

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9948 of 2008

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Ranjit Ranjan Kumar, son of late Mahesh Thakur, resident of Mohalla-Malighat, P.S.-Mithanpura, District-Muzaffarpur

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Engineer-in-Chief-cum-Special Secretary, Road Construction Department, Government of Bihar, New Secretariat, Patna.
3. The Chief Engineer, Road Construction Department, Government of Bihar, Patna.
4. The Superintending Engineer, North Bihar Circle, Road Construction Department, Muzaffarpur.
5. The Executive Engineer, Road Construction, Muzaffarpur Division No.2, District-Muzaffarpur.
6. The Assistant Engineer, Road Construction Department Runnisaidpur, Sub-Division Runnisaidpur, District-Sitamarhi.
7. The Executive Engineer, Road Division, Dhaka District- East Champaran at Motihari.
8. The Assistant Engineer, Road Sub-Division, Sub-Division No.2, Motihari, District-East Champaran at Motihari.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Arun Kumar, Advocate
For the Respondent/s : Mr. Sanjay Kumar Sharma, AC to AAG-3

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 02-12-2021

Heard the parties.

The short question which arises for consideration in the present writ petition is whether the respondents are justified in depriving the petitioner who was appointed on compassionate ground as correspondence clerk in the year 1987 the salary for the period from 31.12.2002 to 15.09.2003. To appreciate the question, brief facts are necessary which are as follows:-



The petitioner joined as a correspondence clerk in the year 1987 and was posted in Motihari Division and thereafter he was transferred in the office of Executive Engineer, Road Division, Muzaffarpur. Later the petitioner was transferred from Muzaffarpur Division No.2 to Runnisaipur Road Division, District- Sitamarhi on 10.07.2002 vide memo No. 720. The petitioner took charge at Runnisaipur Division under Road Construction Department on 27.08.2002 and just after four months of his joining at Runnisaipur he was transferred from Runnisaipur to Muzaffarpur Division No.2 vide memo No. 1744 dated 21.12.2002 by the order of Superintending Engineer, North Bihar Circle, Muzaffarpur (annexure-1 to the writ petition) which led to filing of CWJC No.2717 of 2003 and the said writ petition was disposed of vide order dated 24.03.2003 with a direction to the petitioner to file representation before the concerned authority who shall pass a speaking order with respect to such frequent transfer being made within a period of four months. The concerned authority Respondent No.2 in compliance of the above order passed a non speaking order dated 16.09.2003 and posted the petitioner back at Runnisaipur. It is the case of respondent that in compliance of the order contained in memo no. 3344(e) dated 16.09.2003 the petitioner never reported for duty at Runnisaipur,



as such, the petitioner is not entitled to salary for the period 31.12.2002 to 15.09.2003. The order being non speaking the petitioner filed CWJC No.13558 of 2003 for directing the authorities to make payment of his salary for the aforesaid period. This Court vide order dated 12.05.2005 disposed of CWJC No. 13558 of 2003 with a direction to the respondent no.2, Engineer-in-Chief to look into the matter as to whether the petitioner was voluntarily absent or was prevented from joining his duty at Runnisaidpur and to assign reasons as to why salary for the aforesaid period be not paid to the petitioner. The respondent no. 2, Engineer-in-Chief, who also vide order contained in memo No. 3344(e) dated 16.09.2003 without assigning any reason declined to pass any order for making payment of salary for the period 31.12.2002 to 15.09.2003. However, he had allowed payment of salary from the period 16.09.2003 onwards. The petitioner was again forced to file CWJC No. 15338 of 2003. This Court finding the order passed by the respondent no. 2 to be a non speaking order directed the petitioner to file a representation and disposed of the writ petition vide order dated 12.05.2005 with a direction to the respondent no. 2, Engineer-in-Chief-cum-Special Secretary to consider the grievance of the petitioner within a period of four weeks from the date of receipt/production of the order of the



Court. The petitioner has made a specific statement that instead of respondent no.2, the Superintending Engineer (respondent no. 4) without jurisdiction passed the order rejecting the claim of the petitioner for the aforesaid period i.e. from 31.12.2002 to 15.09.2003. He submits that order being without jurisdiction is nullity.

