

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8736 of 2021

Dr. Bijay Kumar @ Bijoy Kumar, son of Late Ramji Prasad Sah Resident of Station Pokhra, P.S. Bettiah Town, District- West Champaran at present residing at Hotel Amrapali Campus, Lal Bazar, Bettiah, District- West Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Home (Special Department), Government of Bihar, Patna.
2. Special Secretary, Home (Special Department), Government of Bihar, Patna.
3. The Principal Secretary, Health Department, Government of Bihar, Patna.
4. Additional Secretary, Health Department, Government of Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Yogesh Chandra Verma, Sr. Advocate Mr. Anuj Kumar, Advocate
For the Respondent/s	:	Mr. Ajay Kumar, AC to GP-4

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

2 13-07-2023 Heard learned counsel for the petitioner, and learned counsel for the State.

2. The writ petition has been filed for quashing of the notification dated 26.08.2019 (Annexure-2) whereby and whereunder the petitioner has been denied payment of subsistence allowance.

3. The brief factual background is that the petitioner, a Medical Officer, was transferred to the Divisional Jail, Hajipur by Home (Jail) Special Department notification dated 30-06-2000 bearing No. 1278. He did not join the transferred place of posting and remained unauthorizedly absent. His



services accordingly, were returned from the Home (Jail) Special Department to the Health Department, under notification dated 25.10.2004.

4. On 24.01.2005, he was placed under suspension and his headquarters was fixed at the place of posting. By the departmental Resolution dated 30-04-2005, departmental proceedings was initiated against him. An Enquiry report was submitted holding the charge of lack of discipline and negligence towards duties, established, whereafter, second show cause notice was issued on 26.12.2005.

5. After due consideration, the Competent Authority, by notification dated 11.01.2007, awarded the petitioner the punishment of withholding of two annual increments without cumulative effect and warning.

6. The impugned notification records that thereafter the petitioner sought revocation of his suspension by submitting an explanation, for the first time on 09-03-2018. He however has not submitted any proof of having marked his attendance at the headquarters fixed during his suspension period.

7. The petitioner has taken a stand that the Jail Deputy Superintendent, Divisional Jail, Bettiah had not relieved him upon his transfer under notification dated 30.6.2000 and,



therefore, he could not join at Hajipur. There is also a reference to some orders passed in a Title suit filed by the petitioner bearing Title Suit No. 227 of 2001, for payment of salary and allowances in which, the petitioner claims that certain orders were passed for payment of the same on 09.06.2003. The order of the Title Suit however, has not been placed by the petitioner on record. There is also no material to show that the petitioner ever marked his attendance during the period of suspension. The petitioner, therefore, has rightly been deprived of subsistence allowance.

8. Petitioner's suspension has been revoked, and by the impugned notification dated 26.08.2019, he has been directed to join in the department forthwith. The period of suspension has been treated as extraordinary leave (with pension).

9. As per averments in the writ petition the petitioner has submitted his joining on 27.08.2019, pursuant to the impugned order. He, thereafter, admits that the salary slip has been issued for the period 27.08.2019 to 31.03.2020 on which date, he retired.

10. The facts and circumstances, noted above, do not make out any case for the petitioner to claim subsistence allowance for the periods in-question, since there is nothing on



record to show that he has ever marked his attendance in the headquarters fixed during the period of suspension. He has also not placed on record any affidavit to the effect that he was not otherwise gainfully employed. The petitioner, if in possession of any such proof of joining or if in position to claim any subsistence allowance otherwise, for the periods in-question, would be at liberty to approach the authority in accordance with law.

11. With such liberty, the writ petition is dismissed.

(Madhuresh Prasad, J)

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