

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4074 of 2011

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Krishna Chandra Verma , son of Late Ramawatar Prasad , resident of village-
Khedayan, P.S.- Andar, Distt.- Siwan

.... Petitioner

Versus

1. The State of Bihar through the Principle Secretary of Human Resources
Department, Bihar, Patna
2. The District Superintendent of Education, Siwan
3. The Regional Education Officer, Raghunathpur, Siwan
4. The Block Education Extension Officer, Raghunathpur, Siwan
5. The Block Development Officer, Raghunathpur, Siwan

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Dhananjay Kumar, Adv.

For the Respondent/s : Mr. AC to SC-15

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 21-04-2016

Heard Sri Dhananjay Kumar, learned counsel for the
petitioner and learned AC to SC-15.

2. The petitioner, invoking writ jurisdiction of this
Court under Article-226 of the Constitution of India, has prayed
for quashing of an order contained in Memo No.397 dated
31.01.2011 issued by the District Superintendent of Education,
Siwan, whereby an order was passed that during the suspension
period, save and except subsistence allowance, the petitioner
shall not be entitled to get any pay or allowances. This order is
purported to have been passed while exercising power under
Rule 97(5) of Bihar Service Code. The petitioner has further

prayed for directing the Respondents to make payment of full salary during his suspension period.

3. Short fact of the case is that the petitioner, while functioning as Assistant Teacher, was made accused in Andar P.S. Case no.45/1986 registered for the offence under Section 302/34 of the Indian Penal Code. It is case of the petitioner that he was taken in custody on 04.09.1986 and finally he was released on bail. The petitioner was chargesheeted and prosecuted in the said case corresponding to Sessions Trial No.344/1989 and finally the petitioner was acquitted from all the charges vide Judgment of acquittal dated 15.07.2006 passed by the learned Addl. Sessions Judge, Siwan vide Annexure-7 to the writ petition. The petitioner after being acquitted was released from his suspension vide order contained in Memo No.2062 dated 21.07.2010. In view of the fact that the petitioner was detained in a criminal case and it was alleged by the Department that the petitioner had not disclosed the fact regarding his detention, the petitioner was also departmentally proceeded and Memo of Charge was served vide Annexure-5 to the writ petition.

The petitioner was charged on three allegations, namely, (i) he was detained in a criminal case for the offence

under Section 302/34 of the Indian Penal Code (ii) Despite the fact that the petitioner was a government servant, he was involved in a case of murder and (iii) even though the petitioner was in custody, he had not given such information and, as such, it was a case of misconduct on the part of a government servant.

4. The enquiry officer after conducting enquiry found that no charge was proved against the petitioner and it was also noticed by the enquiry officer vide Annexure-9 to the writ petition that since the petitioner was acquitted from the criminal charge, his suspension can be revoked. Only thereafter, the suspension of the petitioner was revoked. Finally, vide impugned order i.e. the order, contained in Memo No.397 dated 31.01.2011 an order has been passed to the extent that during the whole suspension period, the petitioner shall not be entitled to get any pay and allowances, save and except subsistence allowances.

5. Learned counsel for the petitioner has referred to Annexure-2 i.e. a communication dated 01.05.1987 to the writ petition to show that after the petitioner was released from the judicial custody, he was directed to join the Headquarters, though he was ordered to remain in suspension. Learned counsel for the petitioner has also submitted that thereafter, the petitioner

was regularly attending the office and he has also placed reliance on Annexure-16 to the rejoinder filed by the petitioner on 2nd February, 2016 to show that he was putting his signature on the Attendance Register.

6. On the aforesaid fact, it has been argued by learned counsel for the petitioner that once the petitioner was exonerated from all the charges in the departmental proceeding, the order impugned was incorrectly passed withholding salary and allowances of the petitioner during his suspension period. It has been argued that once the petitioner was exonerated from all the charges, automatically the petitioner was entitled to get all the salary and allowances during the suspension period save and except the period, during which the petitioner was in judicial custody. To corroborate his submission regarding claim for salary during the suspension period, learned counsel for the petitioner has placed reliance on (i) 2000(4) PLJR 136; Chandrika Mochi Vs. State of Bihar & Ors (ii) 2013(4) BBCJ 327; Janak Lali Sinha Vs. State of Bihar & Ors and (iii) 2006(4) PLJR 230; Devendra Prasad Sinha Vs. State of Bihar. In Devendra Prasad Sinha's case (supra), learned counsel for the petitioner has referred to paragraph-11 of the said Judgment. Accordingly, it has been argued that in view of settled law, the

order impugned is liable to be set aside and the petitioner is entitled to get salary for the suspension period, as indicated herein above.

7. Learned AC to SC-15 has opposed the prayer of the writ petitioner. He has firstly raised a preliminary objection on the point of maintainability of the writ petition. He, by way of referring to paragraph-18 of the counter affidavit filed on behalf of Respondent no.2 on 22nd January, 2013, submits that the against the order impugned the petitioner was having statutory remedy of appeal under the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as the “Rules,2005”). He submits that as per Rule 23 of the “Rules, 2005”, against such order, the petitioner was required to file an appeal. Learned State Counsel has also tried to persuade the Court that there is no illegality in the impugned order.

