

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12300 of 2014

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Mithilesh Kumar, Son of Late Devan Yadav, At.- Singhpokhar, P.O.- Chilim,
P.S.- Dobhi, District- Gaya, Presently Posted as Prabhari Pradhanadhyapak in
Middle School, Singh Pokhar, Dobhi, Prakhand, District- Gaya.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Education Department, Govt. of Bihar, Patna.
3. The Director Mid- Day- Meal (MDM), Govt. of Bihar, Patna.
4. The District Magistrate, Gaya.
5. The District Education Officer, Gaya
6. The District Prabhari Officer Mid- Day- Meal (MDM) Gaya.
7. The Block Development Officer, Dobhi, Gaya.
8. The Block Education Officers Dobhi, Gaya.
9. The Block Resource Person, MDM, Dobhi.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rama Kant Singh, Advocate
For the State	:	Mr. M. Nasrul Hoda Khan, SC-1
		Mr. Md. Irshad, AC to SC-1
For the MDM	:	Mr. Girijish Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT

Date : 28-02-2024

1. Heard learned counsel for the petitioner and learned
counsel for the respondents.

2. The petitioner by filing the instant writ application
has prayed for quashing the order as contained in memo no. 269
dated 15.5.2014, issued under the signature of the District



Magistrate, Gaya whereby the petitioner was directed to deposit a total sum of Rs.85,734.96/- within a period of three days or else appropriate steps would be taken as mentioned in the said order.

3. The case of the petitioner in brief is that pursuant to an enquiry conducted with respect to the school in question on 16.4.2014, it transpired that the number of beneficiaries of the Mid-day Meal Scheme were being inflated than the actual number of beneficiaries under the said scheme. Thus, the respondents calculated the total amount defalcated, as per the guidelines and came to the conclusion that the petitioner had defalcated Rs.85,734.96/- and consequently the directions as contained in order dated 15.5.2014 for the petitioner to deposit the same.

4. Learned counsel for the petitioner submits that the order impugned is not sustainable for the reason that as per the directions contained in memo no.2558 dated 29.10.2013 (Annexure-7), the Principal Secretary, Education Department has categorically directed the District Mid-day Meal Scheme Officers to take steps as mentioned in the said letter, to carry out the inspections and to pass appropriate orders of recovery etc. as contained therein. It is thus submitted that it was for the Mid-



day Meal Scheme Officers who were to pass the orders and the District Magistrate, in the instant case, did not have the jurisdiction to pass the orders for recovery of the amount alleged. It is submitted that even on merits, the order impugned is not sustainable because the petitioner has been working in the school concerned to the satisfaction of all the authorities without any illegality or irregularity. On receipt of the show-cause notice, the petitioner submitted his reply on 26.6.2014, clearly explaining the facts alleged in the notice. It was thereafter that by an *ex parte* order that the order impugned has been passed by the District Magistrate. It is submitted that the petitioner has also preferred an appeal before the Director, Mid-day Meal Scheme but no action has been taken by the respondents.

5. Learned counsel appearing for the Mid-day Meal Scheme in reference to the counter affidavit filed on behalf of the respondents has submitted that it was only on an inspection having been carried out by the respondents and on the illegality/irregularity transpiring in the said inspection that a notice was issued to the petitioner asking him to show-cause with respect to the allegations made therein. It was only after receipt of the petitioner's reply and considering the contentions raised there that the order impugned has been passed. It is



submitted that there is no merit in the writ application and the same be dismissed.

6. Having heard learned counsel for the parties and having perused the material on record, so far as the contention raised by the petitioner that the District Magistrate, Gaya had no jurisdiction to pass the order impugned in view of the guidelines issued in the letter dated 29.10.2013 of the Principal Secretary, Education Department is concerned, the same merits no consideration and is rejected outright. With respect to the petitioner having performed his functions in accordance with law without any illegality or irregularity, the Court may observe that so far as the facts/allegations as levelled against the petitioner are concerned, as to how many beneficiaries were taking the benefit of the Mid-day Meal Scheme against the bills being furnished by the petitioner, the same in the opinion of the Court are clearly disputed questions of fact which cannot be decided under writ jurisdiction under Article 226 of the Constitution by this Court.

7. In view of the facts and circumstances, the Court does not find any merit in the writ application and the same is dismissed giving liberty to the petitioner to pursue his remedy, if so advised, by filing an appropriate suit in the learned trial



Court.

8. The writ application stands dismissed.

(Partha Sarthy, J)

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AFR/NAFR	
CAV DATE	N/A
Uploading Date	29.02.2024
Transmission Date	N/A

