

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6619 of 2023

Md. Quasim, Son of Late Abdul Ghani, Resident of Village- Teenhaiya, P.S. Dhaka, District- East Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Chief Secretary, Govt. of Bihar, Patna.
3. The Department of Minority Welfare, Patna, District- Patna through its Secretary.
4. The Principal Secretary, Minority Welfare Department, Patna.
5. The Director, Minority Welfare Department, Patna.
6. The Bihar Urdu Academy, through its Secretary, At Ashhok Rajpath, Chauhatta, P.S. Peerbahore, District- Patna.
7. The Executive Committee, Bihar Urdu Academy, Patna through its Secretary, At Ashhok Rajpath, Chauhatta, P.S. Peerbahore, District- Patna.
8. The Secretary, Bihar Urdu Academy, Patna, At Ashhok Rajpath, Chauhatta, P.S. Peerbahore, District- Patna.
9. The Accountant-in-Charge, Bihar Urdu Academy, Patna, At Ashhok Rajpath, Chauhatta, P.S. Peerbahore, District- Patna.
10. Azimulah Ansari, Secretary, Bihar Urdu Academy, Patna, At Ashhok Rajpath, Chauhatta, P.S. Peerbahore, District- Patna.
11. Md. Tamanna, Accountant in-charge, Bihar Urdu Academy, Patna, At Ashhok Rajpath, Chauhatta, P.S. Peerbahore, District- Patna.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 9991 of 2023

1. Md. Azim, Son of Late Md. Abdur Razzaque @ Mohammad Razaque, Resident of Mohalla- Bhanwar Pokhar, Park View Apartment, P.S. Peerbahore, P.O. Bankipur, District- Patna. At Present working in Bihar Urdu Academy, Ashoka Rajpath, P.S.- Peerbahore, District- Patna.
2. Md. Shahid Alam Son of Late Md. Mokarram, Resident of Village- Hussaina, P.S. Ballia, District- Begusarai and residing at Flat No. 3-D, Yameen Apartment, New Sir Syed Nagar, Aligarh. At Present working in Bihar Urdu Academy, Ashoka Rajpath, P.S.- Peerbahore, District- Patna.
3. Md. Bablu, Son of Late Md. Allauddin, Resident of Mohalla- Chandwara, Near Judges Kothi, P.S. Muzaffarpur Town, District- Muzaffarpur. At Present working in Bihar Urdu Academy, Ashoka Rajpath, P.S.- Peerbahore, District- Patna.



... .. Petitioner/s

Versus

1. The State of Bihar
2. The Chief Secretary, Govt. of Bihar, Patna.
3. The Department of Minority welfare, Patna, District- Patna through its Secretary.
4. The Principal Secretary, Minority Welfare Department, Patna.
5. The Director, Minority welfare Department, Patna.
6. The Bihar Urdu Academy, through its Secretary. At Ashok Rajpath, Chauhatta, P.S. Peerbahore, District- Patna.
7. The Executive Committee, Bihar Urdu Academy, Patna through its Secretary. At Ashok Rajpath, Chauhatta, P.S. Peerbahore, District- Patna.
8. The Secretary, Bihar Urdu Academy, Patna. At Ashok Rajpath, Chauhatta, P.S. Peerbahore, District- Patna.
9. The Accountant-in-Charge, Bihar Urdu Academy, Patna. At Ashok Rajpath, Chauhatta, P.S. Peerbahore, District- Patna.
10. Azimullah Ansari, Secretary, Bihar Urdu Academy, Patna. At Ashok Rajpath, Chauhatta, P.S. Peerbahore, District- Patna.
11. Md. Tamanna, Accountant in-charge, Bihar Urdu Academy, Patna. At Ashok Rajpath, Chauhatta, P.S. Peerbahore, District- Patna.

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 6619 of 2023)

For the Petitioner/s	:	Mr. Md. Anis Akhtar, Advocate Mr. Md. Rashid Alam, Advocate
For the Respondent/s	:	Mr. Ajit Kumar, SC-9 Mr. Arvind Kumar, AC to SC-9 Mr. Umesh Kumar Roy, AC to SC-9
For the Urdu Academy	:	Mr. Sajid Salim Khan, Advocate Ms. Shobia Mustaq, Advocate

(In Civil Writ Jurisdiction Case No. 9991 of 2023)

For the Petitioner/s	:	Mr. Md. Anis Akhtar, Advocate Mr. Md. Rashid Alam, Advocate
For the Respondent/s	:	Mr. Kapileshwar Prasad Yadav, GP- 11 Mr. Santosh Chandra Bhaskar, AC to GP-11
For the Urdu Academy	:	Mr. Sajid Salim Khan, Advocate Ms. Shobia Mustaq, Advocate

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 29-01-2024

Considering the identical grievance and the nature



of the dispute, both the writ petitions have been heard together and with the consent of the respective parties are being disposed of by this common order/judgment.

