

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.895 of 2017

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Uday Sharma, aged about 61 years Son of late Hriday Sharma Resident of Village-
Harpura, Police Station- Bikram, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The District Magistrate, Patna.
3. The District Panchayat Raj Officer, Patna.
4. The Block Development Officer, Bihta (Patna).
5. The Accountant General Bihar, Patna.
6. The District Provident Fund Officer, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Mukesh Kumar, Advocate
For the State	:	Mr. Kameshwar Prasad Gupta, GP 10
For the A.G.	:	Mr. Kumar Priya Ranjan with Mr. Niraj Kumar, Advocates

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 06-02-2018

Heard learned counsel for the petitioner and State.

2. Pursuant to the earlier order, the District Magistrate,
Patna is also present in Court and has already filed supplementary
show cause.

3. The petitioner has moved the Court for the following
reliefs:

*“I. For payment of full and final pension as well
as arrears of pension.*

*II. For payment of General Provident Fund
amount with upto date statutory interest till the
date of actual payment.*



III. For payment of Group Insurance.

IV. For payment of statutory as well as penal interest due to delayed payment.”

4. In sum and substance, the petitioner contends that despite there being serious charges of misappropriation and embezzlement of Government funds, he is entitled to 90% provisional pension and gratuity in terms of Section 43 (c) of the Bihar Pension Rules, 1950 (hereinafter referred to as the ‘Rules’).

5. The petitioner was a Panchayat Secretary and on 29.02.2016 he superannuated after attaining the age of 60 years. In the meantime, the Committee formed to consider the cases of persons who desired to be re-employed on contractual basis, recommended the name of the petitioner but ultimately the authorities concerned did not approve his re-employment. However, in the meantime, after his superannuation on 29.02.2016, within a span of a few months, he withdrew over Rs. 31 Lakhs under various schemes. On such charge, the authorities have not finalized his pensionary benefits and have also initiated departmental proceeding and instituted criminal proceeding against him.

6. Learned counsel for the petitioner submitted that under *bona fide* impression that the petitioner’s case was recommended by the Committee constituted to look into the matter, he had withdrawn



the money and had continued to complete the work which has also been done for the amount he has withdrawn. It was submitted that the petitioner having invested the amount in the work for which the fund was earmarked, it cannot be categorized either as loss to Government exchequer or embezzlement.

7. The Court, on an earlier occasion, had directed the District Magistrate, Patna to conduct an enquiry with regard to the claim of the petitioner that the amount taken by him had been satisfactorily explained in the work done by him. In the earlier report, the petitioner was found to have withdrawn the money without any authority and, thus, making out a case of misappropriation /embezzlement. However, on a specific query relating to the amount which the petitioner is said to have withdrawn and the work relating to the scheme for which the amount has been withdrawn having been done, the stand is that out of a total amount drawn by the petitioner of Rs. 31,65,800/-, for an amount of Rs. 85,000/- and odd absolutely no work has been done and with regard to the other works, he has not submitted the required documents, i.e., vouchers, muster roll etc.

8. On a direct query of the Court as to what action has been taken against the officers who were also responsible for allowing the petitioner to continue discharging official duties, even upon his superannuation, the District Magistrate took a categorical stand before



the Court that in terms of the report of the A.D.M., even the Block Development Officer, Bihta was responsible for not ensuring that the petitioner did not withdraw any amount and, thus, action would also be taken against him as he is also a party to such illegality. On a query as to why action has still not been taken, the District Magistrate submitted that under *bona fide* impression that as the matter was subjudice before the Court, further action by the authorities had not been precipitated, but once the Court permits, the authorities would ensure that strict action is taken against all those officers also who were responsible for such a situation without any pick and choose. It was further assured by the District Magistrate that such action would be quick and effective and the matters would be taken to their logical conclusion without undue waste of time.

9. Learned counsel for the petitioner submitted that the petitioner having invested the amount in the work and also the fact that under the Rules, the authorities have to release at least the provisional pension and gratuity which has not been done, the petitioner's right has been violated and, thus, the Court may interfere in the matter.

10. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court has not been persuaded to exercise its extraordinary, prerogative, writ



jurisdiction under Article 226 of the Constitution of India for the reason that the petitioner has not come to the Court with clean hands. On a specific query of the Court as to whether the amount of over Rs. 31 Lakhs has been withdrawn by the petitioner after his superannuation, the categorical stand is in the affirmative. The petitioner being aware of his date of superannuation and the fact that no formal order for his re-employment on contractual basis has been issued, the petitioner could not have touched even one rupee from the Government fund and in fact had no authority to keep on discharging his official duties as a Panchayat Secretary. Once the petitioner has admittedly drawn over Rs. 31 Lakhs and that too in a span of a few months without the Competent Authority approving such re-employment on contractual basis, the petitioner cannot plead ignorance or take the stand that it was *bona fide*. The *mala fide* is writ large, as there can be no justification or any reason for a person who has superannuated to withdraw any amount and in the present case when the amount is huge, just because the money has been invested or spent on the scheme, would not absolve the person of the liability of having withdrawn the amount totally without any authority in law.

11. For reasons aforesaid, the writ petition stands dismissed.

12. However, the petitioner shall be at liberty to raise his



defence before the concerned authorities in accordance with law and the authorities concerned shall not be prejudiced by the dismissal of the present writ petition.

13. The personal appearance of the District Magistrate, Patna stands dispensed with.

(Ahsanuddin Amanullah, J)

Anjani/-

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