

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 18691 of 2017

Along with

Interlocutory Application No. 4782 of 2018

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Pramod Narayan Singh S/o Late Ram Naresh Singh R/o Village- Darheta, P.O. Mednipurbarhiya, P.S. Kurtha, District- Arwal.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department Government of Bihar, Patna.
2. The Director, Primary and Secondary Education Department, Government of Bihar, Patna.
3. The Regional Deputy Director, Education Department, Gaya.
4. The District Education Office, Gaya.
5. The District Programme Officer (Primary Education and Sarv Siksha Abhiyan), Gaya.
6. The Headmaster, Middle School, Kespa, Tekari Gaya.
7. The Accountant General, Bihar, Patna.
8. The Block Education Officer, Tekari, Gaya.
9. Binod Sharma S/o Ramdhani Sharma, Resident of Village- Lari, P.S. Kurtha, District- Arwal (Ex-Incharge Headmaster).

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rama Kant Sharma, Sr. Advocate Mr. Rajesh Kumar, Advocate
For the State	:	Mr. Madhaw Prasad Yadav, G.P. 23 Ms. Meena Singh, A.C. to G.P. 23
For the Accountant General	:	Mr. Bindhyachal Rai, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 17-07-2018

Re.: Interlocutory Application No. 4782 of 2018

Heard learned counsel for the petitioner; State and Accountant General.

2. The present Interlocutory Application has been filed seeking amendment in the main writ application to the extent of seeking quashing of the order passed by the District Public



Grievance Redressal Officer, Gaya dated 08.12.2017 in Issue No. 43511-10688 and also consequential order of the District Programme Officer, Primary Education and Sarv Shiksha Abhiyan, Gaya contained in Memo No. 700 dated 12.03.2018, by which he has communicated to the District Programme Officer (Establishment), Gaya that because the petitioner has not deposited the amount, as indicated in the order dated 08.12.2017, No Objection Certificate could not be issued to the petitioner.

3. Learned counsel for the petitioner submitted that the orders impugned are almost absurd. It was submitted that there is no dispute that the amount which the petitioner has received during his tenure of Rs. 2,20,000/- was not utilized, though it was meant for completion of the school building. However, it was submitted that now the authorities are taking a strange ground that because the work was not completed; today for completion, an amount of Rs. 4,68,000/- would be required and since the amount in the account is only Rs. 2,20,000/-, difference of Rs. 2,48,000/- is required to be paid by the petitioner in terms of the new estimate.

4. As such prayer is related to the relief sought in the writ petition, the Court deems it appropriate to allow the Interlocutory Application. Accordingly, the aforesaid two orders shall also be impugned in the main writ application.



5. Interlocutory Application No. 4782 of 2018 stands disposed off.

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6. The writ application has been filed for the following reliefs:

“That this is an application for issuance of appropriate writ /writs, order/ order, direction / direction commanding the respondent authorities / benefit amount of the petitioner such as gratuity, Provident Fund, and further for fixation of pension as petitioner has already received group insurance and leave encashment and remaining retiral benefit amount has not been paid on account of non-issuance of no objection certificate by respondent District programme officer respondent 5) headmaster (respondent no. 6)

Petitioner further seeks Hon’ble Court’s indulgence commanding the respondent authority especially (respondent no. 5/ Headmaster) (respondent No. 6) to issue no objection Certificate by taking into consideration the fact that private respondent no. 9 had not handed over the charge with respect to construction of part of School building nor handed over any vouchers and account statement /cashbook / ledge books regarding expenditure of first installment in construction of School resultantly petitioner in course of his officiating period on post of incharge headmaster when received second installment for completion of said work then he sought guidelines from the senior officials and intum they instructed for refunding of the amount into the account of District Programme Officer (respondent No.4) but the said cheque was not encashed and respondent authorizes have illegally with held the no-objection certificate of the petitioner without any fault on his part.

Petitioner further seeks any other relief/ reliefs for concern he is found entitled in the eye of



law and in the facts and circumstances of the present case.”

7. In view of the amendment, further prayer for quashing of the orders dated 08.12.2017 and communication dated 12.03.2018 are also part of the relief prayed for.

8. The Court would also note that till date, no counter affidavit has been filed on behalf of the authorities in the present matter but because the Court is going on the basis of the admitted factual position, it is not deemed necessary to wait for a formal counter affidavit in the matter.

9. The entire controversy with regard to non payment of the retiral dues of the petitioner, who superannuated from the post of Incharge Headmaster, Middle School, Kespa, Tekari in the district of Gaya was due to the fact that No Objection Certificate by the respondents no. 5 and 6 has not been issued to him.

10. Learned counsel for the petitioner submitted that there is no dispute with regard to the fact that whatever amount he had received during his tenure for the purpose of construction of the building, which was already in the process of construction, was not utilized and the entire amount still was in the official account of the school at the time the petitioner demitted office. It was submitted that because of the impugned orders dated 08.12.2017 and 12.03.2018, a



bogey has been created that since the work, as per the revised and fresh estimate would cost more, the difference would be recovered from the petitioner. Learned counsel submitted that the said procedure is unknown to law, as, for not having spent money for whatever purpose, there cannot be an order of recovery. Learned counsel submitted that the petitioner having superannuated on 28.02.2017, cannot be saddled with recovery based on fresh calculation relating to construction of the unfinished school building.

11. Learned counsel for the State does not dispute that there is no allegation with regard to any mis-utilization or defalcation of Government fund. It was further admitted and accepted that because the petitioner has not completed the work, now for doing the same, a higher amount is required and, thus, the petitioner has been directed to pay the amount before No Objection Certificate can be issued to him.

12. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that the orders dated 08.12.2017 and 12.03.2018, cannot be sustained. When the petitioner had not used the money, there cannot be any charge against him for any misuse of Government fund. From the records, it transpires that in the taking over charge receipt, it was clearly indicated by the petitioner's predecessor that he would submit



the account book and connected ledgers and vouchers relating to construction of the building later. Thus, in such view of the matter, when the amount of Rs. 2,20,000/- was sent to the school and deposited in its account, the petitioner wrote to the authorities that in view of the details of work already done, no further work could be done and he had also sent the cheque of the amount to the respondent no. 8. However, respondent no. 8 did not encash the same. Thus, the Court finds that there is no lapse on the part of the petitioner for him to be made liable for payment of any additional amount which the authorities now say is required for completion of the work. Once the Court has found that the petitioner is not at fault, there cannot be any ground to deny issuing of No Objection Certificate to him. The Court would record at this juncture that on a specific query to learned counsel for the State as to whether there was any other reason, the categorical reply is that there is no other reason.

13. In view of the aforesaid, the impugned orders dated 08.12.2017 (Annexure-12) and 12.03.2018 (Annexure-13) are hereby quashed. The authorities are directed to issue the No Objection Certificate in favour of the petitioner within two weeks from the date of production of a copy of this order before the respondents no. 5 and 6. Upon the same being done, the petitioner shall deposit the same before the respondent no. 2. Upon him doing so, it shall be ensured



that all admitted retiral dues of the petitioner are paid to him within two months thereafter.

14. The writ petition stands allowed in the aforementioned terms.

(Ahsanuddin Amanullah, J.)

P. Kumar

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