

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7645 of 2011

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Ravinandan Sharma aged about 61 years s/o Late Kedar Prasad Sharma, resident of Mohalla - Raj Colony Pucca Field, Maharani Road, Gaya, P.S. - Kotwali, District - Gaya

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Director, Primary Secondary And Adult Education, Bihar, Patna
3. The District Superintendent Of Education, Gaya
4. The District Provident Fund Officer, Gaya
5. The Drawing Disbursing Officer, Vardha Middle School, Gaya
6. The Accountant General, Bihar, Patna
7. The Treasury Officer, Gaya

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Binod Kumar

For the Respondent/s : AC to SC 22

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 27-01-2016

Heard Sri Binod Kumar, learned counsel for the petitioner and learned AC to SC No. 22.

The petitioner, who superannuated with effect from 30.11.2010 as Headmaster from Middle School, Verda has approached this court invoking its writ jurisdiction with a prayer to quash an order contained in letter no. 237 dated 4.3.2011 issued under the signature of District Superintendent of Education, Gaya. By the said order the earlier pay fixation in favour of the petitioner in the scale of Rs. 7500 -250- 12000/- with effect from 1.4.1997 was unilaterally cancelled and also direction was issued for recovery of

the excess paid amount.

Short fact of the case is that the petitioner was initially appointed as Assistant Teacher on 12.10.1973 and was posted in Alakhdeo Middle School, Guraru, Gaya. Since after completion of several years no promotion was granted to the petitioner and other similarly situated persons, the petitioner and others had approached this court by filing a writ petition vide CWJC No. 2564 of 1994. In the said writ petition a plea was taken for directing the respondents for their promotion as Headmaster against the vacancies said to be existing prior to 1st January 1986. The said writ petition was disposed of on 9.3.1995 with a direction to the District Education Establishment Committee, Gaya, to consider the grievances of the petitioner and issue appropriate order in accordance with law within a specified time.

Learned counsel for the petitioner submits that subsequently in compliance with the order of the writ court promotion order was issued vide Annexure - '3' to the writ petition i.e. office order contained in memo no. 2559 dated 5th October 1995. By the said order the petitioner was promoted as Headmaster and name of petitioner finds place at serial no. 7 of the Annexure - '3'. After issuance of the promotional order petitioner joined and availed all the benefits and scale which was granted by the authority



concerned. Functioning in the said capacity the petitioner with unblemished service retired on 30.11.2010. However about more than one year after retirement of the petitioner the impugned order has been issued by the District Superintendent of Education, Gaya vide Annexure – '1' to the writ petition and scale which was granted to the petitioner long back has been directed to be cancelled with retrospective effect and also direction has been issued for recovery of the same. A specific plea has been taken by the petitioner in this writ petition that before issuance of such order no notice was issued to the petitioner. Meaning thereby that the order was passed behind the back of the petitioner. Learned counsel for the petitioner further submits that the petitioner was granted the scale without any misrepresentation or fraud committed by him and as such according to learned counsel for the petitioner in such a situation after retirement no order can be passed for recovery of the said amount.

Learned state counsel has opposed the prayer of the petitioner and by way of referring to the averment made in paragraph no. 10 and 11 of the counter affidavit he submits that promotion was granted with effect from the date of joining as per order dated 5.10.1995. However, learned state counsel was not in a position to dispute the allegation of the petitioner that the order impugned was passed unilaterally without any notice to the writ petitioner.

In view of the facts and circumstances particularly the fact that the benefit which was granted some time in the year 1995 was purported to be withdrawn even about one year after retirement of the petitioner that too without any notice to the petitioner is certainly not sustainable in the eye of law. This was the reason that while granting time for filing counter affidavit by order dated 9.5.2011 this court had restrained the respondents from recovery pursuant to Annexure – '1' to the writ petition. Accordingly the order impugned being passed in complete violation of the principle of natural justice is not sustainable and is accordingly set aside.

The writ petition stands allowed.

It is made clear that if any recovery has been effected in view of Annexure – '1' to the writ petition same must be refunded to the petitioner within a period of three months from the date of receipt / production of a copy of this order with a rider that after three months if payment is not made to the petitioner, he shall be entitled to get interest at the simple rate of 12% per annum thereafter which may be recovered from the pocket of the concerned employee / officer responsible for the same.

The writ petition stands allowed.

(Rakesh Kumar, J)

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