

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6028 of 2008

Pradeep Kumar Singh, son of Late Shiv Prasad Singh, resident of village-Jehanabad, P.S. Kudra, District- Bhabua (Kaimur)

.... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Old Secretariat, Patna
2. The Secretary-cum- Commissioner, Department of Agriculture, Government of Bihar, New Secretariat, Patna
3. Joint Secretary, Department of Agriculture, Govt. of Bihar, New Secretariat, Patna
4. Deputy Secretary, Department of Agriculture, Govt. of Bihar, New Secretariat, Patna
5. Additional Secretary, Department of Agriculture, Govt. of Bihar, New Secretariat, Patna

.... Respondents

Appearance :

For the Petitioner/s : Mr. SHAILENDRA KUMAR SINHA

For the Respondent/s : Mr. AC to G.A.3

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 11-03-2015

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Heard Sri Shailendra Kumar Sinha, learned counsel for the petitioner and learned AC to Govt. Advocate no.3.

The sole petitioner, invoking writ jurisdiction of this Court under Article 226 of the Constitution of India, has prayed for quashing of a Notification No.394 dated 26.04.2005 (Annexure-3 to the writ petition), whereby while rejecting the representation of the petitioner, the Dy. Secretary, Agriculture Department, Govt. of Bihar has held that during the period of suspension i.e. from 17.03.2003 to 14.07.2003 (correctly 14.07.2004), the petitioner

shall not be entitled to get anything, save and except subsistence allowance.

Short fact of the case is that by order, contained in Memo No.304 dated 17.03.2003 vide Annexure-1 to the writ petition, the petitioner was put under suspension in contemplation of departmental enquiry. The petitioner was put under suspension with effect from 17.03.2003 on an allegation of unauthorised absence and not taking interest in the work of different schemes. After receipt of the enquiry report submitted by the conducting officer, the departmental proceeding against the petitioner was dropped with a direction to record 'Censure'. Nothing was indicated while recording 'Censure'. Since it was not clarified regarding payment of salary during suspension period, the petitioner filed representation claiming salary for the period of suspension. However, vide Annexure-3 to the writ petition, the representation of the petitioner was rejected and it was held that the petitioner shall not be entitled to get anything, save and except subsistence allowance.

Sri Shailendra Kumar Sinha, learned counsel for the petitioner assailing the notification No. 394 dated 26.04.2005 (Annexure-3 to the writ petition) submits that once after departmental enquiry, the petitioner was exonerated inflicting



minor punishment recording 'Censure', there was no reason to withhold salary of the petitioner during suspension period. He submits that by way of issuance of Annexure-3, virtually without any rhyme and reason, subsequent punishment has been imposed by way of withholding the salary of the petitioner during suspension period, which is not permissible in the eye of law, virtually against the principles of natural justice.

Learned counsel for the State has opposed the prayer of the petitioner and by way of referring to the facts disclosed in the counter affidavit, he submits that under the provision of Bihar Service Code, the petitioner was not at all entitled to get anything save and except subsistence allowance. According to learned State Counsel, the writ petition is fit to be rejected.

Besides hearing learned counsel for the parties, I have also perused the materials available on record. Fact remains that the petitioner was put under suspension vide Annexure-1 to the writ petition i.e. order dated 17.03.2003 in contemplation of departmental enquiry, which was subsequently initiated and after receipt of enquiry report, a punishment of recording 'Censure' was imposed. Once, on conclusion of departmental enquiry, no further punishment was imposed save and except recording 'Censure', there was no reason to withhold salary for the suspension period.

Once the departmental proceeding had come to an end without any punishment of forfeiture of salary during suspension period, at subsequent stage, that too, on a claim made by the petitioner by filing representation for salary for the said period, the authority concerned was not at all authorised to amend punishment order, which was passed earlier. Since no such punishment order was passed, the authority concerned was not at all authorised for forfeiture of salary of the petitioner.

In view of facts and circumstances, the Court is of the considered opinion that in absence of punishment order, the petitioner is entitled to get salary for the period of suspension. Accordingly, the Respondents are directed to take steps for making payment of salary of the petitioner after adjusting the amount of subsistence allowance, which was paid to the petitioner from 17.03.2003 to 14.07.2004.

With above observation and direction, the writ petition stands allowed.

(Rakesh Kumar, J)

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