

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7665 of 2017

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Md. Mazharul Haque, son of Late Md. Zahiruddin, Resident of Village and Post-Asthawan, P.S.- Asthawan, District- Nalanda.

.... 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, Nalanda.

.... Respondents

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Appearance :

For the Petitioner : Mr. Fakhruddin Ali Ahmad, Advocate
Mr. Arun Kumar Bhagat, Advocate
For the State : Mr. Madhaw Prasad Yadav, GP-23
Mr. Rajesh Kumar Sinha, AC to GP-23

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 05-12-2017

Heard learned counsel for the petitioner and State.

2. On 20.11.2017, as per the earlier order dated 30.10.2017, a direction was to file counter affidavit by 30.10.2017, failing which the respondents no.1 to 4 were required to be present in Court. On 20.11.2017, no counter affidavit was filed as the stand taken by learned counsel for the State was that though it was prepared but as it requires changes, the same was not being filed. The Court had granted indulgence and, thus, restrained from passing any strict order despite the



fact that both the directions of the Court in its order dated 30.10.2017 had not been complied with, i.e., neither counter affidavit was filed nor respondents no.1 to 4 were present.

3. It is quite unfortunate that even today, no counter affidavit has been filed and on the contrary, again some time is being sought. The Court cannot keep granting time again and again for no valid reason. The Court had indicated that as there was already an order on the issue by a Co-ordinate Bench, which was affirmed by the Division Bench, and still the authorities not taking a decision indicated that there was deliberate resistance on the part of the authorities to accept the decision of the Court on the issue.

4. Today, learned counsel for the State has brought to the notice of the Court an order dated 30.01.2014 passed in C.W.J.C. No.5252 of 2006, to submit that as the Court had refused to grant a similar prayer in the said case with regard to Leave Encashment, the authorities were not sure as to whether the said order was to be followed or the order dated 03.08.2015 passed in C.W.J.C. No.23 of 2015, which has been subsequently upheld in L.P.A. No.1856 of 2016 by judgment dated 16.03.2017. Learned counsel further informed that the order



passed in C.W.J.C. No.5252 of 2006 was also the subject matter of L.P.A. No.715 of 2014 and the appeal was withdrawn in terms of order dated 19.05.2015.

5. Upon going through the order dated 30.01.2014 in C.W.J.C. No.5252 of 2006, the Court finds that the consideration by the Co-ordinate Bench with regard to leave encashment starts from paragraph no.28 and ends in paragraph no.33. The same reveals that the resolution of the State Government in the Human Resources Development Department contained in Memo No.237 dated 20.02.1990, which is one of the reasons for the Court to have allowed the prayer for payment of leave encashment by order dated 03.08.2015 in C.W.J.C. No.23 of 2015, has not been noticed by the Co-ordinate Bench while considering the claim for leave encashment in order dated 30.01.2014 in C.W.J.C. No.5252 of 2006.

6. As far as the order dated 19.05.2015 in L.P.A. No.715 of 2014 is concerned, the same clearly discloses that permission was granted to withdraw the appeal with the observation that the State was interested in filing the appeal against the order and further that the said order would not affect the right of the State to prefer appeal. Thus, the Court finds that



there is no order or judgment of the Division Bench arising out of the decision of the Co-ordinate Bench in C.W.J.C. No.5252 of 2006, on the merits of the issue.

7. Coming to the merits of the matter, when the Court called upon learned counsel for the State to assist as to whether they can be any other import of the resolution of the State Government contained in Memo No.237 dated 20.02.1990 with regard to admissibility of the claim of the petitioner for encashment of earned leave in the present case, he is unable to make any distinction or controvert the decision of the State Government, which had the concurrence of the Finance Department and has also been approved by the Cabinet. From the said resolution, it is clear that petitioner and similarly situated persons were granted all benefits including salary and other facilities, as was payable to the Teaching and Non-Teaching Staff of Government Schools from time to time. This was a major reason for the Court earlier to allow the prayer in C.W.J.C. No.23 of 2015 by order dated 03.08.2015. Upon being taken before the Division Bench in L.P.A. No.1856 of 2016, the same has been upheld by judgment dated 16.03.2017.

8. In view of the aforesaid, the Court has no reason to



take a different view than what it had taken in C.W.J.C. No.23 of 2015. Accordingly, the writ petition stands allowed in similar terms as order dated 03.08.2015 passed in C.W.J.C. No.23 of 2015. The respondents are directed to pay the leave encashment amount as per the entitlement of the petitioner within a period of two months from the date of production of a copy of this order before the respondent no.4.

(Ahsanuddin Amanullah, J)

N.H./-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	05-12-2017
Transmission Date	