The petitioner is aggrieved by non-payment of wages for the period 31.12.2002 to 15.09.2003 and hence the present writ petition for direction to the concerned respondent for making payment of wages/salary for the aforesaid period. In support of his claim the petitioner submits that rejection of his claim for aforesaid period has penal consequences and the order contained in 'Annexure-5' is without jurisdiction is nullity. No specific reasons have been assigned for non payment of salary. He submits that his specific case is that he has been subjected to vexatious transfer in an illegal manner just to penalize by transferring him from one place to another within a period of four months without any administrative reason. In this way he was rather restrained to work at one place and the authorities also did not release him. The petitioner was forced to avail legal remedies by filing writ petition immediately before this Court and this Court after taking into consideration of the illegal act of the authorities concerned, in



transferring the petitioner within such a short span of time, had quashed the order contained in Memo No.1744 dated 21.02.2002 with a direction to dispose of the representation filed by the petitioner within fortnight.

Learned counsel further submits that he cannot be penalized for any act of omission on the part of the authorities. The respondent no.2 without assigning any reason had rejected the claim of the petitioner for the period 31.12.2002 till 15.09.2002, however he had directed to make payment of entire salary/wages from 16.09.2003. Petitioner was again forced to file CWJC No. 15338 of 2003 against the aforesaid order of respondent no.2. This Court disposed of the writ petition vide order dated 13.05.2005 directing the respondent no.2, Engineer in-Chief cum Special Secretary to consider the grievance of the petitioner within a period of four weeks from the date/production of the order of this Court. However, inspite of the specific direction of this Court that Respondent No. 2 to pass fresh reasoned order. Inspite of the specific direction of this Court to Respondent No.2, the Superintending Engineer (Respondent No.4) without jurisdiction sat over the matter and passed order contained in Memo No. 1375 dated 02.07.2005 which is void ab initio and do not have a legal



effect. The petitioner has been left to face both mental as well as financial loss by the illegal act of the respondents.

Learned counsel for the petitioner submits that the respondents are under obligation to make payment of salary for the aforesaid period. The petitioner is ready to apply in proper format prescribed in this regard if given an opportunity.

Shri Sanjay Kumar Sharma, learned counsel appearing on behalf of the State submits that petitioner can not claim wages for the period for which he was not on duty. He further submits that the petitioner was already relieved from Runnisaipur Sub-Division on 30.12.2002 to join at Muzaffarpur B9, but even after passing of the aforesaid order petitioner continued at Runnisaipur from 30.12.2002 to 15.09.2003 on his own will and deliberately disobeyed the orders of the higher authorities. However, on conjoint reading of orders contained in Annexure-5 and 6, it is clear that the authorities have not violated the order of this Court rather they have complied with the order/direction of this Court. From Annexure-6 it would appear that it is the petitioner who had not approached the concerned authority in proper format in accordance with law for payment of his salary for the aforesaid period.



What has emerged before this Court is that the order contained in memo no. 1375 dated 02.07.2005 passed by the Respondent No.4 denying due salary of the petitioner for the aforesaid period is without jurisdiction. From order passed by respondent no.2 also it is not a case of the respondents that petitioner has not performed his duty rather it is a case of not obeying the order of transfer. It is the settled principle of law that the said act of disobedience on the part of the petitioner requires proper proceeding and in want of any proceeding or order the petitioner cannot be denied of his legitimate salary for the period 31.12.2002 till 15.09.2003 during which period he had approached this Court from time to time as it would be evident from 'Annexure-2 and 4' which are orders passed in CWJC No. 2717 of 2003 and CWJC No. 13558 of 2003 respectively.

Taking all the factors as mentioned above it is clear from 'Annexure-5' Memo No. 1375 dated 02.07.2005 passed by respondent no. 4 is without jurisdiction. It is well settled that if order is without jurisdiction the order end in void.

The petitioner was not at fault in joining the transfer place. The salary of the petitioner for the period in question cannot be denied in absence of relieving order. The petitioner was prepared to join the duty but it was the respondents who disabled



the petitioner from joining the duty, therefore, the petitioner cannot be blamed. In the circumstances, the petitioner being not at fault in joining at the transfer place cannot be blamed for the consequences. It is a fact that the respondents have not denied that he did not worked factually for the period in question. Taking all these factors into consideration, I am of the view that the ends of justice would be met by directing the respondents to pay the salary and allowances for the period in question within six months.

The present writ petition is accordingly allowed with no order as to costs.

(Purnendu Singh, J)

Niraj/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

