

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.15024 of 2015**

Arjun Prasad, aged about 64 years S/o Late Sidheshwar Prasad Resident of  
Ward No. 24, P.O. Baidrabad, P.S. Arwal, District Arwal.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Education, Patna.
2. The Director, Secondary Education, Department of Education, Patna.
3. The District Magistrate, Arwal.
4. The District Education Officer, Arwal.
5. The District Programme Officer (Establishment), Arwal.
6. The District Programme Officer (Sarva Shiksha Abhiyan), Arwal.
7. The Treasury Officer, Arwal.

... .. Respondent/s

**Appearance :**

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| For the Petitioner/s | : | Mr. Talib Mustafa, Advocate       |
| For the Respondent/s | : | Mr. Nutan Kumari Sharma, AC to GA |

**CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY**  
**ORAL ORDER**

2      06-12-2018                      Heard learned counsel for the petitioner and learned  
counsel appearing for the State.

The petitioner has superannuated on 31.07.2011. After his retirement the respondent No.6, District Programme Officer, Arwal has passed order of recovery of Rs.3,40,673/-from the Post retiral dues payable to the petitioner.

Learned counsel appearing on behalf of the petitioner would submit that after the retirement of the petitioner without giving any opportunity of hearing unilaterally the District Programme Officer, Arwal has fixed accountability and at no point of time any inquiry was made with opportunity of hearing to this petitioner. He further submits that civil construction work



was done by the petitioner under the surveillance of the committee connected with the construction and as such the respondents are not justified in fixing accountability against the petitioner after his superannuation.

This writ petition was filed on 17.09.2015 after service of two advance copies to the office of the Advocate General. High Court amended the rule of filing and the provision to serve two advance copies to the Advocate General was introduced to facilitate the respondent to respond at the earliest so that writ petition may be disposed of but unfortunately idea behind service of two advance copies was frustrated by the inaction on the part of the respondent. In this instant writ petition even after expiry of more than three years respondents have not filed any counter affidavit. Under the aforesaid circumstances, the Court has no option but to dispose of the present writ petition on the basis of averment made in the writ petition applying the principles of Non Traverse and the principle laid down by the Apex Court in the judgment of Nasim Bano Vs State of U.P. AIR 1993 SC 2592 and proceed on the basis of the averments made in the writ application as admitted as the same has not been converted by the respondents. It appears that the civil construction work of the schools was done



under the supervision of the construction committee comprising of Engineers and other officers and after supervision the respondent District Programme Officer has fixed accountability purportedly on the basis of measurement done behind back of the petitioner. There is no reference as to measurement done and determination of liability of all concerned in the matter of construction and how they arrived at the finding that petitioner alone is responsible. The respondent District Programme Officer has without compliance of principles of natural justice has fixed accountability on the basis of ex parte enquiry report. Respondents have deducted amount from the pensionary benefits payable to the petitioner. It is noted here that the teachers who were primarily concerned with the teaching have been directed to do construction by the State officers in the name of construction of school building/additional school building or room and the fund under the Sarva Shiksha Abhiyan has been utilized by the respondents and in this process they have not employed their own agency for construction rather teachers were entrusted to carry construction and thus teachers have been relegated to the level of contractor in connection with the construction of school building/additional building or room under Sarva Shiksha Abhiyan. In this process large number of



persons are involved including the agency who have assigned the responsibility to carry construction work and those who are involved in the supervision and quality control and utilization of fund allocated in the matter of construction. But it is a matter of common knowledge that after superannuation accountability are fixed on those people who superannuated as they are soft target. The case of the present petitioner is falling under same category. On account of superannuation he has been accountable for payment of Rupees three lacs and odd on the ground that on the measurement in the case the work was done was found to be of value Rs.3,40,673/- less than amount allocated for the construction purposes and without opportunity of hearing and without following the principles of natural justice, the said amount was determined and deducted from the post retiral benefits of petitioner. The action of the respondent in the instant case indicates total arbitrariness in the decision making process and violation of principles of natural justice. Such arbitrary determination and deduction is impermissible in system governed by rule of law. The Court is constrained to hold that entire action of the respondent including the decision contained in Annexure -5 is without compliance of natural justice and as such the order contained in Annexure-5 cannot sustain. It is



accordingly quashed. The respondents are directed to refund the amount deducted from the post retiral dues of the petitioner within a maximum period of four months from the date of receipt/production of a copy of this order.

With the aforesaid, the writ petition stands allowed and disposed of.

**(Anil Kumar Upadhyay, J)**

T.Kr./-

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