

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15899 of 2018

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Meena Kumari Wife of Vijay Kishore Singh Resident of Village- Sutihara,
Police Station- Parihar, District- Sitamarhi.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Department of Education, Government of Bihar, Patna.
3. The Director, Department of Primary Education, Government of Bihar, Patna.
4. The District Magistrate, Sitamarhi.
5. The District Education Officer, Sitamarhi.
6. The District Programme Officer, Establishment, Sitamarhi.
7. The Block Education Officer, Parihar.
8. The Chief Engineer, Minor Water Resource Department, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Ajey Kumar, Advocate
For the Respondent/s : Mr.S.K.Ranjan, Advocate

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

2 08-06-2020 Heard learned counsel for the petitioner and the respondents.

The petitioner has filed the present writ petition for a direction to the respondents to pay retiral dues such as gratuity, leave encashment and arrear of pension due since 1.1.2017.

Counsel appearing on behalf of the petitioner would submit that the petitioner superannuated on 31.12.2016. After superannuation when she was denied post retiral dues, she filed the present writ petition.

A counter affidavit has been filed on behalf of



respondent no.6. paras 4 and 5 of the same is quoted below for ready reference.

“4. That with regard to above mentioned made by the petitioner, it is most respectfully submitted that departmental proceeding has been initiated against the petitioner for the defalcation of amount Rs. 12,23,888/- (Twelve Lacs Twenty Three Thousand Eight Hundred Eight) only which was paid to the said Vidyalaya Shiksha Samitee for the construction of school building by Bihar Shiksha Pariyojana as per direction and estimate. The petitioner being a then Headmaster started to construct building of two rooms and also got completed it on the ground floor.

It is expedient here to mention that out of two rooms, one room was constructed on the road of Bihar Govt. without taking any NOC. Under such situation an order was passed by the Hon'ble Court in MJC No. 2827/2013, Rameshwar Sharma Vrs. The State of Bihar that one room constructed on Govt. road is illegal. In the light of above order, one said room was demolished and in place of it, the petitioner was requested to construct the said room upon the roof of rest room. The petitioner did not do so and defalcated the said amount. And for that



DPO, Primary Education, SSA Sit, wrote to DPO (Est.), Sitamarhi vide its letter no. 1069 dated 26.07.2018 to deduct the said amount from the retiral benefits of the petitioner and got deposited it in the A/c No. 3218781152, IFSC Code SBIN00000186 of Bihar Shiksha Pariyojana, Sitamarhi.

5. That it is further submitted that on the basis of the report of DPO, Primary Education and Sarva Shiksha Abhiyan, Bihar Shiksha Pariyojana, Sitamarhi, DPO (Est.), Sitamarhi initiated departmental proceeding against the petitioner by vide its letter no. 2138 dated 21.08.2018. Notice was issued and Tamila was also done but not submitted any written reply against the allegation levelled against her and thus the said proceedings is still pending for disposal. In the meanwhile, DPO (Est.), Sitamarhi fixed provisional pension of the petitioner who got retire under the provision of Sankalp no. 11556 dated 22.12.1999 and 819 dated 23.9.2009 of Rs. 100080/- (Ten Thousand and Eighty) per month from dated 1.1.2017 upto disposal of the proceeding and ordered to DDO to the concerned school by vide its letter no. 2854 dated 1.11.2018 to pay the said amount to the petitioner through the Bank amount. Under such situation the petitioner should have to wait for sometime



and then if aggrieved, he should have to represent the higher authority regarding it but he failed to do so and filed the instant writ petition which is premature, not maintainable and liable to be rejected.”

It appears from the counter affidavit that the respondents have fastened the accountability upon the petitioner for construction of rooms from the fund allocated under the Sarva Shiksha Abhiyan.

Learned counsel appearing on behalf of the petitioner has filed rejoinder to the counter affidavit specifically stating that construction of room was made after approval of the competent authority. The project plan was cleared after spot verification and estimate of cost of construction was approved and thereafter when it was found that construction of room was made on public land, the construction was demolished and the entire liability for construction was shifted on the head of the petitioner.

In a case where the respondents have decided to construct room of the school and the building plan as well as estimate was approved, the petitioner cannot be made accountable for loss sustained due to demolition of the construction.

Considering the fact that the petitioner superannuated



in December, 2016, the Court directs the respondents to ensure payment of entire post retiral dues within a maximum period of 2 months from the date of receipt/production of a copy of this order.

The issue of liability as to construction shall be fixed on all who have approved the sanction of the project after verification of spot and the petitioner cannot be made accountable if on verification of the measurement book of the construction which has been demolished. The funds were utilized for construction of the project after approval of the competent authority, the respondents shall not make recovery from the post retiral dues of the petitioner. However, if any amount which is required to be adjusted after measurement of the construction of the demolished premises, the same shall be done after opportunity to the petitioner. Entire exercise must be completed within a maximum period of three months from the date of receipt/production of a copy of this order with opportunity of hearing to the petitioner.

With the aforesaid, the writ petition stands disposed of.

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(Anil Kumar Upadhyay, J)

