

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1433 of 2017

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Gopi Nath Pathak son of late Sidheshwar Pathak, resident of Village-
Bakawan, P.S.-Bhadaur, District- Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Education Department,
Bihar, Patna
2. The Director, Secondary Education, Bihar, Patna.
3. The District Education Officer, Patna.
4. The District Program Officer Establishment, Patna.
5. The In Charge Head Master, Smt. Radhika Devi High School 2, Darwe-
Bhadaur, P.S.-Bhadaur, District-P
6. The Accountant General, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Sidhendra Narayan Singh Mr. Kumar Lalit
For the Respondent/s	:	Mr. Madhukar Mishra, AC to SC-16
For the AG	:	Dr. Anand Kumar

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 28-08-2019

The present writ petition has been filed for directing the respondents to make payment of the leave encashment amount for 17 days, which is still due, as also to refund a sum of Rs. 69,120/- recovered from the petitioner herein on the head of market price of 216 bags of cement, as also for quashing the letter dated 13.12.2016 issued by the District Programme Officer (Establishment), Patna whereby and whereunder the representation of the petitioner has been rejected.

2. The brief facts of the case, according to the petitioner, are



that the petitioner had superannuated on 1.8.2007 as In-Charge Headmaster, however, he did not receive the retiral dues, whereupon, he had filed a writ petition bearing CWJC No. 14687 of 2008 wherein the learned coordinate Bench of this Court had, by an order dated 16.1.2015, directed the respondents State authorities to pay the retiral benefits of the petitioner after adjustment / recovery of amount equal to the cost of 216 bags of cement, which is said to have been purchased by the petitioner and had got destroyed without being utilized, along with interest at the rate of 9 per cent per annum on the delayed payment. Ultimately, the petitioner had filed a contempt petition, whereupon the retiral benefits were paid to the petitioner.

3. In view of the liberty granted by the learned coordinate Bench of this Court by the aforesaid order dated 16.1.2015, to challenge the adjustment / recovery made from him on account of loss of 216 bags of cement, the present writ petition has been filed assailing the same.

4. The learned counsel for the petitioner has submitted that the claim of the petitioner has been arbitrarily rejected by the District Programme Officer (Establishment) Patna vide order dated 13.12.2016.



5. The learned counsel for the petitioner has further submitted that without initiating any proceeding against the petitioner herein, a sum of Rs. 69,120/- has been directed to be recovered from the amount of pension and gratuity payable to the petitioner, as is apparent from the letter dated 20.4.2015 issued by the Incharge Headmaster of the school in question.

6. Per contra, the learned counsel for the respondents-State by referring to the counter affidavit filed on behalf of the Respondent No. 4 has submitted that the present writ petition is barred by the principles of constructive res judicata inasmuch as the petitioner had earlier preferred a writ petition bearing CWJC No. 14687 of 2008 for the same relief and the same has already stood disposed of. It is further submitted that as far as the leave encashment amount is concerned, the Incharge Headmaster of the concerned school had found that the petitioner was entitled to get payment of 11 days leave encashment and accordingly, he had recommended for the same to the District Education Officer, Patna vide letter dated 16.1.2010.

7. The learned counsel for the Respondents-State has further submitted that the actual fact is that while the petitioner was posted as Incharge Headmaster, Smt. Redhika Devi High School, Darwe Bhadaur, P.S.-Bhadaur Patna, a sum of Rs. 4.95



lakh was allocated for construction of the school building under the Sam Vikas Yojna, which had been withdrawn by the petitioner, but he could not complete the building and upon examination of the said matter by the District Magistrate, it was found that the petitioner had withdrawn a sum of Rs. 92,195/- in excess and further, 398 bags of cement were purchased on Government rate, but on account of negligent attitude of the petitioner in completing the school building, 216 bags of cement could not be utilized and got destroyed, hence, the petitioner was directed to deposit a sum of Rs. 92,195/- as well as the cost of 216 bags of cement, nonetheless, the petitioner deposited only a sum of Rs. 92,195/-, hence, the price of the 216 bags of cement has been recovered from the petitioner herein. It is also submitted that one FIR bearing Bhadaur P.S. Case No. 78 of 2009 has also been instituted against the petitioner by the Headmaster of the concerned school.

8. I have heard the learned counsel for the parties and I find that as far as the amount of leave encashment is concerned, the same has already stood paid and there is no rebuttal on behalf of the petitioner to the statement made in the counter affidavit filed on behalf of the Respondent No. 4 regarding the calculation made by the Incharge Headmaster of the concerned school vide



letter dated 16.1.2010 regarding entitlement of the petitioner to get payment of 11 days leave encashment, hence, on this score, this Court finds that no further direction is required to be issued.

9. Now coming to the issue of the deductions made from the retiral benefits of the petitioner herein to the tune of Rs. 69,120/-, this Court finds that admittedly, the respondents have failed to bring on record any chit of paper to show that any departmental proceeding was initiated either prior to the retirement of the petitioner herein or thereafter, wherein any finding had been arrived at, based on cogent evidence, leading to the conclusion that the petitioner had either misappropriated 216 bags of cement or on account of his negligence, 216 bags of cement had been rendered unusable. It is a well settled law that unless and until a delinquent has been found guilty by the disciplinary authority after a full-fledged departmental proceedings for the purposes of inflicting major punishment or making any recovery, only then, recovery can be effected from the outstanding dues to be paid to such a delinquent or in the alternative, the concerned department can recover the amount of loss caused by taking recourse to either a money / recovery suit or appropriate certificate proceedings, which have not been resorted to in the present case. Therefore, this Court finds that



the order dated 20.4.2015 issued by the Respondent No. 5 and counter signed by the Respondent No. 4, as also the order dated 13.12.2016 rejecting the claim of the petitioner is illegal, hence, are set aside.

10. The writ petition stands allowed with a direction to refund the aforesaid sum of Rs. 69,120/-, recovered from the retiral dues of the petitioner herein forthwith, however, with liberty to the respondent State authorities to take recourse to the remedies available to it under the law, for recovery of the aforesaid amount in question.

(Mohit Kumar Shah, J)

ajay gupta/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	3.10.2019
Transmission Date	NA

