

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13094 of 2013

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Rajkumar Mallick, S/O Late Punni Mallick, resident of Mahavir Asthan, Ward No. 6, Nagar Panchayat, Rosera, P.S- Rosera, District- Samastipur.

.... Petitioner

Versus

1. The State of Bihar
2. The Principal Secretary, Urban Development Department, Government of Bihar, Patna.
3. The District Collector, Samastipur, District- Samastipur.
4. The Executive Officer, Rosera Nagar Panchayat, Rosera, District- Samastipur.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Anju Jha, Adv.

For the Rosera Nagar Panchayat : Abhay Shankar Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 20-10-2016

Heard learned counsel for the petitioner and learned counsel for the Rosera Nagar Panchayat.

2. In this case, the petitioner having claimed that he has not been paid the salary from May, 2012. The petitioner further claimed that he had fallen ill for certain period and later on, he has joined and discharged the duty, but the Sanitary Inspector due to *mala fide* intention did not mark his attendance and shown him as absent from duty.



3. The petitioner is claiming that he was appointed as sweeper (Dom) on permanent basis. He had fallen ill in May, 2012. He was put to treatment of doctor and later on, he was referred to senior doctor in Darbhanga, there he was recovered in August, 2012. The petitioner received a letter vide Memo No.456 dated 20.07.2012 (Annexure-4 to this writ application) of show cause of his absence, whereupon he started discharging his duty from 21/15.08.2012, but the Sanitary Inspector has shown him absent all through illegally.

4. To fortify his submission, learned counsel for the petitioner has drawn attention of the Court to the order dated 10.03.2013 (Annexure-6 to this writ application), which indicates that the Sanitary Inspector was in habit of showing the person absent from duty illegally and so much so that the petitioner has filed a representation before the Executive Officer, Rosera Nagar Panchayat, narrating the entire story and sought a relief from him about the payment of salary.

5. A counter affidavit has been filed by the Rosera Nagar Panchayat, annexing the attendance register, which indicates that the petitioner having remained absent from the duty for the period which has been claimed by him and he has been paid the salary for

the period which he has discharged the duty.

6. Having considered the rival contentions of the parties, the petitioner is a IVth grade employee (sweeper) and is also an illiterate person having no idea about the nicety of law, but claiming that for certain period he remained absent on medical ground, but illegally has shown to be absent all through.

7. In such circumstances, this Court directs the Executive Officer, Rosera Nagar Panchayat, to examine the case of the petitioner sympathetically. If it is found that the petitioner was ill for the period as has been claimed by him and if leaves are standing in his account, the same should be adjusted against his leave. Further, upon examining the documentary as well as oral evidence, if the Executive Officer, Rosera Nagar Panchayat arrives to a finding that the petitioner was really discharging the duty, but has wrongly been shown to be absent, in such circumstances also the petitioner should be paid the salary, which he has entitled to.

8. It has been informed by learned counsel for the petitioner that the present petitioner is in 'C.O.M.M.A.' and not in a position to represent his case. If that be so, the application filed on behalf of the wife or his son will be treated to be his application and

action will be taken in accordance with law. The entire exercise must be completed within a period of six months from the date of receipt/production of a copy of this order.

9. With the aforesaid observations and directions, this writ application is disposed of.

(Shivaji Pandey, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	22.10.2016
Transmission Date	