Ray, AC to SC-4.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 23-12-2016

2.15 p.m.

The present writ petition has been filed by the petitioner for a direction to the respondent-authorities to make payment of dues of encashment of leave on attaining the age of superannuation.

2. The question involved in the present writ petition is whether or not the teachers employed in Non-

Government Aided Minority Schools can avail the benefit of encashment of leave.

3. The facts of the case are not in dispute.

4. The petitioner was initially appointed as Assistant Teacher on 16.11.1981 in a Non-Government Aided Minority Secondary School. He retired on attaining the age of superannuation on 31.03.2016 from Hadi Hashmi Senior Secondary School, Gaya as Headmaster.

5. Learned counsel for the petitioner has submitted that in view of the Resolution No. 237 dated 20th February, 1990 as contained in Annexure-3 to the writ petition, the petitioner is entitled to be given equal pay and all other benefits on par with the government schools. He has submitted that the teachers employed in Government Aided Minority Schools are entitled to encashment of leave as it is paid on account of unutilized leave and, therefore, it partakes the character of salary. He has also submitted that in terms of Resolution No. 237 dated 20th February, 1990, teaching and non-teaching staffs working in Non-Government Aided Minority Primary/Middle/Secondary Schools are given parity, including Dearness Allowance, Medical Allowance, House Rent Allowance and Urban Compensatory Allowance etc. Hence, the petitioner cannot be denied the benefit of leave encashment.

6. On the other hand, learned counsel for the respondents has submitted that the issue involved in the present case involves financial implications and is also concerned with the policy decision, as such, necessary guideline has been sought from the Director, Secondary Education, Bihar in this regard. He has contended that the resolution relied upon by the petitioner is confined to payment of salary to the teaching/non-teaching staffs of government schools and those facilities provided by the State Government from time to time have been given to the teaching/non-teaching staffs of recognized Non-Government Aided Minority Primary/Middle/Secondary Schools, Non-Government Sanskrit Schools and Madarasas of the State, but the resolution does not say a word regarding payment of dues of encashment of leave. He, thus, submits that in absence of any clear directive in the aforesaid resolution, the petitioner cannot claim payment of encashment of leave as a matter of right and it would not be proper for this Court to issue *mandamus* in this regard.

7. I have heard learned counsel for the parties and perused the record.

8. The Resolution No. 237 dated 20.02.1990 has come into force on 01.01.1990. It reads as under :-

> **"बिहार सरकार, मानव संसाधन विकास, संकल्प ज्ञापांक 237 दि0 20.2.90**
> **विषय :–** राज्य के मान्यता प्राप्त गैर सरकारी अल्पसंख्यक

प्राथमिक/माध्यमिक विधालयों, प्रस्वीकृत संस्कृत विधालयों एवं प्रस्वीकृत मदरसों के षिक्षक/ षिक्षकेत्तर कर्मचारियों को सरकारी षिक्षक/ षिक्षकेत्तर कर्मचारियों की तरह वेतन , भत्ता एवं अन्य वित्तीय सुविधायें प्रदान करने के सम्बन्ध में।

पढ़ा गया – राजकीय संकल्प सं0 2022 दि0 18.8.79, 179 दि0 22.11.81, 522 दि0 28.2.82, 172 दि0 24.3.84 , 330 दि0 16.3.84 , 273 दि0 25.3.89, 300 दि0 31.3.82 , 372 दि0 13.4.83, 172 दि0 24.4.83 एवं 360 दि0 31.3.84.

