

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22112 of 2011

1. MD.WAKIL SON OF LATE AHMAD HUSSAIN RESIDENT OF VILLAGE - KHAJURA, P.S. MADHEPUR, DISTRICT - MADHUBANI, AT PRESENT POSTED AS A ASSISTANT TEACHER PRATHMIK MAKTAB, SIKARIYA, P.S. MADHEPUR, DISTRICT - MADHUBANI
2. SANTOSH KUMAR JHA SON OF LATE BHOGENDEA JHA RESIDENT OF VILLAGE - MAHRAIL, P.S. JHANJHARPUR, DISTRICT - MADHUBANI AS PRESENT POSTED MIDDLE SCHOOL NARPATI NAGAR, BLOCK - PANDAU, DISTRICT - MADHUBANI
3. Phool Jha Son Of Late Upendra Jha Resident Of Village - Khajura, P.S. Madhepur, District - Madhubani At Present Posted Kaniya Primary Vidyalaya- Banki, Block Madhepur, District - Madhubani
4. ARBIND KUMAR SON OF SHIVNANDAN MAHTO RESIDENT OF VILLAGE - SUKHAITH, P.S. JHANJHARPUR, DISTRICT - MADHUBANI AT PRESENT POSTED U.M.S GODHANPUR, BLOCK JHANJHARPUR, DISTRICT - MADHUBANI
5. MD. GAYASUDDIN SON OF MD. ZIAUDDIN RESIDENT OF VILLAGE - GIDARGNJ, P.S. ANDHRATHARHI, DISTRICT - MADHUBANI AT PRESENT POSTED PRATHMIK VIDYALAL KANIYU URDU, BABUBARHI, BLOCK BABUBARHI
6. BINOD KUMAR RAM SON OF LATE BISHESHWAR RAM RESIDENT OF VILLAGE - KACHHWI, P.S. MADHEPUR, DISTRICT - MADHUBANI AT PRESENT POSTED MIDDLE SCHOOL KACHHWI, BLOCK - LAKHNAUR, DISTRICT - MADHUBANI
7. BISNUDEO BIHARI SON OF LATE RAM RATAN MOCHI RESIDENT OF VILLAGE - BEHAT, P.S. MADHEPUR, DISTRICT - MADHUBANI AT PRESENT POSTED PARTHIK VIDYALA ADALPUR CHARWAJA, BLOCK - LAKHNAUR, DISTRICT - MADHUBANI
8. SANJAY KUMAR MISHRA SON OF LATE DENA NATH MISHRA RESIDENT OF VILLAGE - CHUNNI, P.S. MADHEPUR, DISTRICT - MADHUBANI AT PRESENT POSTED PRATHMIK VIDYALA RUPAULIO, BLOCK - MADHEPUR, DISTRICT MADHUBANI
9. DEEPAK KUMAR SINGH SON OF LATE HIRDEO NARAYAN SINGH RESIDENT OF VILLAGE - JHANJHARPUR BAZAR WARD NO. 10 P.S. JHANJHARPUR, DISTRICT MADHUBANI AT PRESENT POSTED PRIMARY SCHOOL JHANJHARPUR MADH, BLOCK JHANJHARPUR, DISTRICT - MADHUBANI
10. MD. NOORULLAH SON OF LATE MD. JAINUDDIN RESIDENT OF VILLAGE - DARHAR, P.S. DARHAR, DISTRICT - SAHARSA AT PRESENT POSTED U.M.S KHORE MADANPUR, BLOCK - MADHEPUR, DISTRICT - MADHUBANI

... .. Petitioner/s



Versus

1. THE STATE OF BIHAR THROUGH THE SECRETARY, HUMAN RESOURCES DEPARTMENT, GOVERNMENT OF BIHAR, NEW SECRETARIAT, BAILY ROAD, PATNA
2. THE DIRECTOR PRIMARY EDUCATION, HUMAN RESOURCES DEPARTMENT, GOVERNMENT OF BIHAR, NEW SECRETARIAT, BAILY ROAD, PATNA
3. THE DISTRICT MAGISTRATE, MADHUBANI
4. THE DISTRICT SUPERINTENDENT OF EDUCATION, MADHUBANI
5. THE ACCOUNTANT GENERAL, BIHAR, PATNA

... .. Respondent/s

Appearance :

For the Petitioner/s : Md Abu Haider, Adv
Md. Nazir Ansari, Adv
For the Respondent/s : Mr. Chakradhari Shar Singh Aa

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

5 26-06-2018 Despite indulgence granted by this Court on previous occasion respondents have not filed counter affidavit.

The manner respondents are defying the direction of the Court in the matter of filing of counter affidavit reflects the attitude of the respondents in this Court. Despite adverse comments of this Court on 31.01.2012, no counter affidavit was filed.

Learned counsel appearing on behalf of the petitioner submits that the issue raised in the writ application is no more res-integra in fact in batch of cases, the co-ordinate Bench of this Court had decided the issue on 10.11.2016. The relevant part of judgment dated 10.11.2016 in C.W.J.C. No. 15885 of 2011 and analogous cases reads as follow:-

“12 In view of the facts



and circumstances of aforesaid cases, particularly the fact that petitioners had drawn salary as Assistant Teacher, as they were appointed as Assistant Teacher, it would be difficult to approve the impugned order passed in aforesaid writ petitions. In view of principle laid down by the Apex Court in Rafiq Masih's case (Supra), as indicated above as well as in view of the fact that petitioners being Class III employees and had drawn their salary, as Assistant Teacher, respondents may not be drawn their salary, as Assistant Teacher, respondents may not be allowed to take any step for any recovery on the plea that it was unproductive expense.

13. Accordingly, the order dated 20.4.2011 passed by the District Superintendent of Education, Madhubani in respect of aforesaid petitioners are hereby set aside, with a direction to refund the recovered amount, which has been indicated herein-above, to concerned petitioners from whom recovery has already been effected. The recovered amount must be refunded to concerned petitioners within a period of four months from the date of receipt/production of a copy of this order.

In view of the above, the Court is of the view that the present writ application is also required to be disposed of in the light of the judgment in C.W.J.C. No. 15885 of 2011 and analogous case dated 10.11.2016. Accordingly, the present writ application is also allowed in terms of the judgment dated 10.11.2016 in C.W.J.C. No. 15885 of 2011, before I part with my express my displeasure on the conduct of the respondent in



conducting the present case. The Director Primary Education is hereby directed to see that henceforth counter affidavits on behalf of the Director must be filed as and when there is direction passed by the writ Court otherwise the Court will initiate contempt proceeding for defying the direction of the Court in the matter of filing counter affidavit.

(Anil Kumar Upadhyay, J)

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