

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8615 of 2001

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Tufani Mahto, son of late Mauji Mahto, resident of Village Ramsagar, P.S.
Sikandra, District Jamui

.... Petitioner/s

Versus

1. The State of Bihar
2. The District Panchayati Raj Officer, Munger
3. The Commissioner Munger Division, Munger

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 06-03-2018

Neither the petitioner nor the State is present to press this writ petition and the case is being disposed of in their absence on the basis of the material available on record.

In the present writ petition, petitioner has made a prayer for quashing the order dated 8.11.1990 (Annexure-3) passed by the District Panchayati Raj Officer, Munger whereby and whereunder lifted the order of suspension dated 22.10.1990 but held that he would not be paid salary for the period of suspension except the subsistence allowance already paid to him and also for quashing the order dated 30.3.1992 (Annexure-4) passed by the District Panchayati Raj Officer, Munger by which it has been held that in view of pay fixation as on 1.4.1986, difference of amount of salary will be treated payable that for the



period of suspension i.e. 5.2.1988 to. 8.11.1990 difference of subsistence allowance will not be payable. Further prayer has been made for quashing the appellate order dated 3.2.2001 (Annexure-5) passed by the Commissioner Munger Division, Munger in Service Appeal No. 28-2/93 and further made a prayer for giving direction to pay the arrear along with interest.

The petitioner was posted as Panchayat Sewak in Lakshmipur Panchayat Jamui. He was given the work for construction of a room in the Primary School Bhandari as a departmental contractor under the National Rural Employment Programme, for that a sum of Rs.41,269/- was paid, with the condition to complete the construction by 31.3.1987 and later on sanctioned amount was slightly enhanced. At the same time, the petitioner was also made incharge of Panchayat Sewak Ratanpur and Seba Panchayats. For execution of work, certain cash amount and wheat were given by way of advance but no cement was given. In the second time, advance money was given as well as wheat on 1.6.1987 but this time cement was not given. Therefore, the work could not be started by the time, when further advance was given including the cement, rainy season set on and on account of rain half of the cement bags were spoiled as there was no arrangement for keeping the cement at safe place.



But even after this situation which the petitioner faced carried out the work by April, 1998. On measurement it was found that the petitioner has executed the work except certain small work was left to be carried out.

While the petitioner was carrying the construction work at Bhandari simultaneously he was also assigned the work of Ratanpur School as per order dated 28.10.1986 and on account of engagement at two places there was some delay in completion of the work assigned to the petitioner. But by the time he was put under suspension vide memo no. 57 dated 5.2.1988 on account of none completion of work is an act of indiscipline, was only entitled to subsistence allowance during the period of suspension. A departmental proceeding was initiated, accordingly charge sheet was issued which was replied by the petitioner by way of his explanation stating that though the department did not supply cement but carried the job successfully. The Executive Magistrate, Jamui proceeded with the enquiry with three charges, first charge was that the petitioner has misappropriated the advance amount which was handed over to him for construction of school building. Second charge was made against him that from 1.12.1997 to 7.12.1987 he remained absent unauthorizedly from head office and charge no.3 even after direction of the



Block Development Officer did not hand over the complete charge and thereby committed an action of misconduct.

The Enquiry Officer has recorded, one by one finding that charge no.1 was not found to be proved and explanation submitted by the petitioner with respect to his absence was accepted by the Block Development Officer, Lalshmipur so Enquiry Officer did not enter into the merit of the charge and third charge was with respect to delay in handing over the charge was an act of indiscipline, the explanation submitted by the petitioner in delay of handing over the charge was accepted that he was ready to hand over the charge, but two persons did not turn up to take charge, but third person turned up he handed over the charge to him. The Enquiry Officer did not find any of the charge proved against the petitioner but the District Panchayat Officer, Munger (Disciplinary Authority) vide order dated 8.11.1990 passed the order thereby lifted the order of suspension passed against him held that he would not be entitled to any salary except subsistence allowance already paid. Against that the petitioner has filed an appeal before the appellate authority i.e. Divisional Commissioner, Munger which was registered as Service Appeal No. 28-2/93 . This Court fails to understand that when Enquiry Officer did not find any of the charges proved



without recording the finding of disagreement and without service of notice on disagreement with the enquiry report without observing proper procedure, passed the order by the Disciplinary Authority thereby deprived of the salary save and except payment of subsistence allowance for the period the petitioner remained under suspension and appellate authority did not consider this aspect of the matter and rejected the appeal. This Court is of the view that both orders are illegal.

Accordingly the order dated 8.11.1990 passed by the District Panchayati Raj Officer, Munger and order dated 3.2.2001 passed in Service Appeal No.28-2/93 are set aside and this Court directs the authority to make payment of difference of salary for the period of suspension.

With the aforesaid observation and direction this writ petition is allowed.

(Shivaji Pandey, J)

Vinay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	15.3.2018
Transmission Date	NA

