

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2033 of 2018

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Faiyaz Ahmad, son of Late Mukhtar Ahmad, resident of Mohalla- Kalali Bagh, P.S.- Dhanbad Town, District- Dhanbad Jharkhand.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary Department of Home, Govt. of Bihar.
2. The Senior Superintendent of Police, Patna.
3. The Superintendent of Police, Kishanganj.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sarvadeo Singh, Advocate
		Mr. Md. Anisur Rahman, Advocate
For the Respondent/s	:	Mr. Fazle Karim, Advocate

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CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN

ORAL JUDGMENT

Date : 09-10-2023

Heard learned counsel for the petitioner and learned counsel for the State.

2. Learned counsel for the petitioner submits that due to inadvertant mistake in typing, May 2000 has wrongly been typed in place of May 2002 in paragraph 1 (C) of the writ petition. He is directed to correct the same in course of the day.

3. The present writ petition has been filed by the petitioner for quashing of the order contained in Memo No. 7728 dated 07.07.2017 shown as District order No. 2680 of 2017 by which the payment of the petitioner for the period from May 2002 to April 2003 has been denied on the principle of “no



work no pay” but sanctioned this period as extraordinary leave. Learned counsel for the petitioner further challenged the order dated 29.10.2016 passed by the respondent No. 3, Superintendent of Police, Kishanganj by which the salary of the petitioner for the period from May 2002 to April 2003 has been withheld on the principle of “no work no pay.” The further prayer has been made to direct the respondent to make payment of salary from May 2002 to April 2003 treating the petitioner on duty for the said period.

4. Learned counsel for the petitioner submits that the petitioner has challenged the said order primarily on two grounds; firstly, the Senior Superintendent of Police, Patna has no jurisdiction to pass such an order dated 07.07.2017 and, secondly, while passing of the said order, he has ignored the Rule 843 of the Police Manual Rule, 1978 (hereinafter referred to as the ‘Rules of 1978’) as well as passed the order in contravention of Rules 180 and 232 of Bihar Service Code, 1952.

5. Learned counsel for the petitioner further submits that, Rule 843 of the Rules of 1978 is clear that in case of unauthorized absence, proceeding has to be initiated. According to relevant rules of Bihar Service Code, 1952, the leave ought to



be granted under the admissible rules according to service which has completely been ignored. Learned counsel for the petitioner also submits that under Rule 232 of Bihar Service Code, 1952, the respondent ought to have considered the said period as half pay leave period.

6. Learned counsel for the State submits that the petitioner has earlier moved before this Court in CWJC No. 2314 of 2015 for the same relief and his claim was rejected by Hon'ble Single Judge vide order dated 06.02.2015. Thereafter, the petitioner has filed Letters Patent Appeal bearing L.P.A. No. 568 of 2015 which was disposed of vide order dated 23.08.2016 with certain observations and directions which are as follows:-

“a. In our view, it was not an ordinary case of employer and employee, but it was a case where Government was the employer. Atleast the Government ought to have been asked whether payment was made or not, and if not why, because Government is a model employer and cannot shirk its responsibility and take shelter of legalistic approach to defeat the legitimate claim of its employees.”

“b. In these appellate proceedings, the appellant has brought on record by supplementary affidavit that the State Government in the Department of Home Police has requested



the Director General of of Police, Bihar, Patna to enquire into the matter and if payment is due, make payment. We can only reiterate the same.”

“c We, accordingly, direct the Director General of Police, Bihar, Patna to let the matter be enquired into and if it is found that the payment is due to the petitioner-appellant for the period aforesaid, he would ensure that within three months from today, payment is made to the petitioner-appellant, but if it is found that payment is not due, speaking order in that regard would be duly communicated to him.”

7. Learned counsel for the State further submits that this matter was specially assigned by the Director General of Police to the Senior Superintendent of Police and the Senior Superintendent of Police upon going through the relevant documents and the reports collected related with the petitioner from the various corners has passed a detailed and reasoned order in which the stand has been taken that as per the Police Headquarter order 7947/P-2 dated 14.12.2000 and subsequently, I.G. Darbhanga Zone Letter No. 53/C dated 15.01.2002 and D.I.G Purnea Range Letter No. 90 dated 18.01.2002 and consequently Kishanganj District Order 528 of 2002, the petitioner was relieved from Dhanbad District, Jharkhand and



