

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1406 of 2019

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Sushil Kumar Jha, son of Late Radha Kant Jha, R/o At and P.O.- Mahshi, P.S.-
Bibhutipur, District- Samastipur

... .. Petitioner/s

Versus

1. The State of Bihar through its Principal Secretary, Department of Education,
Govt. of Bihar, Patna
2. The Principal Secretary, Education Department, Govt. of Bihar, Patna
3. The Director, Primary Education, Govt. of Bihar, Patna
4. The Regional Dy. Director of Education, Bhagalpur Division, Bhagalpur
5. The District Education Officer, Bhagalpur
6. The District Programme Officer (Estt.), Bhagalpur
7. The Block Resources Person (BRP) Block- Birpur, District- Bhagalpur
8. The Headmaster, Govt. Basic School, Bihpur, Block and P.S.- Bihpur,
District- Bhagalpur

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Rajeev Kumar Singh, Advocate
		Mr. Gayanand Kumar, Advocate
For the Respondent/s	:	Mr.Madhaw Prasad Yadav (Gp23)
		Mr. Sanjay Kumar, AC to GP.-23

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

- 3 09-07-2019 Heard learned counsel for the petitioner and the State.
2. Initially, the petitioner has filed the present writ application on 23.01.2019 challenging the order of suspension dated 22.06.2016.
3. In para 31 of the writ application, the petitioner has categorically stated that till date subsistence allowance has not been paid, though he is under suspension since 22.06.2016. This specific statement on affidavit has not been controverted by the respondents.



4. During the pendency of the writ application, the respondents have decided to dismiss the petitioner from service. The petitioner has challenged the decision of dismissal by way of filing interlocutory application, bearing I.A. No. 1 of 2019.

5. Today a counter affidavit has been filed on behalf of respondent no.4, the counter affidavit is conspicuously silent on the point of payment of subsistence allowance.

6. In the case of non-payment of subsistence allowance, the entire departmental proceeding stands vitiated. The Apex Court has occasion to decide the effect of non-payment of subsistence allowance in the case of **State of Maharashtra Vs. Chandrabhan Tale**, reported in **AIR 1983 SC 803**. The Apex Court held out that the departmental proceeding is vitiated on account of non-payment of subsistence allowance. The token amount of Rs.1 was not accepted as subsistence allowance and on that score the departmental proceeding was held to be vitiated. This view was subsequently reiterated by the Apex Court in the case of **Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. & Anr.**, reported in **(1999) 3 SCC 679**. Similar view was also expressed in the case reported in **2014 (1) PLJR 316 SC**.

7. Since the respondents have not disputed the fact



that the petitioner was not paid subsistence allowance during the period of suspension, the Court is left with no option, but to quash the order passed by the respondents as vitiated in law in view of the judgment of the Apex Court discussed herein above.

8. Accordingly, the order as contained in Memo No. 67 dated 15.01.2019 (Annexure-15 to I.A. No. 1 of 2019) is hereby quashed. The respondents are directed to pay the entire subsistence allowance in one go within a period of one month from today and thereafter the respondents may proceed with the departmental proceeding denovo. In the event, subsistence allowance is not paid within a period of one month from today, the entire departmental proceeding shall be treated as nullity and the respondents are restrained from taking any step for departmental proceeding and the petitioner shall be entitled to all consequential benefits, as if no departmental proceeding was ever initiated against the petitioner.

9. With the aforesaid, this writ application stands allowed and disposed of.

(Anil Kumar Upadhyay, J)

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