

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 9044 of 2016

=====

Shivpyar Tripathi, S/o- Late Sukhdeo Tripathi, Resident of Village- Suraundha,
P.S-Dumraon, District- Buxar, Retired Teacher Kamala Nehru Shishu Vihar,
Sadaquat Asharam, Patna-10.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department,
Government of Bihar, Patna.
2. The District Education Officer, Patna.
3. The District Programme Officer, District- Patna.
4. The Provident Fund Officer, Patna, Bihar.
5. The Principal, Kamala Nehru Shishu Vihar, Sadaquat Ashram, Patna-10.
6. The Employee Provident Fund Officer Organization through its Regional
Director, Serpentine Road, Near MLA Flates, Patna- 800001.

.... Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Bijay Shankar Choubey, Advocate
For the E.P.F.O.	:	Mr. Rajiv Kumar Verma, Sr. Advocate
		Mr. Satyendra Kumar Jha, Advocate
For the State	:	Mr. Anil Kumar Sinha, GA.-1
For the Respondent no. 5	:	Mr. Mukeshwar Dayal, Advocate
		Mr. Vikas Mohan, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 07-08-2018

Heard learned counsel for the petitioner; State; E.P.F.O.

and respondent no. 5.

2. Pursuant to order dated 16.07.2018, the respondent no.

5 is also present in Court.

3. The respondent no. 5 was directed to be present in

Court to explain her conduct which has been noted in the order dated

16.07.2018. However, no show cause on her behalf has been filed in

such terms, though, a counter affidavit has been filed on her behalf.



The Court is surprised. When a person is called to explain his/her conduct, it presupposes filing of a show cause. Counter affidavit is only with regard to reply to the contentions and averments made in the writ petition or in the pleadings to which the counter affidavit is being filed. When a person is called to explain his or her conduct, there is no question of any counter affidavit, as it is a charge to which the person has to reply by filing proper show cause. This is a major lapse on the part of the respondent no. 5. Firstly, she chose to ignore the communication of the Court for appearing and explaining matters and thereafter instead of explaining her conduct, she filed a counter affidavit. The Court was, thus, of the opinion that strict order was required to be passed for such blatant defiance of the order of the Court. However, on apology tendered by her in person and also for the reason that it was her counsel and not her, who was responsible for not filing a show cause instead of counter affidavit, which the Court records was a grave lapse on the part of the learned counsel concerned, being an officer of the Court and a qualified legal practitioner, the Court, taking a lenient view in the matter and accepting the unqualified apology tendered by her and the assurance that in future such conduct shall not be repeated, does not propose to proceed further on the issue and the same stands consigned.

4. Coming to the merits of the matter, from the pleadings



on record, especially the reply filed on behalf of the petitioner today, it appears that he had not disclosed payment of Rs. 13,452/- made on 02.01.2014, with regard to his E.P.F. payment due to which the authorities had paid him Rs. 18,000/- during the pendency of the writ petition, which was in excess of what was actually due to him. The admitted position today is that only Rs. 16,204/- was payable to the petitioner but he was paid Rs. 18,000/- as the authorities had initially proceeded on the basis of the averments made in the writ petition

5. Having regard to the aforesaid, the Court cannot over emphasize the fact that in judicial proceedings, especially while moving the High Court under its extraordinary prerogative and discretionary writ jurisdiction under Article 226 of the Constitution, the foremost requirement is that the person coming to Court does so with clean hands by disclosing all relevant facts and materials without any suppression. Payment of Rs. 13,452/- having already been credited into his account in January, 2014 and the writ petition being filed in May, 2016, without disclosing the aforesaid fact, certainly indicates lack of *bona fide*.

6. For the reasons aforesaid, besides being obliged to return the excess payment, the Court deems it appropriate to also impose cost on the petitioner.

7. Accordingly, let Rs. 2,000/- be returned through Bank



draft in favour of the Regional Provident Fund Commissioner, E.P.F.O., Patna. The same be done within two weeks from today and receipt filed in the Registry of the Court. Further, for such conduct, cost of Rs. 5,000/- is imposed on the petitioner to be deposited in the Juvenile Justice Fund of the State Social Welfare Department and receipt filed thereafter in the Registry of the Court. If compliance of the order is not made and receipt not filed latest by 25th August, 2018, Registry shall place the matter before the Bench for further orders.

8. The writ petition stands disposed off in the aforementioend terms.

9. Personal appearance of the respondent no. 5 is dispensed with.

(Ahsanuddin Amanullah, J.)

P. Kumar

AFR/NAFR	
U	