L.P.C. was issued. At that period, the petitioner was posted at Tedhagach P.S. as Officer-in-charge but having got information about transfer, the petitioner absconded from Tedhagach P.S. and on 18.05.2002, sent an application to Superintendent of Police, Kishanganj about his treatment in P.M.C.H, Patna enclosing the copy of the outward ticket issued by P.M.C.H., Patna bearing ERSO No. 1348 dated 16.05.2002 showing advise for three weeks rest by the doctor and again on 06.06.2002 sent an application to Superintendent of Police, Kishanganj about rest for further three weeks. Upon an enquiry about the petitioners treatment, it has come to the knowledge of the Superintendent of Police, Kishanganj that the register of P.M.C.H., Patna bearing ERSO No. 1348 dated 16.05.2002 is in the name of one Md. Zahid while as per the ticket submitted by the petitioner, it should be in the name of Faiyaz Ahmad by which it is clear that the petitioner had submitted a fabricated slip of treatment before his high officials.

8. Learned counsel for the State submits that in this background, the petitioner was treated as absconded during the period from May 2002 to April 2003 and during the said period, his leave was treated in accordance with Rule 180 of Bihar Service Code, 1952 as extraordinary leave. Learned counsel for



the State further submits that there is due compliance of Letter Patents Appeal order passed by this Hon'ble Court has been made as this Hon'ble Court has pleased to direct to the Director General of Police to enquire into the matter and if it has been found that the payment is due to the petitioner for the aforesaid period, he would ensure the payment and if not, speaking order in this regard would be duly communicated to him. Learned counsel for the State further submits that a reasoned and speaking order has already been communicated which is under challenge before this Hon'ble Court in the present writ petition.

9. Upon going through the pleadings and upon perusal of the records, it is clear to this Court that petitioner has moved earlier before this Hon'ble Court in CWJC No. 2314 of 2015 and further in L.P.A. No. 568 of 2015 and in the light of the observation made by this Hon'ble Court in L.P.A. No. 568 of 2015, the present reasoned and speaking order has been passed. The reasons assigned by the Officer in the said order are as follows:-

“वर्णित परिस्थिति में स्पष्ट है कि श्री अहमद विरमित होने की सूचना पाते ही अपने पदस्थापन स्थान, टेढ़ागाछु थाना से दिनांक- 10.05.2002 को फरार हो गये एवं सक्षम प्राधिकार के समक्ष अवकाश स्वीकृत संबंधी कोई अनुरोध अभ्यावेदन समर्पित नहीं किये।



पी०एम०सी०एच० में ईलाजरत होने संबंधी सूचना / दावा भी गलत पाई गई। वस्तुतः श्री अहमद झारखण्ड राज्य में योगदान देने से बचने हेतु लगातार फरार रहे एवं स्थानान्तरण रूकवाने का प्रयास करते रहे। सरकार द्वारा जब तक इनके संबंध में बिहार राज्य में बने रहने का निर्णय नहीं लिया गया, तब तक बीमारी का झूठा बहाना बनाकर कर्तव्य से फरार रहे एवं आदेशोल्लंघन करते रहे। मई 2002 से अप्रैल 2003 तक न तो याचिकाकर्ता बिहार स्थित किसी जिला में कर्तव्य पर रहे, न ही झारखण्ड राज्य में योगदान दिए।

पुलिस मुख्यालय, बिहार पटना का ज्ञापांक- 7995/पी-1, दिनांक-07.07.17 द्वारा प्राप्त निर्देश के अनुपालन में सेवानिवृत्त पु०नि० फैयाज अहमद के अवधि का निराकरण no work, no pay का सिद्धान्त पर मई 2002 अप्रैल 2003 तक का असाधारण अवकाश स्वीकृत किया जाता है एवं उक्त अवधि में वेतन एवं अन्य भत्ता देय नहीं होगा।"

10. After going through the said reasoning, it transpires to this Court that the petitioner has tried to mislead to his high officials by way of submitting false documents of his illness and on this ground, he wants to take the benefit of the same.

11. On the basis of the reasons assigned in the order, the view of the authority that the petitioner was neither worked in Bihar nor at Jharkhand during the period from May 2002 to April 2003.



12. This Court is of the view that there is no need of any interference. Accordingly, this writ petition is dismissed.

(Dr. Anshuman, J.)

Divyansh/-

AFR/NAFR	
CAV DATE	
Uploading Date	13.10.2023
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