

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7311 of 2014

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Ghan Shyam Tripathi son of Shri Dewata Tripathi, resident of village AND P.O. Rajpur (Madan), Police Station - Shikarpur, District - West Champaran.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Director, Agriculture, Bihar, Patna.
3. The District Magistrate, West Champaran at Bettiah.
4. The Block Development Officer, Jogapatti, District - West Champaran.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Bashishtha Narayan Mishra
Mr. Sachida Nand Rai

For the Respondent/s : Mr. Shashi Shekhar Pd. Sinha, AC to GA-13

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL JUDGMENT

Date: 15-01-2015

Heard the parties.

The petitioner has filed the present writ petition seeking a direction to the respondents to make payment of his arrears of salary since August 2013 as also current salary till date.

Learned counsel appearing on behalf of the petitioner submits that though the petitioner was transferred by order dated 13.06.2013 (Annexure-1) issued under the signature of the respondent Agriculture Director, Bihar, Patna, from the district of West Champaran, Bettiah to the District of Lakhisarai on the post of Jan-sewak, but he was not relieved from the place of posting by his immediate controlling officer. Therefore, he could not join at the place of his transfer in the district of Lakhisarai. It is contended that the petitioner is still discharging his duty in the district of West Champaran, Bettiah.

Learned counsel appearing on behalf of the State has opposed the prayer by referring to the averments made in the counter-affidavit filed on behalf of the respondent no.2. It is

contended that by virtue of the order of transfer, as contained in Annexure-1, the petitioner ought to have joined in the district of Lakhisarai. However, the specific plea taken by the petitioner in paragraph-8 of the writ petition that he was not relieved by his immediate controlling officer in the district of West Champaran, Bettiah, has not been controverted in the aforesaid counter-affidavit.

This Court is of the opinion that if pursuant to the order of transfer dated 13.06.2013 the petitioner was not relieved by his controlling officer in the district of West Champaran, Bettiah and his service is being taken even till today, then he cannot be denied the claim of his salary for the interregnum period. However, if the petitioner was relieved pursuant to the order of transfer dated 13.06.2013 (Annexure-1) and he is not discharging his public duty thereafter by not joining the post at the place of his transfer in the district of Lakhisarai, then he cannot claim his payment of salary for that period, but all these issues have not been indicated in the counter-affidavit filed on behalf of the respondent no.2. Even the respondent District Magistrate, West Champaran, Bettiah as also the Block Development Officer, Jogapatti, the immediate controlling officer of the petitioner, have not filed their counter-affidavit till date.

In above view of the matter, the present writ petition is disposed of with a direction to the petitioner to appear before the respondent District Magistrate, West Champaran, Bettiah within a period of four weeks from today with a comprehensive representation as also a certified copy of the present order. The respondent District Magistrate, West Champaran, Bettiah shall examine the entire matter and shall record a finding with respect to

the issues indicated above. If the petitioner has been discharging his duty in the district of West Champaran, Bettiah, despite the order of transfer, then he shall be paid his salary for the said period. However, if the petitioner was relieved by his controlling officer in compliance of the order of transfer as per Annexure-1 and he has not joined his duty after the date of his relieving, then certainly he cannot claim payment of salary for that period. Entire exercise must be completed by the respondent District Magistrate, West Champaran, Bettiah, within a period of two months from the date of appearance and filing of the representation by the petitioner, as indicated above.

The writ petition stands finally disposed of with the observations and directions made above.

(Birendra Prasad Verma, J)

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