

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 15532 of 2022

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Murlidhar Mishra S/o Late Bhola Mishra, R/o Village and Post - Rangra, P.S.
- Gopalpur, Dist. - Bhagalpur, PIN - 853204.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Home Department
Government of Bihar, Patna.
2. The D.G. cum I.G. of Police, Bihar, Patna.
3. The D.I.G. of Police, Special Branch, Bihar, Patna.
4. The S.P. (A) Special Branch, Bihar, Patna.

... .. Respondent/s

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Appearance:

For the Petitioner/s : Mr. Ranjit Jha, Advocate

For the Respondent/s : Mr. Manish Kumar (GP-4)

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 20-03-2024

1. The present writ petition has been filed for making payment of arrears of salary for the period of dismissal of the petitioner from service and for the period of custody i.e. from 01.09.1992 to 01.08.2014 as also payment of subsistence allowance for the year 2014 to 2018.

2. The brief facts of the case, according to the petitioner are that the petitioner was appointed as a constable and posted at the Special Branch at Patna and subsequently a departmental proceeding was initiated vide departmental proceeding no.29 of



1993, which had culminated in passing of an order of dismissal from service in the year 2005, however, the same was set aside by a judgment passed by the Hon'ble High Court in a writ petition bearing CWJC No. 9337 of 2005, whereafter the petitioner was reinstated in service, however, consequential benefits were not paid. It is also submitted that on 12.02.1993, an FIR bearing FIR No.334 of 1993, under Section 409 of the Indian Penal Code, was lodged in the Secretariat Police Station, Patna, against the petitioner, whereafter he was taken into custody on 13.11.1993 and was released on bail on 04.04.1994. In the said criminal case, the petitioner was acquitted by a judgment dated 10.01.2002, passed by the learned Additional Sessions Judge-X in Criminal Appeal No.48 of 2000 and the judgment/order of conviction and sentence dated 31.01.2000, passed by the Judicial Magistrate, 1st Class, Patna in Trial No. 468 of 2000 was set-aside.

3. The learned counsel for the petitioner has submitted that after a Coordinate Bench of this Court vide judgment dated 02.02.2012, passed in CWJC No. 9337 of 2005 had set aside the order of punishment of dismissal from service dated 27.06.1994 and the appellate order dated 04.06.2005 and the matter was remanded back to the disciplinary authority, the petitioner had



submitted his joining before the respondents on 13.02.2012, whereafter, a fresh inquiry was conducted in pursuance to the aforesaid departmental proceeding No. 29 of 1993, however, when the said inquiry could not be concluded in time, the petitioner had filed another writ petition, bearing CWJC No. 21931 of 2012, which was disposed of by a coordinate Bench of this Court vide order dated 14.02.2014, with a direction to the respondents to conclude the departmental inquiry and take final decision within a period of six months, whereafter the disciplinary authority i.e. the Superintendent of Police, Special Branch, Bihar, Patna had passed the order of punishment dated 01.08.2014, inflicting the punishment of withholding of annual wage increment for two years, equivalent to three black marks, as also forfeiture of wages/allowances for the period, the petitioner had absconded unauthorizedly, apart from adjusting the said period as extraordinary leave. It was also directed that for the period of suspension, the petitioner would not be entitled to any amount except what has already been paid to him and the period of suspension shall be regularized against his half-earned Leave as also he would not be paid any subsistence allowance for the period he remained in jail.

4. The learned counsel for the petitioner has contended



that since the petitioner has been acquitted in the aforesaid criminal case, he is entitled to get the entire benefits which a government employee is entitled to.

5. Per contra, the Ld. counsel for the respondent-State has submitted by referring to the counter affidavit, filed in the present case, that the present writ petition is not only barred by the principles of estoppel, waiver and acquiescence but is also barred by the principles of res-judicata and constructive res-judicata, in view of the judicial order passed by this Hon'ble Court in the writ petition, filed by the petitioner. It is also submitted that since the petitioner has not challenged the order of punishment dated 01.08.2014, no relief can be granted to the petitioner.

6. The learned counsel for the respondents has further submitted that after the matter was remanded back to the disciplinary authority by a coordinate Bench of this Court, vide order dated 02.02.2012, passed in CWJC No. 9337 of 2005, pursuant to quashing of the order of punishment/appellate order, for the purposes of conducting the departmental inquiry afresh, the disciplinary authority i.e. the Superintendent of Police, Special Branch, Bihar, Patna has passed an order of punishment dated 01.08.2014, afresh, whereby the following punishments



have been inflicted upon the petitioner, upon him being found to be guilty in the connected departmental proceeding:-

“(i) The petitioner has been imposed the punishment of withholding of annual increments for a period of two years, equivalent to three black marks.