2. Heard Mr. Anis Akhtar, learned counsel along with Md. Rashid Alam, learned counsel appearing on behalf of the petitioners in both the cases, Md. Sajid Salim Khan, learned counsel along with Ms. Shobia Mustaq, learned counsel for the Bihar Urdu Academy and Mr. Arvind Kumar, learned counsel along with Mr. Umesh Kumar Rai, learned counsel for the State.

3. The petitioner in C.W.J.C. No. 6619 of 2023 is a retired employee of the Bihar Urdu Academy, Patna has filed the present writ petition seeking a direction commanding upon the respondent Secretary, Bihar Urdu Academy, Patna (respondent no.8) to make payment of Rs.5,88,665/-, deducted from his gratuity, whereas the petitioners in CWJC No. 9991 of 2023 are the working employees of Bihar Urdu Academy, Patna (hereinafter referred to as 'the Academy') and they have preferred the writ petition seeking quashing of orders as contained in letters no. 58/23, 57/23 and 59/23 dated 23.06.2023 passed by respondent no.8 whereby a direction has been issued for deduction of the amount of Rs.5,88,665/-, Rs. 8,34,478/- and Rs.5,78,621/- respectively from their salary, which amount was



paid to all the petitioners after the proceedings of M.J.C. No. 5056 of 2012, brought for non-compliance of the order dated 16.08.2011 passed in C.W.J.C. No. 16537 of 2004 after five years of getting the contempt proceedings dropped and further to arraign the respondent Secretary for his deliberate and gross willful contemptuous conduct of disobedience and misconstruction/misinterpretation of the orders dated 16.08.2011 and 08.11.2017.

4. The short facts, which led to the filing of the present writ petitions is that the petitioners were appointed on daily wages between 1981-1983 and in 1994, and further they were subsequently appointed in their respective pay scales admissible against their posts. However, during the service period, the petitioners along with two other employees of the Academy were terminated from service by the order dated 25.11.2004. The petitioners along with two others assailed their termination order by filing C.W.J.C. No. 16537 of 2004, which was after hearing allowed by the order dated 16.08.2011 and their termination orders were set aside with the following directions:

“Accordingly, the orders as contained in Annexure 8 series, terminating the services of the petitioners, are quashed and the petitioners are directed to be reinstated in service. However, since



there is nothing on record that during the period of termination, the petitioners were not gainfully employed elsewhere, the respondents are directed to pay only 50% of their emoluments for the period the petitioners remained under termination. Needless to say, the petitioners will be entitled to the arrears of salary till the date of their termination in accordance with law, as recommended by the enquiry committee and admitted by the Secretary of the Academy, while issuing the notification of termination.

The whole exercise of reinstatement and payment should be done within a period of four months of the production/receipt of a copy of this order.”

5. Consequent thereto, the petitioners have filed applications for their reinstatement and payment of their arrears of salary, but on one pretext or the other, no such order was passed compelling the petitioners to file M.J.C. No. 5056 of 2012 for initiation of a contempt proceeding against them for non-compliance of the order dated 16.08.2011.

6. The petitioner in C.W.J.C. No. 6619 of 2023 was allowed his joining on 01.02.2016, whereas the petitioners in C.W.J.C. No. 9991 of 2023 were allowed their joining on 04.02.2016, but for non-compliance of the other directions contained in the order, notices were issued to the opposite



parties (respondents herein) to show-cause. The initial show-cause of the Academy was not accepted and found no compliance. Thereafter the Academy filed supplementary show-cause annexing therein with the detailed chart showing payment of total Rs.88,38,902/- to the writ petitioners in C.W.J.C. No. 16537 of 2004. The learned court taking note of the compliance showing reinstatement of the petitioners and paying to them the arrears of salary, disposed of the contempt petition vide order dated 08.11.2017.