राज्य के प्राथमिक/ मध्य/ माध्यमिक अल्पसंख्यक विधालयों, प्रस्वीकृत संस्कृत विधालयों एवं मदरसों के षिक्षक एवं षिक्षकेत्तर कर्मचारियों को सरकारी षिक्षकों की भांति वेतन के अतिरिक्त अन्य सुविधायें प्रदान करने की मांग आती रही है। इन विधालयों एवं मदरसों में कार्यरत षिक्षक/ षिक्षकेत्तर कर्मचारियों का वेतन के अतिरिक्त दी जा रही महंगाई भत्ता, चिकित्सा भत्ता , आवास भत्ता, नगर क्षति पूर्ति भत्ता आदि को सुविधाओं में एकरूपता नहीं है। जहां माध्यमिक अल्पसंख्यक विधालयों के षिक्षक एवं षिक्षकेत्तर कर्मचारियों को सरकारी षिक्षकों की भांति महंगाई भत्ता स्वीकृत किया जा रहा है वही प्रस्वीकृत संस्कृत विधालयों के षिक्षकों एवं षिक्षकेत्तर कर्मचारियों को वेतन के अतिरिक्त केवल 13 (तेरह) किस्त एवं मदरसों को पूर्ण महंगाई भत्ता प्राप्त हो रहा है। परन्तु आवास भत्ता, चिकित्सा भत्ता , नगर क्षतिपूर्ति भत्ता नही मिल रहा है।

2. **विभिन्न अल्पसंख्यक विधालयों, प्रस्वीकृत संस्कृत विधालयों एवं प्रस्वीकृत मदरसों के षिक्षक/ षिक्षकेत्तर कर्मचारियों को समान रूप में सुविधायें उपलब्ध कराने का प्रष्न राज्य सरकार के विचाराधीन थी। सरकार द्वारा इसपर पूर्णरूपेण विचारोपरान्त निर्णय लिया गया है कि राज्य के गैर सरकारी मान्यता प्राप्त अल्पसंख्यक प्राथमिक, मध्य एवं माध्यमिक विधालयों तथा प्रस्वीकृत गैर सरकारी संस्कृत विधालयों एवं मदरसों के षिक्षक एवं षिक्षकेत्तर कर्मचारियों को वेतन के अतिरिक्त वे सभी सुविधायें दी जाय जो सरकारी विधालय षिक्षक एवं षिक्षकेत्तर कर्मचारियों को उपलब्ध हैं एवं समय–समय पर जो राज्य सरकार द्वारा उपलब्ध करायी जाय।**

3. **उपरोक्त निर्णय दिनांक 1.1.90 से प्रभावी होगा।**

4. **इस पर होने वाले व्यय के सम्बन्ध में पृथक से आदेष निर्गत किया जायेगा।**

5. **संकल्प में वित्त विभाग की सहमति एवं मंत्रिपरिषद की स्वीकृति प्राप्त कर ली गयी है।"**

9. From perusal of the aforesaid resolution, it would be evident that in view of the demand for providing other facilities besides salary to the recognized Non-Government Aided Minority Primary/Middle/Secondary Schools, Non-Government Sanskrit Schools and Madarasas of the State like government

teachers, the Government after elaborate consideration decided that all facilities in addition to salary as available to the teaching/non-teaching staffs of the government schools provided by the State from time to time should be given to the recognized Non-Government Aided Minority Primary/Middle/Secondary Schools and Non-Government Sanskrit Schools and Madarasas of the State. Hence, I find substance in the argument of learned counsel for the petitioner that in terms of the aforesaid resolution, the petitioner is entitled to be given the benefit of leave encashment.

10. So far as the objection raised by the State is concerned, this Court would like to record that the law is in respect of payment of dues of encashment of leave is well-settled. It is nothing but payment of salary for leave not availed by an employee and which is to his credit. Leave encashment is earned by an employee by discharge of his duties for each completed calendar month of service period. An employee who retires on attaining the age of superannuation becomes entitled to payment of cash equivalent of leave salary for earned leave, if any, at the credit of the employee on the date of retirement subject to the prescribed upper limits to be fixed by the State Government from time to time. Thus, leave encashment is nothing but salary which an employee earns during service and is paid after his retirement.

11. In view of the discussions made above, the writ petition is allowed. The respondents are accordingly directed to pay the dues of leave encashment to the petitioner as per his entitlement without any delay preferably within a period of three months from the date of production of a copy of this order failing which the respondents would be liable to pay interest at the rate of eight percent per annum on such delayed payment from the date the amount became due till the date of its actual payment.

(Ashwani Kumar Singh, J.)

Kanchan/-

AFR/NAFR	NAFR
CAV DATE	…
Uploading Date	10.01.2017
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