

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14007 of 2008

=====

Raj Kumar Singh, son of Late Sakaldip Singh resident of village Kurari P.S.
Karamchat District Kaimur

.... Petitioner/s

Versus

1. The State of Bihar
2. The Secretary cum Commissioner Minor Water Resources Government of Bihar, Patna
3. The Coordinator Water Resources Minor Irrigation Department Bishwsaraia Bhawan Patna
4. The Chief Engineer (South) Tube Well Division Shekhpura Patna 14
5. The Superintending Engineer Tube Well Circle Arra
6. The Superintending Engineer, Tube well circle Gaya
7. The Executive Engineer Tube well division Mohania district Kaimur
8. The Executive Engineer Tube Well Division Sasaram Camp Dehari
9. The Assistant Engineer Tube Well Sub Division Durgawati District Kaimur
10. The Junior Engineer Tube Well Sub Division Durgawati District Kaimur

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. ARBIND NATH PANDEY

For the Respondent/s : AC to SC 3

=====

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 16-09-2015

Heard Sri Arbind Nath Pandey, learned counsel for the petitioner and learned AC to SC No. 3.

The petitioner, who is a Class IV employee, invoking writ jurisdiction of this Court under Article 226 of the Constitution of India, has prayed for directing the Respondents to pay due salary of the petitioner from the month of March, 2007 till the date of joining after the issuance of Order contained in Memo No. 477, has prayed for payment of salary from the month of March, 2007. It has been stated that the petitioner vide Annexure - "1" i.e. vide Letter No. 175



Dated 8.2.2007 was transferred as Tube Well Driver, Tube Well Division Mohania, to Tube Well Division, Munger. However, on representation of the petitioner the order of transfer was kept in abeyance vide Annexure – “2” to the writ petition i.e. the order contained in Letter No. 498 Dated 28.3.2007. Subsequently, the petitioner was asked to file show cause vide Annexure – “5” to the writ petition i.e. Letter No. 667 Dated 14.5.2007 treating the petitioner as Tube Well Driver, Tube Well Division, Mohania on certain allegations. Despite the fact that petitioner submitted show cause explaining his case, vide order contained in Memo No. 839 Dated 14.6.2007 (Annexure - “6” to the writ petition) a departmental proceeding was initiated against the petitioner whereby conducting officer was also appointed. It has been argued by learned counsel for the petitioner that in the departmental proceeding there was no specific charge relating to violation of transfer order. However, on some other allegations proceeding was initiated. Finally, vide order contained in Memo No. 477 Dated 11.4.2008 (Annexure - “7” to the writ petition), in the departmental proceeding even though there was no material against the petitioner was concluded, *censure* was directed to be recorded in the A.C.R. of the petitioner for the year 2007-08. By the same order the petitioner was directed to be posted in Tube Well Division, Sasaram Camp Dehri. It has been argued that



though proceeding was initiated against the petitioner, petitioner was never put under suspension and after the Order Dated 11.4.2008 petitioner immediately joined at new place. It has been argued that after joining the petitioner is getting his salary, but for the period i.e. from the month of March, 2007 till 16.5.2008 he has not been paid his due salary whereas petitioner had represented before the Executive Engineer, Tube Well Division, Mohania vide Annexure - “9” to the writ petition. In view of the facts and circumstances it has been prayed to direct the Respondents to pay the due salary of the petitioner.

Learned State Counsel opposing the prayer of the petitioner submits that the petitioner even after issuance of transfer order, did not join new place of posting and he has not functioned, and as such, he is not entitled to get salary for the period/ claim salary. He has specifically referred to paragraph no. 10 of the counter affidavit to show that petitioner had not worked from 8.2.2007 to 16.5.2008.

Besides hearing learned counsel for the parties, I have also perused the material available on record. It is true that vide Annexure - “1” to the writ petition petitioner was directed to be transferred from one district to another district but fact remains that immediately thereafter vide Order Dated 28.2.2007 (Annexure - “3” to the writ petition) the order of transfer of the petitioner was directed to be kept



in abeyance. It is further evident that while proposing to initiate departmental proceeding a show cause notice was issued to the petitioner which is at Annexure - "5" to the writ petition i.e. order dated 14.5.2007. On perusal of Annexure - "5" to the writ petition it is evident that petitioner has been treated as Tube Well Driver, Tube Well Division, Mohania. Meaning thereby, that Respondents had kept the order of transfer in abeyance and petitioner was allowed to function at Mohania itself. Finally, the departmental proceeding was concluded and by Annexure - "7" to the writ petition, after imposing *censure* in the A.C.R. of the petitioner the petitioner was posted at Tube Well Division, Sasaram Camp Dehri. It is case of the petitioner that after issuance of Annexure - "7" the petitioner immediately joined the new place of posting. Accordingly, the material on record categorically suggests that the order of transfer i.e. Annexure - "1" was never implemented and petitioner was allowed to continue in Mohania Division. It is further evident that petitioner was departmentally proceeded treating him to be posted in Mohania Division and as such, the facts and circumstances categorically suggests that petitioner remained at his old place of posting and as such, he is entitled to get full salary for the period i.e. from the month of March, 2007 to 16.5.2008. Accordingly, the writ petition stands allowed.

The writ petition stands allowed with a direction to the Respondents to take all steps to clear the due salary of the petitioner which must be paid to the petitioner within a period of eight weeks from the date of receipt / production of a copy of this order.

(Rakesh Kumar, J)

Praful/-

U			
---	--	--	--