

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14115 of 2014

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Om Prakash Son of Late Shambhu Saran Prasad Resident of Village -
Bharwalia, P.S. - Palanawa, District - East Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Commissioner, Tirhut Division, Muzaffarpur.
3. The District Magistrate, West Champaran, Bettiah.
4. The District Programme Officer (Establishment), West Champaran, Bettiah.
5. The Block Development Officer, Mainatand, District - West Champaran.
6. The Block Education Officer, Mainatand, District - West Champaran.
7. The Mukhiya, Gram Panchayat Raj Laxmipur, Mainatand Block, District - West Champaran.
8. The Panchayat Secretary, Gram Panchayat Raj Laxmipur, Mainatand Block, District - West Champaran.
9. The Civil Surgeon-cum-Chief Medical Officer, Motihari, District - East Champaran.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Satyavrat Verma
For the Respondent/s : Mr. Anil Kumar

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT
Date : 18-09-2018

Petitioner has filed the present writ application challenging the order of the respondents directing recovery of Rs. 4,27,428/- (Rupees four lacs twenty seven thousand four hundred and twenty eight) drawn by the petitioner as salary. Earlier the petitioner has filed C.W.J.C. No. 17245 of 2014 challenging the order of termination of the petitioner on the ground that petitioner with 30 per cent disability applied for appointment in disable category and he was appointed as disable candidate. Later on, respondents held out that the petitioner is



not entitled to appointment on the ground that his disability is less than 40 per cent.

2. The present writ application has been filed by the petitioner as indicated above for challenging the order of recovery.

3. Mr. Satyavrat Verma learned counsel appearing on behalf of the petitioner submits that petitioner has applied for consideration of his case against disable category enclosing the disability certificate.

4. Referring to Annexure-1 he submits that petitioner has claimed disability of 30 per cent and the disability of the petitioner as 30 per cent was considered by the respondents with open eye and thereafter he was appointed.

5. Admittedly the appointment was made on the basis of the certificate contained in Annexure-1 which is not forged and fabricated document nor there is any misrepresentation or fraud practiced by the petitioner in procuring the appointment. The respondents have taken decision with open eye on consideration of Annexure-1 which is the declaration as to the 30 per cent disability.

6. Under the aforesaid circumstances, Mr. Satyavrat Verma submits that in the case of fraud and



misrepresentation, the respondents may be justified in taking action of recovery but in the present case when the materials available on record, it is manifest that petitioner claimed appointment in disability category on the basis of certificate of 30 per cent disability and not 40 per cent disability which was the basis of termination of the petitioner.

7. The order of termination may not warrant interference but petitioner was paid salary on the basis of appointment by the respondents and in discharge of duty as teacher in the absence of fraud or misrepresentation in procuring appointment and drawing salary without work the action of the respondents in directing recovery is impermissible.

8. Considering the totality of the facts situation when there was no misrepresentation or fraud by the petitioner in procuring the appointment and respondents after due scrutiny of all the records including the record of disability of the petitioner have appointed the petitioner and petitioner was paid salary for the period the petitioner has worked after appointment, the action of the respondents directing recovery is illegal and arbitrary in exercise of power and as such the Court does not approve the action of the respondents contained in Annexure-9 dated 5.5.2014. Accordingly, the order contained in



Annexure-9 is hereby quashed.

9. The respondents are restrained from taking any coercive steps for recovery of amount paid to the petitioner for performing duty as Assistant Teacher , the subsequent action of the respondents in cancelling the appointment on the ground of disability less than 40 per cannot be a ground to permit recovery for the period the petitioner has actually worked.

10. Accordingly, the writ application stands allowed.

(Anil Kumar Upadhyay, J)

Ravi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.09.2018
Transmission Date	

