

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.3202 of 2017

In
Civil Writ Jurisdiction Case No.4960 of 2017

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Vinod Kumar son of Subelal Ram resident of village - Samastipur, P.S. - Sakra, District - Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar, through Sri Arvind Kumar Chaudhary, the Principal Secretary, Rural Development Department, Govt. of Bihar, Patna.
2. Sri Arvind Kumar Chaudhary, the Secretary, Rural Development Department, Govt. of Bihar, Patna.
3. Sanjay Kumar Singh, the Under Secretary Rural Development Department, Govt. of Bihar, Patna.
4. Sri Aditya Prakash, the Deputy Development Commissioner, Patna.
5. Sri Kumar Ravi ,the District Magistrate, Gaya.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Md. Anisur Rahman, Advocate

For the Opposite Party/s : Mr. Alok Kumar Rahi, A.C. to AAG-4.

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

6 05-02-2020 Heard learned counsel for the parties.

2. This application has been filed for initiation of contempt proceeding against the opposite parties for willful disobedience of this Court's order dated 12.09.2017 passed in CWJC No. 4960 of 2017. It is the petitioner's grievance that despite direction of this Court for payment of subsistence allowance for the period during which the petitioner has remained under suspension, the same has not been paid to him. Paragraphs 6 and 7 of the order of this Court dated 12.09.2017



read thus:-

“6. Another grievance, which learned counsel for the petitioner has raised in the present application, is that the petitioner is not getting his subsistence allowance. If the competent authority has power to suspend its employee, under the Rules, he has equal responsibility to ensure that such government servant is paid his subsistence allowance regularly in accordance with law. Non payment of subsistence allowance, during the currency of suspension, has serious consequences and cannot be taken lightly as non payment of subsistence allowance, at times, adversely affects the employee to pursue his case in a departmental proceeding or criminal case, effectively.

7. I, accordingly, direct the Principal Secretary, Rural Development Department, Govt. of Bihar, to ensure that the petitioner is paid his admissible subsistence allowance within a period of one (1) months from the date of receipt/production of a copy of this order.”

3. A supplementary show cause reply has been filed on behalf of the opposite parties stating therein that the admissible subsistence allowance has been paid to the petitioner. A plea has been taken that the petitioner absented himself and did not mark his attendance in the Headquarters which was fixed during the period of his suspension. Reliance has been



placed on Rule 10(1)(iii) of Bihar Government Servants (Classification, Control and Appeal) Rules, 2005, to submit that it is mandate of the *proviso* to the said provision that a Government Servant shall be entitled to receive the subsistence allowance only for the period when he actually presents himself at the Headquarters during the suspension period and he shall be required to mark his attendance in the attendance register, meant for such Government Servant. It is accordingly the case of the opposite parties that subsistence allowance for the period when the petitioner failed to mark his attendance in the Headquarters cannot be said to be admissible.

4. Learned counsel appearing on behalf of the petitioner has placed reliance on a Supreme Court's decision dated 19.08.2002 in case of ***Anwarun Nisha Khatoon Vs. State of Bihar & Ors.***, [Appeal (civil) No. 5106 of 2002] to submit that a suspended employee is not required to mark his attendance on day-to-day basis and on such ground, payment of subsistence allowance cannot be withheld.

5. In my opinion, the said decision of the Supreme Court in case of ***Anwarun Nisha Khatoon Vs. State of Bihar & Ors.*** has no application in the facts and circumstances of the present case for two reasons; firstly, the Rules have been framed



by the State Government subsequent to the said Judgment of the Supreme Court in case of ***Anwarun Nisha Khatoon Vs. State of Bihar & Ors.*** Language of the *proviso* to sub rule (1) of Rule 10 is unambiguous and reads thus:-

“Provided further that the government servant shall be entitled to receive subsistence allowance only for such period when he is actually present at the headquarters during the suspension period. He shall be required to mark his attendance in the attendance register meant for such government servant;”

6. Secondly, this Court is considering the conduct of the opposite parties in complying with an order of this Court, in the present contempt proceeding. This Court, in the present proceeding, is required to see whether there has been any willful defiance of this Court's order or not. There is no such direction made by this Court which can be said to have been defied by the opposite parties in the facts and circumstances of the case. The direction was to the opposite parties to pay to the petitioner the admissible subsistence allowance. The Court in the present proceeding is not required at this stage to hold what is admissible to the petitioner and interpret the order of this Court, violation of which has been complained of.



7. I do not find any merit in the present contempt application, which is, accordingly, dismissed.

8. The petitioner shall be at liberty to question the correctness of the decision of the State of Bihar in appropriate proceeding in accordance with law.

(Chakradhari Sharan Singh, J)

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