IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2173 of 2018

Gajendra Kumar Pandey, Son of Late Ram Udit Pandey, Resident of Gangachak, Badhanbigha Road, Barbigha, Police Station-Barbigha, District-Sheikhpura.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Education, Government of Bihar, Patna.
2. The District Magistrate, Sheikhpura.
3. The District Programme Officer, (Establishment), Sheikhpura.
4. The District Programme Officer, Primary Education cum Sarva Shiksha Abhiyan, Sheikhpura.
5. The District Education Officer, Sheikhpura.
6. The Block Education Officer, Barbigha, District-Sheikhpura.
7. The Head Master-cum-Drawing & Disbursing Officer, D.A.V. Middle School, Barbigha, District-Sheikhpura. .... Respondent/s

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Appearance :

For the Petitioner/s : Ms. Nivedita Nirvikar, Advocate

For the Respondent/s : Smt. Shilpa Singh, GA12

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

Date: 11-05-2018

Heard learned counsel for the petitioner and the respondents.

2. Learned counsel appearing on behalf of the petitioner has drawn the attention of this Court to Annexure-9 issued by the Block Development Officer, Barbigha. Referring to the said document issued by the Block Development Officer, learned counsel for the petitioner submits that the Block Development Officer has certified that the petitioner has made expenditure of Rs.361/-, more than what was allocated for the purpose of construction.

3. Mr. Girijesh Kumar, learned counsel appearing on

behalf of Bihar Education Project submits that this report itself admits that this calculation was made on the claim of the petitioner that certain construction material was aggregated at the work place, which was subsequently stolen.

4. From the materials available on the record, it appears that it is a matter of accounting and for accounting the respondents are required to calculate after proper measurement in presence of the petitioner. It is needless to state here that in the process of entry in the measurement book, the respondents are required to make entry of construction material aggregated at the work place by the petitioner, as aggregated construction materials are also supposed to be entered in the measurement book.

5. Learned counsel appearing on behalf of the petitioner submits that the petitioner cannot be vexed time and again for the same by directing enquiry. He submits that in the year 2012 enquiry was conducted by the respondents and thereafter the petitioner was given clean cheat. Again, fresh enquiry was initiated in 2014 and in the second round of enquiry Annexure-9 was passed by the Block Development Officer. Now again the respondents for the same issue have issued another show-cause notice in 2016. In the backdrop of the aforesaid, Ms. Nirvikar submits that there should be finality to the enquiry and the respondents cannot harass the petitioner

by undertaking inconclusive and everlasting enquiry. The petitioner cannot be made to suffer the ordeal of the enquiry, particularly, when after enquiry the petitioner was given clean cheat by the respondents.

6. Reading in between the line of Annexure-9, it appears that prima facie the Block Development Officer has accepted the contention, however, rider was put in the last paragraph of Annexure-9 that the issue as to theft of construction materials from the work side is concerned the said issue has to be determined by the District Programme Officer.

7. Considering the materials available on the record including the discussion hereinabove, the Court is of the view that the respondents cannot keep on making enquiry one after another only with a view to any how book the petitioner. The respondents are required to give finality to the enquiry, as the repeated enquiry is not justified. The Court prima facie finds substance in the submission of the petitioner that the third enquiry after first two enquiries to fasten the accountability of the petitioner is unreasonable exercise of power. The Court cannot approve the action of the respondents to keep endless enquiry unless and until the petitioner is condemned in the enquiry. The two enquiry reports are substantially in favour of the petitioner and, as such, the respondents are not justified in the matter

of reopening the enquiry once again.

8. Under the aforesaid circumstance, the respondents are directed to take final decision with reference to Annexures- 5 and 9 and finalize and decide the liability of the petitioner in the light of Annexures- 5 and 9. They are also required to give finality to the enquiry and as such no further enquiry is now permitted. It is clarified here that they have to determine the liability of the eptitioner on the basis of accounting in the light of Annexures- 5 and 9 within a maximum period of 60 days from the date of receipt/production of a copy of this order.

9. The accounting shall be done in presence of the petitioner and if it is found that anything is payable by the petitioner, liberty shall be available to the petitioner to challenge the same in appropriate proceeding. It is made clear that except accounting, petitioner shall not be compelled to suffer the ordeal of fresh enquiry initiated in 2016. The enquiry contemplated vide order dated 04.11.2016 is impermissible, it is accordingly, quashed. The respondents are directed to finalize the liability of the petitioner with reference to Annexures- 5 and 9, as indicated hereinabove, within a period of 60 days, as indicated hereinabove. The order vide letter no. 674 dated 29.07.2017 shall not be given effect to.

10. The writ application is allowed to the extent mentioned above.

(Anil Kumar Upadhyay, J)

Uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.05.2018
Transmission Date	