

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1403 of 2022

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Birbal Academy and Publication Pvt. Ltd. through its Managing Director Dr. Birbal Jha @ Birbal Jha Male S/o Late Dayanand Jha, aged about 48 Years, having its registered Office at 1/48, Lalita Park, Laxmi Nagar, Vikas Marg. Delhi-110092.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secreary, Scheduled Castes and Scheduled Tribes (SC/ST) Welfare Department, Government of Bihar, Old Secretariat, Patna-800015.
2. Bihar Mahadalit Vikas Mission, through its Mission Director, Sachivalaya Visrarikaran Bhawan, Block-3, Old Secretariat, Bailey Road, Patna.
3. Certificate Officer-Cum-ASdditional District Magistrate, Supply, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Samrendra Kumar Jha Adv.
For the State	:	Mr. Sunil Kumar Mandal (Sc3)
For Resp. No 1 to 3	:	Smt. Neelam Kumari AC to Sc3
		Mr. Bipin Kumar Adv. AC to Sc3
For Resp. No. 2	:	Mr. Piush Lal Adv.

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 30-11-2022

In the instant petition, petitioner has prayed for
the following relief(s):-

**“That the present
Civil Writ Application is being filed
for the following reliefs:-**

**(I) For issuance of an
order (s) / direction (s) or
appropriate writ (s) particularly in
the nature of certiorari for quashing
the order dated 16.12.2021 vide
memo no-37(mu) containing
annexure-7 passed by Certificate**



**officer-cum- Additional District
Magistrate, supply, Patna
(hereinafter Certificate Officer)
which has been passed without
jurisdiction.**

**(ii) For issuance of
further order (s) direction (s) or
appropriate writ (s) for staying the
certificate proceeding/attachment
proceeding arising out of certificate
case no-02/2019 until final disposal
of this Writ Application. And/or**

**(iii) For any other
relief(s) for which the petitioner is
entitled under law.”**

2. The petitioner has an organization or institution which is imparting teaching in English and ancillary subjects. Respondent-Bihar Mahadalit Vikas Mission have entered into letter of agreement on 23.09.2013 and agreement is in invogue upto 22.09.2014. Thereafter, it is stated to have been extended from time and time and work orders have been issued. There was a dispute relating to payment of certain amount for which the petitioner invoke remedy under Arbitration and Conciliation Act,1996. Sole arbitrator passed the award on 14.05.2019 and it was a subject matter of litigation under Section 34 of the Arbitration Act before the jurisdictional District and Session Court. When things stood thus the respondents noticed that certain alleged misdeeds were stated to have been committed by the petitioner. In the result, they have



invoked provisions of the Bihar and Orissa Public Demands Recovery Act, 1914(for short Act, 1914). The Certificate Officer has proceeded to pass order which is a subject matter of the present petition.

3. Against the impugned order, the petitioner has a statutory remedy under Section 60 of the Act, 1914. Therefore, without resorting to statutory remedy the present writ petition cannot be entertained in the guise of award was in favour of the petitioner. The award is in respect of execution of agreement. On the other hand, insofar as alleged misdeeds stated to have been committed by the petitioner was a separate issue which is required to be taken note of under the Act, 1914. Therefore, the petitioner cannot take shelter with reference to award in an arbitration proceedings to scuttle the rights of the respondents under Act, 1914.

4. Apex Court time and again held that before entertaining writ petition it is necessary to writ Court to examine whether the petitioner has a statutory remedy or not? In the present case, petitioner has a statutory remedy under Section 60 of the Act against the impugned order dated 16.12.2021.

5. Apex Court in the case of *State of Jammu and Kashmir V. R.K. Zalpuri* reported in *AIR 2016 SC 3006* at



para 20 held as under:-

“20. Having stated thus, it is useful to refer to a passage from City and Industrial Development Corporation V. Dosu Aardeshir Bhiwandiwalla and Others, wherein this Court while dwelling upon jurisdiction under Article 226 of the Constitution, has expressed thus:-

“ The Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether:

(a) adjudication of writ petition involves any complex and disputes questions of facts and whether they can be satisfactorily resolved;

(b) the petition reveals all material facts;

(c) The petitioner has any alternative or effective remedy for the resolution of the dispute;

(d) person invoking the jurisdiction is guilty of unexplained delay and laches;

(e) ex facie barred by any laws of limitation;

(f) grant of relief is against public policy or barred by any valid law; and host of other facts”

6. One of the principle laid down in the aforementioned decision of the Apex Court is that if a person has a statutory remedy, in that event, writ is not maintainable.

7. In the light of these facts and circumstances the present petition stands disposed of as not maintainable.

8. Reserving liberty to the petitioner to invoke



remedy of appeal under Section 60 of Act, 1914. The concerned appellate authority is hereby directed to take note of Section 14 of the limitation Act for the purpose of condonation of delay in filing appeal by the petitioner.

(P. B. Bajanthri, J)

(Purnendu Singh, J)

shoaib/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

