

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.900 of 2008

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Narendra Prasad Saha, son of Shri Narayan Prasad Sah, resident of Village Naya Gaon, P.S. Parbatta, P.O. Jorawar Pur, Dist. Khagaria.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Secretary, Rural Works Department, Government of Bihar, Patna.
3. The Deputy Secretary, Rural Works Department, Govt. of Bihar, Patna.
4. Engineer in Chief, Rural Works Department, Govt. of Bihar, Patna.
5. Chief Engineer, Rural Works Department-I, Govt. of Bihar, Patna.
6. Chief Engineer, Rural Works Department-II, Govt. of Bihar, Patna.
7. The District Magistrate, Saharsa.
8. The Deputy Development Commissioner, Saharsa.
9. The Block Development Officer, Mahishi Block, Saharsa.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. D.K. Sinha, Sr. Adv.

For the Respondent/s : Mr. Harish Kumar, GP-32

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA

ORAL JUDGMENT

Date: 22-07-2015

Heard learned counsel for the parties as with regard to the following relief prayed in this writ application:-

"(i) To quash the order passed by the respondent no. 2 contained in memo no. 6852 dated 05.11.2007 where under and whereby the claim of the petitioner for payment of salary for the period 12.01.1999 to 02.08.2000 has been rejected.

(ii) For a direction upon the respondents to make payment of salary to the petitioner for the period 12.01.1999 to 02.08.2000."

2. The petitioner as noted above has been denied his payment of salary for the period 12.1.1999 to 2.8.2000. Whatever has



come on record in support of such claim of the petitioner is that though the petitioner was transferred from Mahishi Block to Ghorasahan section within Dhaka Division by an order of the Chief Engineer, R.E.O. dated 21.6.1996 but, in pursuance of the same, the petitioner was not relieved till 26.3.1998. It is the case of the petitioner that subsequently the Engineer-in-Chief by his order dated 11.4.1998 had stayed the transfer order of the petitioner. It is a matter of mystery as to when the petitioner had already been relieved on 26.3.1998, where was the occasion for the Engineer-in-Chief to stay such order and whether Engineer-in-Chief was conscious of the fact that the petitioner was already relieved on 26.3.1998.

3. The petitioner then claims that on account of the stay of the transfer by the Engineer-in-Chief in his order dated 11.4.1998 for a period up to June, 1998, he could continue till 2.8.2000. Thus the next question will be why should now the petitioner to be deemed to have been completed his tenure in Mahishi (Saharsa) till June 1998 only because the order of stay of the transfer of the petitioner, even after his being relieved, was only for the period till June, 1998?

4. Now the petitioner's case is that on 26.6.1998, he was transferred by Chief Engineer, R.E.O. vide his order dated 26.6.1998 from Mahishi Block in the district of Saharsa to Dhoraiya Block in the district of Banka. The question therefore would be whether such a



transfer order was permissible to be made by the Chief Engineer when firstly there was an embargo imposed by the Engineer-in-Chief for allowing the petitioner to continue till June, 1998 and, secondly, whether the earlier order of transfer of the petitioner dated 21.6.1996 passed by the Chief Engineer, R.E.O. was cancelled or superseded ?

5. The petitioner having no clear to the aforesaid uncomfortable questions in fact, claims to have continued on the basis of the order of stay of the Engineer-in-Chief dated 11.4.1998 till 2.8.2000 and claims that he had complied the subsequent order or transfer dated 28.6.2000, this time issued by the State Government transferring the petitioner from Mahesi, Saharsa to Samastipur. Here again, since this order of transfer was not issued either of the Chief Engineer, R.E.O. or the Chief Engineer, R.E.O.I. who had issued the earlier order of transfer dated 21.6.1996 and 26.6.1998, was the Government ever made aware of the two transfers already effected of the petitioner and was it that even if the government being aware of the place of posting of the petitioner at Mahaishi Block in Saharrasa vide its order dated 28.6.2000 to Samastipur had joined the work at Mahaishi, Saharsa?

6. These aspects, however, have not at all been gone into by the respondents in the impugned order despite a direction of this court in the order dated 1.12.2006 in C.W.J.C. no. 11882/2000 filed

by the petitioner. There is also no explanation to this effect in the counter affidavit or in the supplementary counter affidavit.

7. That being so, this Court would find that the exercise of power by the Principal Secretary while passing the impugned order was half hearted and he did take into consideration the facts which were brought to his notice by the petitioner in the representation dated 24.1.2007 contained in Annexure-11. Consequently, the impugned order is hereby quashed and the matter is remitted back to the Principal Secretary of the Department who now shall re-consider the representation of the petitioner as contained in Annexure-11 filed by the petitioner in response to the earlier order of this Court. The petitioner also will be at liberty now to raise any supplementary issue by filing a supplementary representation which he must do within a period of three months from today.

8. The Principal Secretary of the Department, thereafter, will afford an opportunity of personal hearing to the petitioner as also would look into all the relevant documents relating to the aforesaid three transfer orders and the plea of the petitioner of his such transfer order being stayed by the Engineer-in-chief.

9. In the event it is found that the petitioner's continuance despite three orders of transfer and his being relieved as being claimed by the Department in connivance with other authorities beginning



from Engineer-in-Chief and ending up to the Block Development Officer, action should also be taken against them if the petitioner is deprived payment of salary for the aforesaid period on the ground that he had not worked in the aforesaid period as per the order of competent authority. A fresh reasoned order therefore should be passed by the Departmental Secretary within a maximum period of six months from the date of receipt of filing of a supplementary representation along with a copy of this order.

10. With the aforementioned observation and direction, this application is disposed of.

(Mihir Kumar Jha, J)

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