IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 6957 of 2017

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Baleshwar Tiwari S/o Late Lalji Nath Tiwari, Resident of Village- Rerwariya, P.O.- Bhore, P.S.- Bhore, District- Gopalganj.

... ... Petitioner/s

Versus

1. The State Of Bihar through District Magistrate, Gopalganj
2. The District Education Officer, Gopalganj.
3. The District Program Officer (Establishment), Gopalganj.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Bipin Bihari Singh

For the Respondent/s : Mr.Kameshwar Kumar-Gp17

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH

ORAL ORDER

6 19-06-2019 Heard counsel for the parties.

This writ application has been preferred by the petitioner for payment of pension and gratuity which remains unpaid till date. The petitioner who was initially appointed as Assistant Teacher, superannuated on 31.05.2015 from the post of Incharge Headmaster Middle School, Kushahar Anchal Bhore, District-Gopalganj. After superannuation the petitioner has been paid all other retiral dues except pension and gratuity.

In this connection an Interlocutory Application No.4336 of 2017 has also been filed by the petitioner whereby the petitioner has prayed for stay of letter no.489 dated 27.05.2017 which has been issued during the the pendency of the writ application by DPO Elementary Education-cum-Sarva Shiksha Abhiyan, Gopalganj whereby an order has been passed directing the petitioner to submit an amount of Rs.2,52,194/- and also Rs.96,138/- failing which the same will be recovered from the retiral benefits of the petitioner.

A counter affidavit has been filed on behalf of the respondent no.7 District Programme Officer (Establishment), Gopalganj, wherein it has been stated that though pension and gratuity has been sanctioned by the Accountant General, Bihar, Patna vide Annexure-2 to the writ petitioner but in the meanwhile it has come to light that the petitioner is liable to refund Rs.2,52,194.00 to the account of Bihar Education Project SSA, and Rs.96,138.00 to the account of Vidyalaya Kshisha Samiti. Letter no.469 dated 27.05.2017 of the D.P.O. R.E. and S.S.A Gopalganj shows that the petitioner had wrongly withdrawn excess amount of Rs.2,52,194.00 on account of construction of 4 ACr and Rs.96,138.00 on account of enhanced cost of construction. In the above circumstances the answering respondent vide letter no. 6469 dated 3.10.17 has instructed the Treasury office, Gopalganj to start payment of petitioner's pension and gratuity after withholding the aforesaid recoverable amount from the petitioner.

The petitioner has also filed reply to the counter affidavit, in which it has been contended on behalf of the petitioner that during entire period of service neither any inquiry nor any proceeding was initiated against the petitioner and after retirement of two years of the petitioner, the aforesaid order of recovery has been passed without any show cause to the petitioner or any inquiry held in this regard. It is further contended by the petitioner that the construction works were conducted under the Sarva Shiksha Abhiyan (SSA) particularly within the guidance of Junior Engineer, Assistant Engineer and its technical Advisor and after their approval the payment were released in instalment against work executed. It has further been contended that the petitioner at the relevant time was only a member of committee and has a little role regarding Bank operation.

From the aforesaid facts and circumstances, it is apparent that the excess withdrawal/advance which is being sought to be recovered from the petitioner is of period 2011-12. It is also not in dispute that till the superannuation of the petitioner neither any proceeding nor any inquiry was ever conducted by the respondents for realization of the same from the petitioner and it is only after the sanction order issued by the

Accountant General, Bihar, Patna that the respondents have come out with the claim of aforesaid excess withdrawal/advance of an amount of Rs.2,52,194/- and also of Rs.96,138/- vide letter no.469 dated 27.05.2017.

Similar issue came up for consideration before this High Court in the case of Smt. Shanti Choubey vs. State of Bihar, 2004(4) PLJR 236 in which in para-11 of the said judgment, it has been held that:-

> **“I am unable to appreciate the said submission of the learned counsel for the State. In view of the law settled that recovery is not permissible even after the retirement of a Government servant from service except after taking recourse to the provisions, contained in Rule 43(b) of the Bihar Pension Rules and that too only if the case is covered by the rider clause of the said provision, which provides that (a) such departmental proceedings, if not instituted while the Government servant was on duty either before retirement or during re-employment; (i) shall not be instituted save with the sanction of the State Government; (ii) shall be in respect of an event which took place not more than four years before the institution of such proceedings.”**

In the similar facts and circumstances in the case of Manju Jaiswal v. State of Bihar reported in 2009(3) PLJR 560, it has been held that without any proceeding being initiated it is not open to the State Government to effect the recovery from the retiral benefits of the government servant after his retirement. In this case case also after retirement of the petitioner, respondents alleged that some adjustment were required to be made on account of some shortage of material which was negated by this Court on the ground that since neither any departmental nor judicial proceeding was initiated during the service period of the petitioner nor after retirement, recovery of the same after retirement is not justified and permissible in law.

Considering the facts and circumstances of the case, submissions of learned counsel for the parties and in view of the settle principle of law as held by this Court in decision referred above, this Court is of the opinion that in the given facts of the case, the letter no. 6469 dated 3.10.17 issued by D.P.O. Elementary Education-cum-Sarva Shiksha Abhiyan, Gopalganj is arbitrary, untenable and hence quashed. All consequential orders including letter No.489 dated 27.05.2017 issued by D.P.O. Elementary Education-cum-Sarva Shiksha Abhiyan, Gopalganj are also quashed. Writ petition is allowed and direction is hereby issued upon the respondents to sanction the pension and gratuity of the petitioner within a period of three months from the date of communication/production of a copy of this order.

If any recovery has been made in pursuant to the letter no. 6469 dated 3.10.17, the same shall be refunded to the petitioner within the same time frame.

A.F.R. **(Prabhat Kumar Singh, J)**

B.Kr./-

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