

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 5926 of 2017

- Bahadur Ram S/o Late Maya Ram Aged About 34 Years Caste Uraon, R/o Gullu, Chowki Sonkyari, Thana Sanna Jashpur Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of Panchayat And Rural Development, Mahanadi Bhawan, New Raipur, Thana Raipur Chhattisgarh.
2. The Chief Municipal Officer, District Panchayat, District Jashpur, Chhattisgarh
3. The Block Education Officer, Block Manora, Thana Manora District Jashpur Chhattisgarh

---- Respondent

For Petitioner
For Respondents

Shri N.K. Malaviya, Advocate.
Shri Adhiraj Surana, Dy. G.A.

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

05/12/2017

1. The petitioner was involved in committing murder of Ku. Suganti Bai, therefore, when he was arrested and incarcerated for more than 48 hours, he was placed under suspension on 28.12.2015 and was served a charge sheet on the same date vide Annexure P-1 & P-2 respectively.
2. The petitioner was subsequently convicted by the Sessions Judge, Jashpur vide its judgment dated 23.07.2016 in ST No.11 of 2017. In petitioner's appeal, bearing Criminal Appeal No. 979 of

2016, the sentence was suspended and the petitioner was released on bail by the Division Bench of this Court vide order dated 22.02.2017.

3. It is argued that the petitioner has not yet been terminated nor the departmental inquiry has been finalized, therefore, he is entitled for subsistence allowance from the date of his release on bail.
4. The petitioner was earlier allowed subsistence allowance during the period when he was in jail. However, since after his release on bail pursuant to the order dated 22.02.2017, the petitioner is not getting the subsistence allowance after his joining.
5. On 08.11.2017, this Court required the presence of CEO, Zila Panchayat, Jashpur to explain the situation as to which petitioner is not paid the subsistence allowance. Today the CEO, Zila Panchayat, has appeared and explained the circumstances.
6. Learned State counsel would submit that after the petitioner's release on bail, he moved an application for joining before the BEO but the same was not attended by the BEO nor it was forwarded to the competent authority, therefore, no orders could be passed either for sanctioning the subsistence allowance or otherwise. He would submit that subsequently an order of termination has been passed against the petitioner with retrospective effect, however, it is fairly conceded by the learned State counsel that an order of termination cannot be passed with retrospective effect so as to deny the petitioner, his right to any service benefit which has accrued to him till the date when the order was issued. Learned State counsel would also concede that as long as the petitioner was not removed from service upon his conviction in the criminal case, he is entitled for the subsistence allowance as he was getting during the course of the trial.
7. In view of the submission made by learned State counsel, under instructions from CEO Jila Panchayat, Jashpur, the State is permitted to cancel the order whereby the petitioner has been terminated with retrospective effect with liberty to pass fresh order

of termination in accordance with law as also to pay the petitioner the entire subsistence allowance till the date the fresh order of termination is issued.

8. In view of the above, nothing survives for adjudication in this writ petition. It is accordingly disposed of.

Sd/-

Judge

Prashant Kumar Mishra

Akhilesh