7. It is the case of the petitioners that the respondent Secretary after taking charge of Secretary, Bihar Urdu Academy at his own level made enquiry and examined the entire record in terms of the letter of the then Secretary withholding payment of CPF amount of the petitioners and found that the Academy in the supplementary show-cause has come clearly with making of 50% for the period they remained under termination and full benefit after the date of order setting aside the termination.

8. Having noted that the termination ended when the order passed by the Hon'ble Court on 16.08.2011 with a direction to reinstate and thus the status of the writ petitioners have been restored on the said date to be treated to be in continuous service. The respondent Secretary further said that



the Academy has rightly determined their entitlements of full benefit for the said period. Whereafter the concerned respondents allowed for deposition of withhold CPF amount on the basis of calculation in terms of the order of this Court, as stated above and on the basis thereof, the respondent no.8 paid the entire retiral benefit to one Md. Kalim. Later on, the petitioner in C.W.J.C. No. 6619 of 2023 also came to be superannuated, thereupon the respondent Secretary after making necessary calculation passed an order directing the Accountant for payment of his all the dues to the tune of Rs.7,51,740/-. However, certain objection was raised by the respondent no.9 (Accountant incharge of the Academy) and again the record was produced before the respondent Secretary by making certain extraneous notings and ultimately he directed the respondent Accountant to process the record of the petitioner for deduction of Rs.5,88,665/- from the gratuity of petitioner in C.W.J.C. No. 6619 of 2023 and similarly directed for deduction of amount paid to the petitioners i.e. Rs.5,88,665/-, 8,34,478/- and Rs.5,78,621/- respectively from the salary of the petitioners in C.W.J.C. NO. 9991 of 2023.

9. The aforesaid direction, in the submission of the petitioners, has been passed by misconstruing the order of the



High Court that the petitioners were entitled to only 50% salary till their joining, irrespective of the order setting aside their termination by the order dated 16.08.2011. While assailing the impugned action/orders, it is submitted on behalf of the petitioners that after getting the contempt proceedings dropped on payment of arrears of salary on 08.11.2017, the respondent Secretary innovated maliciously after six years that the petitioners have been wrongly paid 100% of emoluments from the order dated 16.08.2011 till their joining, contrary to his own submission before this Court that the petitioners for the period have been paid 100% emoluments. The conduct of the respondents is not only illegal, but a fraud has been committed with the Hon'ble High Court.

10. He further submits that the payment of arrears of salary under the direction of the Hon'ble High Court, a valuable legal right of the petitioners has been created in it and same cannot be taken away in such an ordinary manner without affording adequate opportunity of being heard to them. Due to illegal and arbitrary action of the respondent Secretary, the present litigation has been created and thus as per the mandate of the Courts, the respondent should be held personally liable for their malafide acts. There is no justification of the



respondent Academy not allowing the joining to the petitioners within four months of passing of the order dated 16.08.2011 by the Hon'ble High Court and now making an attempt to take benefit of his said wrong and contemptuous act after getting the contempt proceeding dropped.

11. On the other hand, learned counsel representing the Academy while refuting the contention of the petitioners by referring to the letter, Ref. No. 1276/17 dated 12.09.2017 has submitted that the respondent Secretary while making payment had issued individual letter to the petitioners, which was duly served upon them informing that if there is any error in calculating his 50% emoluments, the same would be recovered from them, thus the statement by the petitioners that the respondent Secretary attempted to misconstrue the order and without notice to the petitioners deducting the excess amount paid to them is factually incorrect and denied.

12. He further submits that the petitioners are only entitled for 50% of their salary during their termination period, as it has been ordered by this Hon'ble Court vide its order dated 16.08.2011 passed in C.W.J.C. No. 16537 of 2004. Learned counsel for the Academy also tried to distinguish the case of Md. Kalim by submitting that the payment of retiral dues of Md.



Kalim is justified in terms of the order of the Hon'ble Court and moreover the petitioners were given ample opportunity to show-cause that why excess amount paid to them should not be recovered by the Academy, but they never made any response nor objected. Reliance has also been made on a judgment of the Hon'ble Supreme Court in the case of **High Court of Punjab and Haryana & Ors. Vs. Jagdev Singh**, reported in **(2016) 14 SCC 267**. Making reliance of the aforementioned judgment, it is vehemently submitted that since the petitioners were clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The excess amount paid to the petitioners has rightly been deducted.

13. This Court has heard the learned counsel for the respective parties and also perused the materials available on record, especially the order of this Court dated 16.08.2011 passed in C.W.J.C. No. 16537 of 2004. Indubitably, the penultimate paragraph of the order clearly directs the respondents to ensure payment of 50% of the emoluments for the period, the petitioners remained under termination.

