

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1592 of 2019

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1. Tansen Sekh @ Tansen Shika S/o Rahmatullah Sheikh R/o Village-P.O.-Salika, P.S.-Burwan, District-Murshidabad (West Bengal).
 2. Srinshilabibi, Tarikat Sheikh, R/o Village-Nima Bahadurpur, P.O.-Gramshlika P.S.-Burwan, District-Murshidabad (West Bengal).

... .. Petitioner/s

Versus

1. The Union Of India in the Ministry of Home Affairs through the Commandant, 45th Battalion, Sashastra Seema Bal, Birpur, Supaul
2. Commandant, 45th Battalion, SashastraSeemabal, Birpur, Supaul.
3. Deputy Commandant,45th Battalion, SashastraSeemabal, Birpur Supaul.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Baidya Nath Thakur
For the Union of India : Mr. Awadesh Pandey, CGC

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

2 30-01-2019 Heard the learned counsel for the petitioner and the respondents.

The petitioner is aggrieved by the order dated 11.04.2018 passed by the Commandant, 45th Battalion, SSB, Birpur, Supaul, whereby Rs. 10,000/- has been directed to be deducted from his salary, ostensibly for maintenance of his wife. The order impugned reflects that the Commandant, 45th Battalion, SSB, Birpur put the petitioner to counseling but to no avail and the marital discord continued. The order further reveals that no payment was being made to the wife of the petitioner for her



maintenance. Under the aforesaid circumstances, the order impugned was passed.

Mr. Baidnath Thakur, learned counsel for the petitioner has challenged the order on two grounds: firstly, that such an order could not have been passed by the Commandant, who no doubt is a prescribed officer under Section 61 of the SSB Act, 2007 read with rule 181 of Rules, 2009, but he was only entitled to pass necessary executing order after the Central Government passed an order for making any deductions from the salary of the petitioner to be paid to the wife of the petitioner; and secondly, that the petitioner was not afforded any opportunity of explaining that he was not at fault for the marital discord and that now a divorce has been effected between the petitioner and his wife.

So far as the first ground of assail is concerned, Section 61 of the SSB Act, 2007 clearly indicates that a deduction can be made from the pay and allowance of the officer of any sum required by order of the Central Government or any prescribed officer, to be paid for the



maintenance of his wife or his legitimate or illegitimate child or step child or towards the cost of any relief given by the said government to the said wife or child.

Learned counsel for the petitioner has submitted that the last part of sub-clause (i) of Section 61 definitely means that such deduction can only be made by the Central Government and thereafter the prescribed officer can pass necessary order for its execution.

The aforesaid interpretation does not appear to be correct for the reason that the opening words of sub-clause (i) of Section 67 makes it very clear that sum could be directed to be deducted from the salary of an employee which is considered to be commensurate with the facts of the case either by the Central Government or by any prescribed officer. So far as the government's exclusive domain is concerned, it is only with respect to payment of cost of any relief given to the wife or the step child. Rule 181 of SSB Rules, 2009 further clarifies that the prescribed officer under Section 61 is the Commandant in case of subordinate officers and enrolled persons and Director General



in case of officers. Since the petitioner is a Constable with the SSB, the prescribed officer is the Commandant who only has passed the order.

The other argument raised on behalf of the petitioner however appears to have some force. For such deduction from the salary of the petitioner, it has to be ascertained whether the relationship of marriage exists between the petitioner and his wife. The aforesaid aspect has not been taken note of by the Commandant, 45th Battalion, SSB, Birpur in passing the order. Even if the link of marriage existed at the time of passing of the order, a new development has taken place and now divorce has been effected between the petitioner and his wife. This aspect of the factual situation needs to be revisited by the Commandant, 45th Battalion, SSB, Birpur.

To facilitate such re-look at the order, the petitioner is directed to make a fresh representation before the Commandant, 45th Battalion, SSB, Birpur within a period of four weeks from today, which shall be disposed off by him within a period of six weeks thereafter by a speaking



order.

With the aforesaid observation / direction, this writ
petition stands disposed off.

(Ashutosh Kumar, J)

skm/-

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