

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Jurisdiction Case No.222 of 2014

IN

Civil Writ Jurisdiction Case No. 5794 of 1996

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Vishwnath Paswan, son of Late Mahendra Paswan, resident of Village- Pupri, P.S.-
Pupri, District- Sitamarhi.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Shri Amir Subhani, son of not known to the petitioner, Home Commissioner, Government of Bihar, Old Secretariat, Patna.
3. Dr. Pratima, Daughter of not known to the petitioner, the Superintendent of Police, Sitamarhi.
4. Mr. Pankaj Sinha, son of not known to the petitioner, the Superintendent of Police, Sitamarhi.
5. Mr. Akhilesh Kumar Singh, son of not known to the petitioner, Sub-Divisional Officer, Sitamarhi (East).
6. Mr. Amrendra Mishra, son of not known to the petitioner, Deputy Superintendent Of Police, Sitamarhi.
7. Mr. Sudhir Kumar, son of not known to the petitioner, Officer-In-Charge, Pupri Police Station, Sitamarhi.

.... Respondent/s

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Appearance :

For the Petitioner/s : None

For the Respondent/s : Mr. Anwar Karim, AC to GP-10

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CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date: 23-05-2017

Inter alia contending that an order passed on 18.11.2008 in Civil Writ Jurisdiction Case No. No.5794 of 1996 is not being complied with, this application has been filed for initiating action for contempt.

Records go to show that the Sub-Divisional officer, Sitamarhi East, conducted certain proceedings for appointment on the post of Chowkidars and various persons, including the present



petitioner, were appointed as Chawkidar. However, they were prevented from working and salary was not being paid to them since 6.12.1995, the matter came to this court at the instance of 29 persons, including the present applicant, and one Sri Mangal Sahani in Civil Writ Jurisdiction Case No. No.5794 of 1996. In the said application, a counter affidavit was filed and it was pointed out that the Sub-Divisional Officer acted without jurisdiction and without approval of the District Magistrate and therefore the action was taken. This Court after taking note of the same allowed the writ petition and issued the following directions;

“In the facts aforesaid, I direct that the District Magistrate, Sitamarhi, should verify whether the power of delegation for appointment was issued by the then District Magistrate and whether the petitioners were regularly working as Choukidars in the Village where they have been posted till the letter of termination. The entire verification should be concluded within a period of three months. If the petitioners are found duly appointed as Choukidars, they may be paid their arrears of salary within a period of six months if it is due to them.

I may clarify that in case the Collector of the District on enquiry finds that the appointment were regularly made, then the petitioners may join the posts provided there are vacancies on the said post of Chowkidars.

In the result, this writ application is disposed of with the aforesaid observations and directions.”



When the aforesaid direction was not complied with and the petitioner was not permitted joining, the present contempt application was filed and in reply to the same, the respondents have filed a detailed show cause along with order, Annexure-A dated 26.12.2009, which goes to show that the petitioners have been permitted joining, the intervening period has been regularised and treated on the basis of “No Work No Pay”.

However, after the aforesaid show cause was filed, the petitioners have filed rejoinder and points out that in accordance to the directions issued in CWJC No.5794 of 1996, petitioner No.28 therein, namely, Mangal Sahani, has been granted arrears of salary as there was a direction to pay arrears of salary and treating the period with regard to the present petitioner on the principle of “No Work No Pay”, it is alleged that the order has not been fully complied with.

In pursuance to the same, the respondents have filed supplementary show cause on 09.01.2015 which goes to show that with regard to Mangal Sahani, the mistake committed for payment of arrears of salary has been rectified, order Annexure-A has been passed on 12.12.2014 and the entire arrears of salary paid is being recovered from him. According to the respondents, the order passed in the writ petition being CWJC No.5794 of 1996 was to the effect that the District Magistrate, Sitamarhi should verify, permit joining to the petitioners



and if found duly appointed as Choukidars, they 'may' be paid their arrears of salary. There is no rebuttal to the supplementary show cause filed by the respondents on 09.01.2015.

Learned counsel appearing for the respondents submits that the discretion has been given to the District Magistrate in view of the use of the word, 'may' and the District Magistrate having exercised this discretion by treating the entire period to be regular, except for payment of actual salary on the principle of "No Work No Pay", no case for contempt is made out. It is emphasized by him that the error committed in the case of Mangal Sahani has been rectified by withdrawing the salary paid to him and, therefore, in the light of the compliance made, no further action is required to be taken.

I am satisfied with the explanation given by the District Magistrate. The order was passed in the writ petition using the word, 'may' with regard to payment of arrears and once the discretion was available with the District Magistrate either to pay arrears or to take appropriate order based on the discretion exercised, the action for contempt cannot be initiated. The petitioner may claim arrears of salary by initiating fresh proceedings in accordance with law, wherein after hearing all concerned, the question of arrears of salary can be decided by applying various principles of law, but in the peculiar facts and circumstances of the case, the discretion exercised by the District



Magistrate being found to be in accordance with law, it is not a fit case where now action for contempt proceeding can be initiated. Satisfied with the compliance reported by the respondents, the application stands disposed of.

(Rajendra Menon, CJ)

Sunil/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.05.2017
Transmission Date	

