**IN THE HIGH COURT OF JUDICATURE AT PATNA**
**Letters Patent Appeal No.612 of 2018**
**In**
**Civil Writ Jurisdiction Case No.15729 of 2016**

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Suresh Prasad Son of Late Sukhdeo Prasad resident of village P.O. Kumawan, Via - Paraya, P.S. Koanch, District - Gaya

... ... Appellant

Versus

1. The State Of Bihar
2. The Director (Primary Education) Education Department, Government of Bihar, Patna
3. The District Education officer, Gaya
4. The District Programme officer (Establishment) , Gaya
5. The District Progamme Officer (Sarva Shiksha Abhiyan) Gaya
6. The Block Education officer, Paraya, Gaya
7. The Treasury Officer, Gaya
8. The Accountant General, Bihar, Bir Chand Patel Path, Patna

... ... Respondents

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**Appearance :**
For the Appellant/s : Mr.Nagendra Upadhyay, Advocate
For the Respondent/s : Mr.Ashutosh Ranjan Pandey (AAG15)
For the Accountant General: Mr. Bindhyachal Rai, Advocate

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**CORAM: HONOURABLE THE CHIEF JUSTICE**
**and**
**HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD**

ORAL ORDER

**(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)**

4 19-08-2019 Heard learned counsel for the appellant-writ petitioner and learned counsel for the State-respondents as also learned counsel representing the Accountant General, Bihar.

This Letters Patent Appeal has been preferred challenging the order dated 04.01.2018 passed by learned writ Court in C.W.J.C. No. 15729 of 2016. By the impugned judgment the learned writ Court has while directing the State-

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respondents to pay the gratuity, commutation of pension and pension along with arrears to the petitioner permitted the State respondnets to deduct an amount of Rs. 2,97,516/-. It is the later part of the order of the learned writ Court permitting the State-respondents to deduct the amount of Rs. 2,97,516/- from the post retiral dues of the petitioner that has left the appellant aggrieved. Hence, the present appeal.

A perusal of the records shows that the petitioner moved this court in C.W.J.C. No. 15729 of 2016 seeking a writ in the nature of Mandamus directing the respondents to make payment of his post retiral dues. It was the case of the petitioner that after his appointment as Assistant Teacher in Primary School Kewal Kola, Paraya, Gaya on 16.11.1978, he performed his duties satisfactorily and retired from service on 29.02.2016.

The grievance of the petitioner was that when he applied for payment for his post retiral dues in the prescribed proforma to the office of the District Education Officer, Gaya, the petitioner was paid Arrear of Salary, GIC, GPF amount and Leave Encashment, but then, the payments towards gratuity, pension and amount of commutation of pension were not released. It was also stated that the office of the Accountant General, Bihar had already issued pension and gratuity payment

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orders by giving Pension Payment Orders of given number as mentioned in paragraph ‘6’ & ‘7’ of the writ application.

It appears that a counter affidavit was filed on behalf of respondent no. 4 in which the withholdment of gratuity and pension of the petitioner were sought to be justified on the grounds mainly that when the petitioner was Incharge Headmaster of Middle School, Mahadeopur, Paraiya, he had been advanced a sum of Rs. 9,00,000/- for construction of eight additional classrooms during the financial year 2006-07. Out of the allocated amount Rs. 9,30,000/-, the petitioner had withdrawn Rs. 9,00,000/- but because of the delay in construction which continued up to the year 2012, price escalation took place and the petitioner completed the work to the extent of Rs. 8,68,487/- only leaving an excess amount of Rs. 61,513/- in his hand.

It appears from the records that when the writ application was preferred in the year 2016, the counter affidavit came to be filed in the year 2017 with certain correspondences being enclosed as Annexure B, C, D, F, G. H (series). Out of these correspondences, the correspondence present at Annexure ‘G’ which is addressed to the petitioner dated 30th of March, 2017 incorporates the report of the District Programme Officer

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(Primary Education and Sarve Siksha Abhiyan). The petitioner was held responsible to pay a sum of Rs. 3,08,726/- and, thus, it was stated that after deducting the amount of Rs. 10,760/- which he had deposited on 05.05.2016 itself, the balance amount of Rs. 2,97,966/- is recoverable from the petitioner.

The stand of the State-respondents is that while the work was to be completed up to the year 2008, it continued till 2012 resulting in escalation of the price of the raw materials which are now recoverable from the petitioner.

Learned counsel for the appellant has submitted before us that the facts as revealed from the records would make it evident that this petitioner continued to carry on the construction work during the period 2008-12, no objection was raised by the State-respondents during this period against the petitioner and no allegation was made saying that he had been delaying the construction work rather it would appear that the estimate of the work was revised in the year 2012 taking note of the escalation of prices and then the petitioner was allowed to withdraw the money to the extent of the allocated amount of Rs. 9,30,000/-.

By filing a rejoinder to the counter affidavit he had demonstrated before the learned writ Court that the

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measurement book which is Annexure ‘4’ to the rejoinder shows completion of work to the extent of value of Rs. 9,19,247/- and it was the specific assertion in the rejoinder that this measurement book was approved by the competent authority.

Learned counsel submits that the petitioner appellant had already deposited balance amount of Rs. 10,760/- to give a complete account of Rs. 9,30,000/-, thus, at this stage, when after retirement he was looking for his post retiral dues, there was no reason for the respondents to take the kind of plea which has been taken by filing the counter affidavit.

Learned AAG 15 representing the State-respondents has opposed the Letters Patent Appeal. It is his submission that the recoveries has been sought to be made from the petitioner when it was reported by the District Programme Officer that he had delayed the construction work for long time which had caused loss to the State in form of escalation of price. It is also submitted that no doubt during pendency of the writ application certain correspondences were made to the petitioner particularly Annexure ‘G’ to the counter affidavit, but then, the petitioner did not respond to the said Annexure and as such the impugned judgment of the learned writ Court needs no interference.

Learned counsel for the Accountant General, Bihar is

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present, however, in the nature of controversy he has nothing to contest in the matter.

Having heard learned counsel for the appellant and the State respondents, we are of the considered opinion that the petitioner has prima facie made out a case for consideration by the State respondents. The respondents had entered into certain correspondences during pendency of the writ application. The petitioner, however, did not respond to those correspondences, may be under bona fide belief that he has only to respond by filing a rejoinder as the matter is subjudice before this court. This makes us to take a view that the petitioner should be given an opportunity to submit his response to Annexure 'G' to the counter affidavit and in his response he can take all such pleas which are available to him as also those indicated hereinabove. The appellant shall submit his response to Annexure 'G' to the counter affidavit within a period of 30 days from today and thereafter, the State respondents shall consider the same giving an opportunity of hearing to the petitioner, examine the stand taken by the petitioner on the basis of the materials available on the record and pass a reasoned order thereon within a period of 60 days from the date of receipt of the response of the petitioner-appellant and such reasoned order shall be

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communicated to the petitioner-appellant immediately thereafter. The impugned judgment of the learned Single Judge stands modified to the extent indicated hereinabove.

The Letters Patent Appeal is, thus, disposed of accordingly.

**(Amreshwar Pratap Sahi, CJ)**

**( Rajeev Ranjan Prasad, J)**

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