

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21055 of 2021

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Bhola Nath Khan S/o Late Satyanarayan Khan, R/o Village and Post -
Bangaon, Ward No.- 5, House No.- 32, Bangaon Nort West Tola, P.S. -
Mahishi, District - Saharsha, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar .
2. The Principal Secretary, Education Department, Government of Bihar,
Patna.
3. Bihar Education Project Council, Patna, through its State Project Director.
4. The District Magistrate, Saharsha, Bihar.
5. The District Programme Officer, Elementary Education and Sarva Siksha
Abhiyan Bihar Education Project, Saharsha, Bihar.
6. The District Certificate Officer, Saharsha, Bihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Rakesh Kumar Singh, Advocate
For the Respondent/s : Mr.Madhaw Pd. Yadaw (Gp23)

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. KUMAR)

**(The proceedings of the Court are being conducted through
Video Conferencing and the Advocates joined the proceedings
through Video Conferencing from their residence.)**

Date : 14-02-2022

Heard learned counsel for the parties.

Petitioner has prayed for following relief:-

(I) For issuance of appropriate writ in the nature of mandamus/certiorari, commanding the respondents not to recover the amount in question from the petitioner and drop the entire certificate proceeding initiated against him.

(ii) For quashing of the letter no.1158 dated 30.12.20 issued under the signature of the respondent no.5 whereby and where under a written requisition has been sent to the respondent no.6 for institution of a certificate case against the petitioner.

(iii) For quashing of the entire certificate proceeding pertaining to Certificate Case (Miscellaneous)

No.18/2020-21 pending before the District Certificate Officer, Saharsha (the respondent no.6) which has been initiated against the petitioner in violation of the stipulations made in Section 3(6), Section 5 and 6 of the Bihar & Orissa Public Demands Recovery Act, 1914.

(iv) For holding that, since recovery of the alleged amount does not come within the ambit of Public Demand as mentioned in Section 3(6) read with Schedule 1 of the Bihar and Orissa Public Demands Recovery Act, 1914 and Article 3 of the Appendix-A of the Board's instruction, it is not a public demand, thereby initiation of the certificate proceeding against the petitioner by the respondent no.6 on the basis of the requisition as contained in letter no.1158 dated 30.12.20 (Annexure -1) is not maintainable in the eye of law and the act of the respondent concern is arbitrary, illegal and discriminatory, in as much as inherently without jurisdiction.

(v) For further holding that since there was / is no dues with the petitioner payable to the Government or its agency, the amount in question is neither recoverable from the petitioner nor can be recovered under the Bihar and Orissa Public Demands Recovery Act.

(vi) And also any other appropriate reliefs may be given to the petitioner under the given facts of the case.”

It is not in dispute that petition under Section 9 of the Bihar & Orissa Public Demands Recovery Act, 1914 (hereinafter referred to as “the Act”) is pending consideration/petitioner intends to file before the appropriate authority.

Learned counsel for the parties jointly pray that the instant petition be disposed of with direction to the appropriate authority to consider and decide the same expeditiously.

Learned counsel for the State states that the appropriate authority shall consider and decide the petition filed/ to be filed by the petitioner under Section 9 of the Act positively

within a period of two months from the date of appearance of the petitioner before him along with a copy of this order and the issue of limitation shall not come in the way of decision on merits.

Statement accepted and taken on record.

As such, petition stands disposed of in the following terms:-

(a) Petitioner shall appear in the office of the appropriate authority on **02.03.2022** along with a copy of this order, on which date documents in support of the petition shall be filed, or else file a fresh petition under Section 9 of the Act.

(b) The appropriate authority shall consider and dispose of the petitioner's petition expeditiously, by a reasoned and speaking order, preferably within a period of two months from the date of appearance of the petitioner before him and till then no coercive steps be taken against the petitioner;

(c) The authority shall also examine as to whether the amount in question falls within the definition of public demand or not;

(d) Needless to add, while considering such petition, principles of natural justice shall be followed and due opportunity of hearing afforded to the parties;

(e) Order assigning reasons shall be supplied to the parties;

(f) Equally, liberty is reserved to the petitioner to take recourse to such alternative remedies as are otherwise available in accordance with law;

(g) We are hopeful that as and when petitioner takes recourse to such remedies, as are otherwise available in law, before the appropriate forum, the same shall be dealt with, in accordance with law and with reasonable dispatch;

(h) Liberty reserved to the petitioner to challenge the order passed by the appropriate authority, before the appropriate forum, if so required and desired.

(i) We have not expressed any opinion on merits. All issues are left open;

The petition stands disposed of in the aforesaid terms.

Interlocutory Application(s), if any, stands disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.02.2022
Transmission Date	NA