

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.15286 of 2014**

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Mahendra Mandal Son of Late Kashi Mandal Resident of Village - Balia Basa  
(Jhanjhari), P.S.- Golpara, District- Madhepura. ... .. Petitioner/s

Versus

1. The Bhupendra Narayan Mandal University Lalu Nagar, Madhepura through its Registrar.
  2. The Vice-Chancellor, Bhupendra Narayan Mandal University, Lalu Nagar, Madhepura.
  3. The Registrar, Bhupendra Narayan Mandal University, Lalu Nagar, Madhepura.
  4. The Head of the Department of History, Bhupendra Narayan Mandal University, West Champus, P.G. Centre, Saharsa. ... .. Respondent/s
- =====

**Appearance :**

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|----------------------|---|-----------------------------------|
| For the Petitioner/s | : | Mr. Sanjay Kumar Jha, Advocate    |
| For the Respondent/s | : | Mr. Rajesh Singh, Advocate        |
| For the University   | : | Mr. Mithilesh Kumar Rai, Advocate |

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**CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY**  
**ORAL JUDGMENT**

**Date : 26-07-2018**

Heard learned counsel for the petitioner and the  
counsel appearing on behalf of the University.

2. Learned counsel appearing on behalf of the  
petitioner has raised grievance in the present writ application  
that in terms of Section 69 of the Bihar State University Act,  
1976 (hereinafter referred to as the 'Act') the petitioner is  
entitled to payment of subsistence allowance notwithstanding  
the fact that he was in custody from 07.02.2008 to 02.08.2009.

3. Admittedly, during the aforesaid period, the  
petitioner was behind the bar. However, referring to Section 69  
of the Act he submits that under the statutory provision, he is  
entitled to payment of subsistence allowance as he was deemed  
to be under suspension on account of his custody.



Section 69 for ready reference is quoted below:-

**“(1) If any teaching or non-teaching employee of the University or a constituent college in custody under any law for a period up to 48 hours whether on a criminal charge or otherwise on security grounds, he shall with effect from the date of detention be deemed to have been suspended by the appointing authority.**

**(2) On being released from detention, he shall not be entitled to any remuneration other than the subsistence allowance for the period of suspension.**

**(3) Any employee proceeded against a criminal charge or detained under other law providing for preventive detention shall be deemed to be suspended for the period during which he is kept under detention in custody or undergoes the sentence of imprisonment, and shall not be permitted to draw any pay or allowance for the said period other than subsistence grant payable according to the principles contained in the Statutes, unless the proceeding initiated against him is closed or, as the case may be, he is released from detention and permitted to resume duty. The adjustment of his allowances for such periods shall be made according to the circumstances of the case, Full amount shall be paid only when he is acquitted or the detention is found to be unjustified by an officer.**

**4. An employee against whom proceeding on a criminal charge are pending shall, by a special order to this effect, be kept under suspension during the periods when he is not actually detained in custody or imprisoned (that is, when he is released on bail) if the charges made or the proceedings initiated against him are related to his status as an employee or in this manner may cause trouble in the discharge of his duties, or involves**



**the question of moral turpitude. The provisions aforesaid shall apply in respect of his pay and allowances.**

**5. The provisions made in the preceding sub-section shall *mutatis mutandis* apply to teaching or non-teaching employees of an affiliated college.**

4. Clause(2) of Section 69 of the Act refers that in case on being released from detention he shall not be entitled to any remuneration other than the subsistence allowance for the period of suspension.

5. Learned counsel for the petitioner submits that clause is applicable to a situation where an individual is under detention irrespective of that he was under detention on released, he is entitled to payment of subsistence allowance during the period he was under custody.

6. The Court failed to appreciate the submission as expression has to be read in a manner which will wheel ahead the scheme of the Act. It is beyond the apprehension that a person who was in custody is entitled to payment of subsistence allowance. If the suspension continues after release from custody, then in that situation, the law provides for payment of subsistence allowance.

7. In view of the aforesaid, the Court is not inclined to grant any relief to the petitioner for grant of payment and issuing any direction to the University for payment of any



allowance for the period the petitioner was under custody as that will defeat the whole object of Section 69 of the Act. The scheme has to be read in the manner that promotes the scheme of Act and not to frustrate the scheme.

8. Accordingly, the Court does not find any merit in the petition and the same is dismissed.

9. So far as claim of the petitioner for payment of salary for the period after the petitioner was released and has worked in the institution, the respondents are obliged to make payment as they have not initiated any departmental proceeding against the petitioner and as such they cannot deny salary for the period the petitioner has actually worked.

10. The Court hold that the petitioner during the period of custody, is not entitled to salary or any allowance for the period the petitioner was in custody.

**(Anil Kumar Upadhyay, J)**

Ravi/-

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