

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9499 of 2011

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Jaggiwan Ram Son Of Ram Bilash Ram Resident Of Village-Abdalpur Pipra PS-
Pipra District Patna, At Present Posted As Constable In Civil Court, Bhagalpur.

.... Petitioner/s

Versus

1. The State Of Bihar Through The Chief Secretary, Govt.Of Bihar, Patna.
2. Director General Cum Inspector General Of Police Bihar, Patna.
3. Superintendent Of Police Rail, Patna.
4. Asst. Accountant, Office Of Rail, S.P. Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ram Hriday Prasad

For the Respondent/s : AC to AAG9

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 02-02-2016

Heard Sri Ram Hriday Prasad, learned counsel for the
petitioner and learned AC to AAG No. 9.

The petitioner has invoked the writ jurisdiction of this court
under Article 226 of the Constitution of India with a prayer to direct
the respondents to pay full salary for the period during which the
petitioner remained dismissed. Salary has been claimed from
31.10.2007 to 22.8.2008.

It is the case of the petitioner that on trivial charge of
unauthorized absence the petitioner was proceeded departmentally
and finally he was dismissed from service by order dated 31.10.2007
passed by the Superintendent of Police, Rail, Patna. The petitioner
thereafter preferred an appeal under the provisions of Police Manual



before the D.I.G. Finally, the Deputy Inspector General of Police interfered with the order of punishment of dismissal and set aside the said order from the date of its issuance. Besides setting aside the impugned order primarily on the ground of non compliance of the principle of natural justice the appellate authority i.e. Deputy Inspector General of Police, Rail, Bihar, Patna remitted back the matter to the competent authority i.e. S.P., Rail for examining the matter and passing order afresh. It has been claimed by the petitioner that on remand the matter was again re-examined by the S.P., Rail and on this occasion instead of order of dismissal the S.P., Rail, passed an order for forfeiture of six months increment of the petitioner which was equivalent to one black mark. He submits that once in respect of same allegation final order in the departmental proceeding was passed against the petitioner forfeiting six months increment it is established that petitioner was restrained from discharging his duty and as such the petitioner is entitled to claim salary for the period during which he was remained dismissed. Learned counsel for the petitioner has placed reliance on an unreported order passed by a bench of this court in CWJC No. 1821 of 2000 dated 3.8.2005 and submits that petitioner's case is squarely covered by the said order.

In this case a counter affidavit has been filed. Learned State



Counsel opposing the prayer of the petitioner submits that since the petitioner was not in service due to order of dismissal he had not discharged any duty and as such on the principle of no work no pay the petitioner is not entitled to get salary for the said period. He by way of referring to the averment made in paragraph no. 15 of the counter affidavit submits that after the matter was remitted back to the Superintendent of Police, Rail, the case of petitioner was re-examined and finally the petitioner was imposed punishment for forfeiture of six months increment which is equivalent to one black mark. He submits that while issuing punishment order the period during which the petitioner remained absent due to order of dismissal the said period has been treated as extraordinary leave period and on the principle of no work no pay the petitioner was ordered not to be paid any salary for the said period. However, learned counsel for the State was not in a position to distinguish the case of the petitioner from the case of Pramod Kumar Paswan as decided by this court in CWJC No. 1821 of 2000. This court in Paswan Case (Supra) had considered exactly the similar matter and the court was of the opinion that if in a departmental proceeding first order of dismissal was passed which was set aside and after the matter was remitted a lesser punishment order was passed in that event it will be deemed that the concerned employee was forced not to discharge duty and as such he can be

compensated with the salary. I have also perused the order dated 3.8.2005 passed in CWJC No. 1821 of 2000. The court is of the opinion that the case of the petitioner is exactly similar to the case of Pramod Kumar Paswan and as such no different order can be passed in the present case. Accordingly the writ petition is allowed with a direction to the respondents to pay full salary to the petitioner during which he was restrained from functioning in view of the order of dismissal as stated in the writ petition. The petitioner from the date of order of dismissal i.e. 31.10.2007 remained out of service till 22.8.2008 and as such in terms of the order dated 3.8.2005 passed in CWJC No. 1821 of 2000 the writ petition is allowed with a direction to the respondents to pay salary for the aforesaid period to the petitioner. The entire salary must be paid to the petitioner within a period of eight weeks from the date of receipt / production of a copy of this order.

The writ petition is allowed.

(Rakesh Kumar, J)

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