IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 12981 of 2011

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Binod Kumar Singh S/o Late Rama Prasad Singh R/o Vill. Mor Dihri, P.S. Jamhor, Distt. Aurangabad. At present posted as Peon in the office of Assistant Commissioner (Incharge) Commercial Tax, Saharsa Circle Saharsa.

.... Petitioner

Versus

1. The State of Bihar.
2. Principal Secretary-cum-Commissioner, Commercial Tax, Patna, Bihar, Patna.
3. Joint Commissioner, Commercial Taxes, Patna.
4. Assistant Commissioner (Incharge) Commercial Tax, Saharsa Circle, Saharsa.

.... Respondents

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Appearance :
For the Petitioner/s : Mr. Jitendra Prasad Singh
For the Respondent/s : AC to PAAG

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL ORDER

8. 18-04-2016 Heard Sri Jitendra Prasad Singh, learned counsel for the petitioner and learned A.C. to Principal Addl. Advocate General.

The petitioner, who remained in custody from 01-11-2005 to 11-09-2007, has approached this Court invoking its writ jurisdiction to direct the respondents to pay salary during the period the petitioner was in custody. A plea has been taken that the petitioner was acquitted from criminal charge by judgment dated 11th September, 2007 passed in Sessions Trial No. 87 of 2006/Sessions Trial No. 368 of 2006. It is not in dispute that petitioner was put on trial for charge under Sections

364(A)/120(B) of the Indian Penal Code. The petitioner remained in custody from 01-11-2005 till the date of the judgment of acquittal. The petitioner was acquitted by learned 2nd Additional Sessions Judge, Hazaribag in aforesaid trial. The petitioner was basically acquitted on the ground that prosecution had not proved the case beyond reasonable doubt and as such, the learned trial court had acquitted him giving him benefit of doubt, which is evident from page 18 of the judgment of acquittal (running page 27).

The petitioner in the present writ petition has prayed for quashing of Annexure – 2 i.e. memo no. 2748 dated 22-06-2010 whereby, a decision was taken not to pay salary, save and except, subsistence allowance during the period of suspension.

Learned counsel for the petitioner tried to persuade the Court that under the provision of Rule 97(2) of the Bihar Service Code, petitioner's salary cannot be denied during the suspension period, whereas fact remains that under Rule 99 '***when a government servant is taken into custody, automatically he is deemed to be suspended***.' Meaning thereof that petitioner, since was in custody, shall be considered to be under-suspension and during suspension period, he may not be entitled to get anything, save and except, subsistence allowance.

I do not find any ground to pass any favourable order.

The writ petition stands dismissed.

(Rakesh Kumar, J.)