

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18010 of 2019

Ashok Kumar Pathak, Son of Late Ramdin Pathak, resident of village- New Sepahi Tola, Bua Ghat Road, Purnea, P.S. K. hat, District- Purnea.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, New Secretariat, Baily Road, Patna.
2. The Principal Secretary, Department of Personal and Administrative Reforms, Government of Bihar, New Secretariat, Baily Road, Patna.
3. The District Magistrate, District- Araria, Bihar.
4. The Deputy Development Commissioner, District- Araria, Bihar.
5. The Block Development Officer, Block Palasi, District- Araria.
6. The Accountant General, Bihar, Bir Chand Patel Road, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Rajesh Kumar, Advocate
For the Respondent/s	:	Mr. Md. Nadim Seraj (GP 5)
		Mr. Shailesh Kumar, AC to GP 5

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 07-12-2022

Heard Mr. Rajesh Kumar, learned counsel appearing on behalf of the petitioner and Mr. Md. Nadim Seraj, learned GP 5 duly assisted by Mr. Shailesh Kumar, learned AC to GP 5 for the State.

2. The grievance of the petitioner is with regard to non payment of all the retiral consequential benefits, including Provident Fund, gratuity, leave encashment, payment of salary for the year 2010 to 2014 to the date of superannuation with statutory cum penal interest squarely counted upon from the date of



superannuation per annum till the date of disposal of the writ petition.

3. While the petitioner was working as a Non-gazetted Head Assistant in Plasi Block of Araria district, on account of certain financial irregularities, he was put to departmental proceedings, which culminated into dismissal of the services of the petitioner along with others on 18.08.2010 by the order passed by the District Magistrate, Araria.

4. The aforesaid order came to be challenged by the petitioner before this Court in CWJC No. 14828 of 2011 and the learned Court having considered the materials on record has been pleased to dispose of the writ petition vide order dated 21.02.2019, exonerating the petitioner from all charges by quashing the impugned order of dismissal.

5. It is submitted that though the date of the superannuation of the petitioner was 30.11.2014, but on account of dismissal from the service vide Memo No. 1185 dated 23.08.2010, he had not been allowed any retiral benefits, however, the order of punishment having been set aside, the petitioner submitted his application before the respondent District Magistrate, Araria for payment of all the retiral consequential benefits, in terms of Rule 12 (3) of the Bihar Government Servants (Classification, Control



and Appeal) Rules, 2005 (hereinafter referred to as “Bihar C.C.A. Rules, 2005”) but instead of taking any proper and justified action in making payment of all the outstanding dues the respondent No. 3 came out with Memo No. 902 dated 09.10.2019 regularizing the period 23.08.2010 to 20.11.2014 but refused to pay the salary for such period on the principle of “no work no pay”, which part of the order has been assailed by the writ petitioner by filing IA No. 01 of 2019.

6. A counter affidavit has been filed on behalf of the respondent State and by referring to the averments made in the counter affidavit it is vehemently submitted that in compliance of the order of this Hon’ble Court dated 21.02.2019 passed in CWJC No. 14828 of 2011, the petitioner was reinstated and his services has been regularized with effect from the date of his dismissal to the date of actual retirement. He further submits that the claim of the petitioner for payment of retiral consequential benefits was considered by the District Magistrate, Araria and as it has been found that the petitioner has not worked in the period of 23.08.2010 to 20.11.2014, hence, on the basis of “no work no pay” the salary for the said period has not been allowed to the petitioner, though the period in question has been considered for all other purposes.



7. Mr. Md. Nadim Seraj, learned GP 5 for the state heavily relied upon the Rules 12 (4)(5) and 13 (2)(3) of the Bihar C.C.A. Rules, 2005 and submits that in a case falling under Rule 12 (4) of Bihar CCA Rules 2005, the period of absence from duty, including the period of suspension, preceding his dismissal, removal or compulsory retirement as the case may be, shall not be treated as a period spent on duty, unless the disciplinary authority specifically directs that it shall be so treated for any specified purpose.

8. The learned counsel for the petitioner drawn the attention of this Court towards Rule 12 of the Bihar C.C.A Rules, 2005. From bare reading of the aforesaid rule, it is apparent that Rule 12 deals with treatment of service on reinstatement and admissibility of pay and allowances after dismissal, removal or compulsory retirement as a result of appeal. He submits that this is not a case where the order has been set aside by the Appellate Court, rather the order of punishment has been set aside by this Court and in fact in case of the petitioner only Rule 13(3) will be applicable. He further submits that Rule 13(3) of the C.C.A Rules 2005, clearly speaks as follows:

13(3). Where the dismissal, removal or compulsory retirement of a Government servant is set aside by a Court on the ground of the merit of



the case, or where the dismissal, removal or compulsory retirement of a Government Servant is set aside by a court solely on the ground of non-compliance with the requirements of these Rules and no further enquiry is proposed to be held, the period intervening between the date of dismissal, removal or compulsory retirement, as the case may be, and the date of reinstatement shall be treated as on duty for all purposes. As a result the Government Servant shall be paid full pay and allowances for the period to which he would have been entitled, had he or she not been dismissed, removed or compulsory retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be.

9. From bare reading of Section 13 (3) of the Rules 2005, it is evident that where the dismissal order of a Government servant is set aside by a Court on the merit of the case or on the ground of non compliance with the requirement of these rules and no further enquiry is proposed to be held, the period intervening between the date of dismissal, removal or compulsory retirement, as the case may be, and the date of reinstatement shall be treated as on duty for all purposes. As a result, the Government servant shall be paid full pay and allowances for the period to which he would have been entitled, had he/she not been dismissed, as the case may be.



10. There is no iota of doubt that the Rule 13(3) of the Bihar CCA Rules 2005 is very specific that in a case where the dismissal order is set aside on merit by the Court, the respondent authorities are under obligation to ensure the payment of all the benefits for the period in which the petitioner has not been allowed to work on account of dismissal and removal of his services.

11. The Hon'ble Supreme Court in catena of judgment has been pleased to hold that if an employee is prevented by the employer from performing his duties, the employee cannot be blamed for having not worked, and the principle of "no work no pay" shall not be applicable to such employee. Reliance may be taken to the judgment passed in the case of **State of U.P. Vs. Dayanand Chakrawarty & Ors.**, reported in **2013 (7) SCC 595**.

12. In view of the aforesaid settled legal position and the mandate of the Rule 13(3) of Bihar C.C.A. Rules 2005, the impugned order contained in Memo No. 902 dated 09.10.2019 passed by the respondent No. 3, to the extent whereby the petitioner has not been allowed the salary for the period from 23.08.2010 to 20.11.2014 is hereby set aside and accordingly the present writ petition is hereby allowed with a direction to the respondent authorities to ensure the payment of salary for the



period 23.08.2010 to 30.11.2014, during which the petitioner was remained ousted from the service on account of dismissal order.

13. It is needless to say that the authority has already taken a decision of regularizing the service period of the petitioner with effect from the date of his dismissal till the date of his superannuation and, as such, the authorities shall also ensure payment of all the retiral benefits, including the arrears of pension, salary and the remaining amount of subsistence allowance, if not paid, within a period of eight weeks from the date of receipt/production of a copy of this order.

14. Accordingly, the present writ application stands allowed.

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.12.2022.
Transmission Date	NA

