

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 10183 of 2011

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Dr.Prabodh Jha S/O Late Khakhnu Jha R/O Vill. - Kataia, P.S. - Benipatti,
Distt. - Madhubani.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of Health, Medical Education and Family Planning, Govt. of Bihar, Patna.
2. The Director, Directorate of Health, Govt. of Bihar, Patna.
3. The Joint Secretary, Department of Health, Medical Education and Family Planning, Govt. of Bihar Patna.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Amaresh Kumar Sinha

For the Respondent/s : AC to GA - 1

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL ORDER

6. 29-02-2016 Heard Sri Amaresh Kumar Sinha, learned counsel for the petitioner and learned A.C. to Govt. Advocate – 1.

The petitioner has invoked the writ jurisdiction of this Court under Article 226 of the Constitution of India, with a prayer to quash part of the order contained in Memo No. 274 dated 24-03-2011 (Annexure – 5 to the writ petition). In sum and substances, the petitioner has prayed for quashing of part – 2 of the order, whereby the period of dismissal i.e. from 29-11-2005 to 25-12-2007 has been regularized treating it as extra-ordinary leave. In sum and substances, a prayer has been made to direct the respondents to pay salary from the date on which the petitioner was dismissed from the service and the date on which the

petitioner was again allowed to join, pursuant to quashing of punishment order by this Court.

Earlier, the petitioner was proceeded departmentally on serious allegation relating to purchase of drug from M.S.D. from excess amount of allotment. In the departmental proceeding, the petitioner was held guilty and finally, he was dismissed from service by order dated 29-11-2005. The order of the dismissal was assailed by the petitioner by filing a writ petition before this Court, vide C.W.J.C. No. 2645 of 2000, which was allowed and order of punishment was set aside by this Court by its order dated 05-12-2007, vide **Annexure – 1** to the writ petition. The petitioner submits that after the order of this Court, the petitioner was allowed to join and he joined on 26-12-2007. Finally, in view of order of this Court, again punishment was imposed on the petitioner to the extent of withholding of three increments with cumulative effect. The petitioner is aggrieved that instead of payment of salary, during which he remained out of service due to order of dismissal, the petitioner was not paid salary and that period has been regularized treating it as extra-ordinary leave.

Learned counsel for the petitioner submits that the petitioner was entitled to get salary for the said period and alternatively, it has been argued that even if order of dismissal is

treated as in continuance of order of suspension, the petitioner was at least entitled to get subsistence allowance. So orally, alternatively a prayer has been made to direct the respondents to consider the claim of the petitioner for subsistence allowance.

On perusal of the order dated 05-12-2007 passed in C.W.J.C. No. 2645 of 2000 (**Annexure – 1** to the writ petition), it is evident that while setting aside the order of punishment, there was no specific direction to pay salary/backwages. In absence of such direction, it would be difficult for this Court to pass any positive order. However, on the prayer made by learned counsel for the petitioner, the writ petition can be disposed of granting liberty to the petitioner to approach the authority concerned regarding the claim of salary/subsistence allowance.

The writ petition stands disposed of granting liberty to the petitioner to approach the authority concerned.

It goes without saying that this Court has not recorded any opinion on the merit of the case.

The writ petition stands disposed of.

(Rakesh Kumar, J.)

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