

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21549 of 2013

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Uday Prasad S/O Late Braj Kishore Prasad R/O Village Bhairavi Asthan
Godabari, P.O- Chandchaura, P.S- Rampur, District- Gaya.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The District Magistrate, Gaya District- Gaya.
3. The Deputy Development Commissioner, Division Gaya, District- Gaya.
4. The Block Development Officer, Belaganj, P.S- Belagaj, District- Gaya

... .. Respondent/s

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Appearance :

For the Petitioner/s : M/s Sharda Nand Mishra & Deepak Kumar, Advs.
For the Respondent/s : None

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**CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH
SHARMA**

ORAL ORDER

2 06-02-2023 The petitioner by way of this writ petition has prayed
for quashing of order dated 03.03.2010 passed by the District
Magistrate, Gaya, so far as he has denied salary during the
period of jail custody except subsistence allowance.

Learned counsel for the petitioner submits that the
petitioner was in custody on account of a criminal case
registered against him under Section 376(2)(g) of the Indian
Penal Code. The petitioner was acquitted of the charge vide
judgment dated 4th July, 2009, by the learned District and
Sessions Judge, Gaya. The District Magistrate has however not
given him benefit of salary apart from subsistence allowance for
the period when the petitioner remained in jail. The order dated



03.03.2010 is under challenge before this Court.

A reply has been filed stating that the petitioner has been given his dues in terms of Rules 10(1) and 10(1)(3) of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005, as the petitioner was in jail for an offence of moral turpitude. He was only granted benefit of subsistence allowance and the remaining salary was not released.

I have considered the submissions.

Considering that the allegation against the petitioner for which he was in jail, was an offence under Section 376(2) amounting to moral turpitude, the claim of salary for the period spent in jail is not made out as it can not be said to be on account of fault of the respondents. After having been acquitted of the charge the District Magistrate has already passed orders for other benefits. Learned counsel prayer for grant of ACP is to be examined by the respondents as question granting ACP depends on several factors including the service record.

Keeping in view thereto, no direction for such grant of ACP can be issued by this Court. However, the respondents will examine the case of the petitioner for grant of ACP and if otherwise he is suitable the ACP shall be granted to him. The exercise may be conducted within a period of four months.



The writ petition is partly allowed with the aforesaid
directions.

(Sanjeev Prakash Sharma, J)

Shamshad/-
Item No. 41

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