8. Besides hearing learned counsel for the parties, I have also perused the materials available on record. So far as preliminary objection regarding maintainability of the writ petition is concerned, it is true that in normal course if remedy is available to a person, without exhausting such remedy one may not be allowed to invoke writ jurisdiction. However, it is not a



straight jacket formula to restrain from approaching this Court. Fact remains that as stated by learned counsel for the petitioner, the petitioner superannuated after attaining the age of superannuation in the month of April, 2011 and preliminary objection regarding maintainability of the writ petition was raised by the Respondent State by filing counter affidavit in the year 2013. The matter was kept pending here till date and, as such, at this juncture the Court is of the opinion that it would not be appropriate to reject the writ petition and ask the petitioner to avail remedy as per "Rules, 2005". Moreover, learned counsel for the petitioner has argued that an appeal under Rule-23 of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 is to be preferred against an order of punishment, whereas on perusal of Annexure-12 i.e. the impugned order, it is evident that the disciplinary authority has not passed order of punishment in the departmental proceeding only a direction has been issued that the petitioner shall not be entitled to get salary and allowances, save and except subsistence allowance. According to learned counsel for the petitioner, against such order, normally an appeal under Rule-23 of Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 may not be entertained.



9. Keeping in view the fact that writ petition was filed in the year 2011 and it is pending till date, at this juncture it would not be just and proper, particularly in view of peculiar fact of this case to ask the petitioner to avail appropriate remedy and reject the writ petition. Accordingly, the preliminary objection on the point of maintainability of the writ petition, which has been raised by learned counsel for the State, may not be entertained and it is hereby rejected. It is a fact that the petitioner was detained in custody and prosecuted not for an allegation in relation to discharge of his official duty. Moreover, the petitioner has already been acquitted by the court of competent jurisdiction i.e. learned Addl. Sessions Judge vide Annexure-7 to the writ petition. Acquittal order was passed on 15.07.2006. After the acquittal of the petitioner, certainly charge nos. 1 and 2 come to an end immediately. So far charge no.3 that the petitioner had not informed the Department regarding his detention is concerned, the enquiry officer has not found the allegation as true. The enquiry officer in its report kept at Annexure-9 to the writ petition has observed that the petitioner had already informed the Department. Meaning thereby that the petitioner was exonerated from all the three charges. Pursuant to the enquiry report, the suspension of the petitioner was also



revoked and subsequently Annexure-12 was passed restraining the petitioner from getting salary and allowances during the period of suspension. The issue regarding claim of salary during suspension period after exoneration from criminal proceeding as well as departmental proceeding was considered by this Court on number of occasions. This Court in paragraph-11 of Devendra Prasad Sinha's case (supra) has categorically held that after exoneration the employees shall be entitled to get full salary. The Court proposes to quote paragraph-11 of Devendra Prasad Sinha's case (supra), which is quoted herein below:

“11. In law, the petitioner having been suspended in view of lodgment of a police case against him should be deemed to be on suspension until his retirement and he is entitled to have his period of suspension to be considered as on service or on suspension only after conclusion of the criminal proceeding . In the event in the criminal proceeding the petitioner is exonerated, Bihar Service Code mandates the disciplinary authority to give full salary to the petitioner during the suspension period. It is, however, surprising that a first information report lodged in 1996 has not been investigated in 10 years resulting in filing of a chargesheet. A person cannot be denied of his lawful rights by making him an accused and not proceeding in the matter with utmost expedition to prove that the accusations are correct. In those circumstances, in the



event no charge is filed within three months from today, for all practical purpose, it must be deemed that only for the purpose of making an accusation against the petitioner, the first information report was filed against him and actually there was no sincerity to prove that the accusations are correct. In those circumstances it must be deemed that the petitioner stands absolved of all those accusations and accordingly soon thereafter but not later than one month therefrom the disciplinary authority shall decide in terms of the mandate contained in Section 97 of the Bihar Service Code whether the petitioner shall or shall not be entitled to full salary for the period he was kept under suspension.”

10. Besides this, same proposition was reiterated by this Court in Chandrika Mochi's case (supra) as well as Dr. Janak Lali Sinha's case (supra) regarding the question as to whether the petitioner is entitled to get salary during the whole suspension period. Obviously, during suspension period, while the petitioner was under judicial custody, in view of Rule-99 of Bihar Service Code, the petitioner may not be entitled to get salary and allowances, but after being released and he gave joining, which was accepted vide Annexure-2 to the writ petition, certainly the petitioner is entitled to get full salary and allowances till the date of revocation of suspension order. The Court is of the considered opinion that the impugned order i.e.

Annexure-12 to the writ petition may not be sustained in the eye of law.

11. Accordingly, the order contained in Memo No.397 dated 31.01.2011 is hereby set aside and the Respondents are directed to pay full salary and allowances to the petitioner from the date of Annexure-2 i.e. the order contained in Memo No.859 dated 4th May 1987 till the date of revocation of suspension and, thereafter, pay all other consequential benefits.

12. It goes without saying that all the formalities must be completed within three months from the date of receipt/production of a copy of this order. If within the aforesaid time, the entire claimed amount is not paid, the petitioner, thereafter, shall be entitled to get simple interest @ 7 % per annum on the said amount. The interest amount shall be recovered from the officer/employee responsible for delay in implementation of this order.

With above observation, the writ petition stands allowed.

(Rakesh Kumar, J)

NKS/-

AFR/NAFR	
CAV DATE	
Uploading Date	28-04-2016
Transmission Date	