

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16154 of 2018

Suresh Sahu, Son of Late Anup Sahu, Resident of Mohalla- Shivshankar Path,
Mithanpura, P.O.- Ramna, P.S.- Mithanpura, District- Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Department of Education, Govt. of Bihar, Patna.
3. The Director Secondary Education Government of Bihar, Patna.
4. The Deputy Secretary, Department of Education, Government of Bihar, Patna.
5. The District Magistrate-cum-District Certificate Officer, Khagaria, District- Khagaria.
6. The District Programme Officer (Establishment), Khagaria, Government of Bihar, Patna.
7. Sri Braj Kishore Singh, Son of Late Devendra Prasad Singh, Superannuated from the last held post of RDDE, Munger Division, Additional Charge of District Education Officer, Resident of Village- Indrukh (Godam Par), P.O.- Halimpur, P.S.- Ram Nagar (Jamalpur), District- Munger.
8. Raushan Kumar, Son of not known to the petitioner, Presently posted as Clerk (under Suspension) to the Office of District Education Officer, Lakhisarai, District- Lakhisarai.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Y.V. Giri, Sr. Adv. Mr. Brisketu Sharan Pandey, Adv.
For the Respondent/s	:	Mr. Jitendra Kr. Roy-1 SC13

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 12-10-2018

Heard learned counsel for the parties.

In this case, the petitioner has made a grievance against the realization of an amount of Rs. 11,25,000/- through the process of certificate proceeding. Another prayer has been made for quashing the letter dated 4.7.2018 wherein the authority has arrived to a finding that the petitioner has committed the misconduct. Further prayer has been made for quashing of the order of suspension



contained in Memo No. 588 dated 31.7.2018, whereby, the petitioner has been suspended for financial irregularity.

In the present case, the petitioner, at the relevant time, was exercising the power of District Programme Officer, it transpires that the money amounting Rs. 22,50,000/- was allotted and transmitted to Arya Kanya High School, Arya Samaj Road, Khagaria for payment of 63 teaching and non-teaching staffs without there being approval from the Government.

As per petitioner, he was kept under dark by the Clerk and he had obtained the signature on the instrument of transfer. Further submitted that all the action was taken by Sri Braj Kishore Singh who was posted as District Education Officer as he had interest as his brother was a Teacher in that school, on that account, he has approved for payment of the aforesaid huge amount and, accordingly, the money was transferred. He has further stated that the petitioner had no hand or has given any order for payment of such a huge amount and the entire strategy and conspiracy hatched and executed by aforesaid Braj Kishore Singh (Respondent no.7) and Raushan Kumar (Respondent no.8) who was the Clerk, on whose instance and management, the entire payment was made. When the petitioner could know the fact that the money was wrongly transferred to the school, he instantly lodged the First Information Report with respect to the transfer of money to the aforesaid school vide letter dated 25.10.2016. He has further submitted that the Three Men Committee



was constituted and submitted its report, did not find the petitioner to be involved in the allotment and payment of the said amount and further submitted that the letter dated 31.7.2018 passed by the Director-cum-Additional Secretary, by which the petitioner has been suspended, is a futile exercise which requires interference by this Court.

Learned counsel for the State has submitted that the amount was transferred illegally and the report, that has been placed reliance by the petitioner, does not give a clear-cut finding in favour of the petitioner and, as such, the Government has decided to initiate a departmental proceeding and, on that account, the petitioner has been put under suspension but, counsel for the State has fairly accepted that the direction for recovery of the amount from the petitioner by way of certificate proceeding is completely a misdirected action taken by the authority concerned as the amount, which has been sent under requisition for realization of the same, cannot be said to be a public demand under the Bihar and Orissa Public Demand Recovery Act, 1914.

In the opinion of this Court, when the departmental proceeding is still pending and, in the enquiry, the real person involved to be found as to who was behind the payment of the aforesaid amount, the conclusion for recovery of the said amount from the petitioner is a wrong exercise of the power under the Public Demand Recovery Act as it would depend on the outcome of enquiry proceeding, inasmuch as, the amount cannot be recovered under the



Public Demand Recovery Act, 1914. So, this Court is of the view that the money cannot be recovered under the Public Demand Recovery Act as well as before the completion of enquiry and, as such, the notice dated 4.8.2018 in Certificate Case No. 02/2018-19 is not sustainable and the same is quashed.

The question of recovery of the amount will be dependent on the outcome of the departmental proceeding. Any allegation in the shape of showing charge has been proved will be treated to be a tentative finding, not the final finding on its merit and that cannot be the basis for inflicting punishment on the petitioner. The final result of the enquiry proceeding will decide the course of action.

This Court is not inclined to interfere with the order of suspension as it is incidental to the departmental proceeding and the discretionary power has been conferred upon the State to exercise power and issue an order of suspension during contemplation or pendency of the enquiry. Let the departmental proceeding be expedited.

With the aforementioned observation and direction, this writ application is disposed of.

(Shivaji Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.10.2018
Transmission Date	