14. It goes without saying that by the aforesaid order of this Court, the order terminating the services of the petitioners were quashed. Accordingly, the status of the writ petitioners



have been restored on the said date treated to be continuous in service since then under the Academy, only a consequential order of reinstatement was required, but admittedly the same has been done belatedly.

15. The Word reinstatement, as per the Shorter Oxford English Dictionary, Volume-II, 3rd Edition, means to reinstall or re-establish (a person or thing in a place, station, condition, etc.) to restore to its proper or original state. As per law Lexicon, 2nd Edition, the word “reinstatement” means establishing in former condition, position or authority (as) reinstatement of a deposed prince. As per Black’s Law Dictionary, 6th Edition “reinstatement” means ‘to reinstall, to re-establish, to place again in a former state, condition, or office. To restore to a state or position from which the object or person had been removed.

16. It is needless to observe that the moment, the petitioners were reinstated, they restored their position from which they had been removed. It is further noted that the respondents have been absolved from contempt proceeding taking note of the fact that apart from reinstatement of the petitioners, they have been paid their arrears of salary in terms of the order of the Hon’ble Court. Once the payment has been made and show-cause affidavit in this regard has been duly



sworn and filed in the Court, leading to disposal of the contempt application, any order passed by any authority, who was/were party to the proceedings denying/changing his/their stand would, undoubtedly amounts to defiance of the order of the Hon'ble Court, unless the order stands reviewed or modified.

17. It is the fact that the respondents have never assailed the order of this Court or sought any modification of the same, more so, while setting aside the termination order there was a specific direction for reinstatement and payment to the petitioners within a period of four months. Thus, any delay or laches on the part of the respondents would certainly not cause any prejudice to the right and entitlement of the petitioners.

18. At this stage, it would be proper to quote the observation made by the Bombay High Court in a celebrated judgment of **All India Groundnut Syndicate Ltd. Vs. Commissioner of Income Tax, Bombay City**, reported in **AIR 1954 Bom 232**:

9. But the most surprising contention is put forward by the Department that because their own officer failed to discharge his statutory duty, the assessee is deprived of his right which the law has given to him under sub-section (2) of S. 24. In other



words, the Department wants to benefit from and wants to take advantage of its own default. It is an elementary principle of law that no person—we take it that the Income-tax Department is included in that definition—can put forward his own default in defence to a right asserted by the other party. A person cannot say that the party claiming the right is deprived of that right because “I have committed a default and the right is lost because of that default.”

19. Now coming to the letter/notice dated 12.09.2017 whereby the respondent Academy has informed the petitioners that if there is any error in calculating his 50% emoluments, the same would be recovered from him, would not fulfill the requirement of principles of natural justice, as the issue involved in the present matter does not relate to any mistake/error in the calculation, while granting salary/emoluments, rather the action of the respondents is based upon a misconceived interpretation of the order of this Court and the respondents sat over the matter and for a pretty longtime of 6 years and when the petitioner in C.W.J.C. No. 6619 of 2023 stood superannuated, fresh calculation is made, dehors the direction/order of this Court. Further, the reliance made by the respondent Academy on the



judgment rendered in the case of **High Court of Punjab and Haryana & Ors. Vs. Jagdev Singh** (supra) is also not applicable in the facts of the present case, as the very basis of recovery is based on misconstruing and misinterpreting the order of this Court and the action of respondent Academy cannot be said to be justified in any view of the matter.

20. This Court also finds that the present litigation is truly a self created litigation, without there being any justification. Even ordinarily once the order terminating the services of the petitioners are quashed, can the petitioners said to be still under termination, only because they are not reinstated. In the opinion of this Court, such interpretation would have no place in the eyes of laws.

21. Accordingly, in the circumstances and the discussions made hereinabove, the impugned order of deduction from the gratuity and salary of the petitioners are held to be illegal and unjustified and, as such, any consequential action or order, as contained in letters no. 58/23, 57/23 and 59/23 dated 23.06.2023 are hereby set aside. Consequent to the aforesaid order, any amount, if deducted, from the petitioners are hereby directed to be restored preferably within a period of twelve weeks from the date of receipt/production of a copy of this order.



22. Both the writ petitions stand allowed, but with no order as to costs.

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	31.01.2024
Transmission Date	NA

