

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7294 of 2018

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Syed Masoom Ali Rizvi S/o late Syed Zahid Hussain Resident of Mohalla-
Brahmpura, Eqbal Hasan Road, Post- MIT, P.S.- Brahmpura, District-
Muzaffarpur, the Retired Headmaster, Middle School Jhapahan, Block-
Mushahri, District- Muzaffarpur.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Chief Secretary, Bihar, Patna
2. The Principal Secretary, Education Department, Bihar, Patna.
3. The Director, Primary Education, Bihar, Patna.
4. District Magistrate, Muzaffarpur.
5. District Education Officer, Muzaffarpur.
6. District Programme Officer, Establishment, Muzaffarpur.
7. District Programme Officer, Sarva Shiksha Abhiyan, Bihar Education Project, Muzaffarpur.
8. District Provident Fund Officer, Muzaffarpur.
9. Treasury Officer, Muzaffarpur.
10. Drawing and Disbursing Officer, Middle School Rohua, Mushahari, Muzaffarpur.
11. The Headmistress, Middle School Jhapahan, Block- Mushahari, District- Muzaffarpur.
12. The Assistant Engineer, Sarva Shiksha Abhiyan, Bihar Education Project, Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Amresh Kumar Sinha, Advocate
	:	Mr. Vaibhav Narayan, Advocate
For the Respondent/s	:	Mr. Jai Prabhat Kishore, AC to SC 13
For B.P.S.C.	:	Mr. Girijish Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

20 20-06-2022 Heard the learned counsel for the petitioner, the

learned counsel for the State and the learned counsel for the

B.P.S.C.

The present writ petition has been filed for quashing



letter dated 01.12.2017, issued by the District Programme Officer, Sarva Shiksha Abhiyan, Bihar Education Project, Muzaffarpur, whereby and whereunder recovery to the tune of Rs. 1,11,515/- has been sought to be made from the retirement benefits of the petitioner. The petitioner has also sought quashing of the letter dated 09.02.2018, issued by the District Programme Officer, Establishment, Muzaffarpur, whereby and whereunder it has been directed to deduct a sum of Rs. 1,11,515/- from the amount of gratuity to be paid to the petitioner. Lastly, the petitioner has prayed for payment of arrears of differential amount of salary in the Senior Pay-scale of Headmaster w.e.f. 01.04.2006 up to 31.01.2016.

The brief facts of the case are that the petitioner had joined the services on the post of Assistant Teacher in Primary School, Manoharpatti on 08.05.1976 and thereafter, had continued to work to the full satisfaction of the authorities concerned. The petitioner is stated to have been granted promotions subsequently and lastly, he was promoted in the pay scale of Headmaster w.e.f. 01.04.1994. The petitioner had then superannuated on 31.01.2016 while working as Headmaster, Middle School, Jhapahan, Block- Mushahari, District- Muzaffarpur.



As far as the grievance of the petitioner regarding payment of differential amount of salary is concerned, the learned counsel for the respondent- State, by referring to paragraph no. 4 of the counter affidavit filed on behalf of the respondent no. 6, has submitted that since the petitioner is entitled for senior pay-scale of Headmaster w.e.f. 01.04.2006, the difference of arrears of salary for the period 01.04.2006 to 31.01.2016 has been calculated and paid.

At this juncture, the learned counsel for the petitioner has disputed the said statement made by the learned counsel for the respondent State and has submitted that some portion of differential amount of salary is yet to be paid which according to the petitioner totals upto a sum of Rs. 1 lac an odds. Considering the fact that this aspect of the matter is a disputed question of fact required to be ascertained by the respondent no. 6, this Court grants liberty to the petitioner to approach the respondent no. 6 i.e. the District Programme Officer, Establishment, Muzaffarpur by filing a representation within a period of four weeks from today, who shall examine the matter in its entirety and pass a reasoned and a speaking order and in case, any amount is found due under the head of differential amount of salary, the same shall be paid to the petitioner within a period of



four weeks, thereafter.

Now, coming to the issue of deduction of a sum of Rs. 1,11,515/- from the amount of gratuity, this Court finds that admittedly, neither any proceeding has been initiated against the petitioner nor any order of recovery has been made, much less any punishment order has been passed to the said effect by the respondent authorities, hence the respondent authorities cannot deduct any amount from the gratuity amount payable to the petitioner, more so without any action having been taken under the provisions contained in the ***Bihar Pension Rules, 1950*** and merely on some hypothetical basis, thus the same is unsustainable in the eyes of law. It is a settled principle of law that the right to receive pension which includes gratuity is in the nature of property and the right of property cannot be taken away without due process of law, as per the provisions contained in Article 300(A) of the Constitution of India.

It is apparent from the impugned order dated 01.12.2017 that while the petitioner was posted as Headmaster in the School in question, a sum of Rs. 10,30,000/- was deposited in the account of the School in question for the purposes of construction of a building, however it appears that subsequently, the work could not be completed fully and the



petitioner had superannuated, whereafter an assessment was made by the respondent- authorities and it was found that after deducting the residual amount in the account of the School, a further sum of Rs. 1,11,515/- shall be required to complete the building in question, hence the said sum was sought to be recovered from the gratuity amount payable to the petitioner. Accordingly, the gratuity amount has been paid to the petitioner after deducting a sum of Rs. 1,11,515/-.

The respondents have not disputed the principle of law to the effect that without initiation of any departmental proceeding or for that matter any proceeding under the ***Bihar Pension Rules, 1950***, as also without passing any order of punishment, no recovery can be made from the pensionary benefits of the petitioner herein.

Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove, this Court finds that the impugned letter dated 01.12.2017, issued by the District Programme Officer, Sarva Shiksha Abhiyan, Bihar Education Project, Muzaffarpur and the letter dated 09.02.2018, issued by the District Programme Officer, Establishment, Muzaffarpur, whereby and whereunder a decision has been taken to deduct a sum of Rs. 1,11,515/- from the gratuity amount of the petitioner



are perverse, illegal and contrary to the well-settled principles of law, hence are quashed.

Consequently, the respondents are directed to pay the balance amount of gratuity to the tune of Rs. 1,11,515/- to the petitioner, within a period of four weeks from today.

The writ petition stands allowed.

(Mohit Kumar Shah, J)

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