

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1195 of 2014

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Jainath Kumar Son Of Shri Late Ram Nandan Rai Resident Of Village -
Nainha, P.O. - Nainha, P.S. - Hajipur Sadar, District - Vaishali, Bihar

... .. Petitioner/s

Versus

1. The State Of Bihar Through The Principal Secretary, Human Resources Development Department, Govt. Of Bihar, Patna
2. The Principal Secretary, Human Resources Development Department, Govt. Of Bihar, Patna
3. The Director, Primary Education, Govt. Of Bihar, Patna
4. The Project Director, Bihar Educational Project Council, Sarva Shiksha Aviyan, Rajbhasha Parishad, Saidpur, Patna
5. The District Education Officer, Vaishali At Hazipur
6. The District Programming Officer, Sarva Siksha Abhiyan, Bihar Education Project, Vaishali At Hazipur
7. Block Education Officer, Vaishali At Hazipur
8. Smt. Namita Bhardwaj, Gender Equity Consultant, Bihar Education Project Council, Rajbhasha Parishad, Saidpur, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Aditya Prakash Sahay, Advocate
For the State	:	Mr. Sudhanshu Shekhar, AC to SC 24
For BEPC	:	Mr. Girjish Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT

Date : 24-09-2018

Heard learned counsel for the petitioner and learned counsel appearing on behalf of the State as well as the Bihar Education Project.

The petitioner is aggrieved by the order contained in Annexure-3 and the follow up order contained in Annexure-5.

Learned counsel for the petitioner submits that the action was taken against the petitioner without compliance of the principles of natural justice and without providing any opportunity of hearing to the petitioner. Referring to the judgment in CWJC



No. 8579 of 2013 and analogous cases, he submitted that the subject matter of that case was the same and noticing non-compliance of the principles of natural justice, the Court passed order on 19.7.2013 in the following terms:-

“In order to expedite this exercise this Court would fix the date of 30th September, 2013 for the petitioners to appear in person before the Director, Primary Education, whereafter the Director, Primary Education may hear the petitioners either on the same day or fix another date of enquiry and the petitioners thereafter must participate in the enquiry on the date fixed without indulging into any delaying and /or evasive tactics. In the event the Director, Primary Education finds any of the petitioners indulging in to evasive or delaying tactics he will proceed ex - parte and pass his orders. If, however, the petitioners remain present in course of enquiry, the Director, Primary Education will be under obligation to give them opportunity of personal hearing to the petitioners. The entire exercise of holding enquiry and passing final order by the Director, Primary Education must be completed by 31st December, 2013. Till such an exercise is completed none of the petitioners will be also not subjected to coercive action for refunding the amount by way of recovery.

It is made clear that once such enquiry will be held by the Director, Primary Education there will be no need for holding of parallel enquiry by the



District Programme Officer. Therefore, the papers of the entire enquiry available with District Programme Officer will be sent to the Director, Primary Education who shall now hold enquiry and pass his final order in accordance with law. The scope of such enquiry will be only confined to alleged financial irregularity against the petitioners. The result of the enquiry, therefore, as per decision of the Director, Primary Education will bind both the parties i.e. the authorities of the Bihar Education Project as also the petitioners.

The departmental proceeding, which has been initiated against the petitioners who happen to be permanent employees of the State of Bihar while doing work of Bihar Education Project by way of contract during the period of deputation in Bihar Education Project, would remain stayed till a categorical finding on financial irregularity is recorded by the Director, Primary Education against any of the petitioner. Such findings recorded by the Director, Primary Education, however, could be utilized in the pending departmental proceeding wherein there may be more charges other than financial irregularity against the petitioners. Thus, for the time being the departmental proceeding against the petitioners shall remain in abeyance and once the Director, Primary Education will take his final decision on or before 31st December, 2013 such order may be made available to the competent authority for taking further action against the petitioners by way of



continuation and conclusion of the departmental proceeding already launched against the petitioners, if necessary. It is also made clear that the competent authority having received the order of the Director, Primary Education passed by him after holding enquiry against the petitioners may also take a decision for not continuing with the departmental proceeding if there is no other serious charge against any of the petitioners.”

Mr. Aditya Prakash Sahay, learned counsel for the petitioner referring to the order dated 16.10.2017 passed in CWJC No. 499 of 2017 submitted that the writ court has passed order for payment of authorized gratuity to the petitioner of that case. The relevant part of that order is quoted below:-

“Accordingly, I direct the District Programme Officer (Establishment), Vaishali (respondent no. 3) to make payment of duly sanctioned and authorized gratuity to the petitioner, as early as possible, but not later than three months from the date of receipt/production of a copy of this order. In case, the respondent no.3 fails to pay gratuity to the petitioner within the afore-stated period of three months, the admissible amount of gratuity would earn interest at the rate of seven per cent per annum from the date it became due till the date of actual payment. In such case of payment of interest, the State Government shall be at liberty to recover the amount of interest from the



officer/officers responsible for the delay caused in payment of amount of gratuity in accordance with law.”

Accordingly, the respondents are hereby directed to take steps for payment of gratuity in similar terms as directed by order dated 16.10.2017 in CWJC No. 499 of 2017.

With the aforesaid, the writ petition stands disposed of.

(Anil Kumar Upadhyay, J)

spandey/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.09.2018
Transmission Date	