(ii) The wages/allowances for the period the petitioner remained unauthorizedly absent has been forfeited.

(iii) The period during which the petitioner had remained absconding unauthorizedly has been directed to be adjusted as extraordinary leave.

(iv) For the period of suspension, the petitioner has been held to be not entitled to anything beyond what has already been paid to him.

(v) The period of suspension has been directed to be regularized against his half-earned Leave.

(vi) For the period, the petitioner had remained in custody, it has been directed that he shall not be paid any subsistence allowance.”

7. The learned counsel for the respondent-State has further submitted that a bare perusal of the aforesaid judgment dated 02.02.2012, passed in CWJC No. 9337 of 2005, would show that as far as the arrears of salary for the period of dismissal is concerned, the same had been made subject to the final order to be passed in the departmental proceeding. Thus, it



is contended that as far as the issue of payment of arrears of salary to the petitioner is concerned, the same was left to be decided by the disciplinary authority, at the time of passing of the final Order. Therefore, it has been submitted that since the disciplinary authority, vide the order of punishment dated 01.08.2014, not assailed by the petitioner till date, has already held that neither any salary/ allowance shall be paid to the petitioner for the period of unauthorized absence nor any subsistence allowance shall be paid for the period of incarceration of the petitioner nor any additional amount except what has already been paid to the petitioner shall be paid for the period of suspension, the petitioner is not entitled to any salary/allowance for the period 01.09.1992 to 01.08.2014.

8. I have heard the learned counsel for the parties and perused the materials on record, from which certain facts are undisputed i.e. the petitioner had absconded from duty on 01.09.1992, along with Government Revolver and 18 rounds of bullet/cartridge and despite several letters and special messenger having been sent to the house of the petitioner, the whereabouts of the petitioner could not be known, resulting in him being put under suspension and a criminal case bearing Secretariat P.S. Case No. 334 of 1993 dated 04.06.1993 having been lodged



against the petitioner, apart from a departmental proceeding, bearing Departmental Proceeding No. 29 of 1993, having been initiated against the petitioner, whereafter the petitioner was arrested on 13.11.1993 and sent to jail, where he remained in custody up to 04.04.1994. It is also a matter of record that the disciplinary authority had then passed an order of punishment of dismissal from service qua the petitioner, vide order dated 27.06.1994, which was challenged by the petitioner by filing an appeal, however, the same was dismissed by an order dated 10.05.1995, leading to the petitioner filing a memorial, which too had stood dismissed by an order dated 04.06.2005. All the aforesaid three orders were challenged by the petitioner by filing a writ petition bearing CWJC No. 9337 of 2005, which was disposed of in the following terms by an order dated 02.2.2012:-

“6. The impugned dismissal, appellate, order passed on the memorial of the petitioner proceed on the basis of the findings recorded in the report of the Enquiry Officer which was conducted while petitioner remained in jail custody, as such, in my opinion, he was not given adequate opportunity to defend himself on both the grounds that the enquiry was conducted while petitioner was in jail custody as also on other ground that subsistence allowance was not paid to



him to support himself and his family.

7. In view of my findings above, the dismissal, appellate, order passed on the memorial of the petitioner dated 27.6.1994, 10.5.1995 and 4.6.2005, Annexures-6,7 to the writ petition and Annexure-A to the counter affidavit respectively are quashed. Petitioner was under suspension, as such, he shall continue under suspension and fresh enquiry be conducted in accordance with law and appropriate final order passed in the matter.

8. Arrears of salary for the period of dismissal till the date of this order shall be subject to the result of the final order passed in the proceeding. While disposing of the proceeding, the authorities are at liberty to consider the overt act of the petitioner of disappearing from place of duty with the arms without any information notwithstanding his acquittal in the criminal case as the standard of proof in departmental proceeding is preponderance of circumstances whereas in criminal trial stand of proof is beyond reasonable doubt.”

9. Admittedly, thereafter, a departmental proceeding was conducted afresh and the disciplinary authority i.e. the Superintendent of Police, Special Branch, Bihar, Patna by an order dated 01.08.2014, had found the petitioner guilty of the charges levelled against him and inflicted the punishment of withholding of annual wage increment for two years, equivalent



to three black marks, as also forfeiture of wages/allowances for the period, the petitioner had absconded unauthorizedly, apart from adjusting the said period as extraordinary leave. It was also directed that for the period of suspension, the petitioner would not be entitled to any amount except what has already been paid to him and the period of suspension shall be regularized against his half-earned Leave as also he would not be paid any subsistence allowance for the period he remained in jail custody.

10. This Court, thus finds that the petitioner was unauthorizedly absent w.e.f. 01.09.1992, whereafter he was put under suspension and then he was in jail custody from 13.11.1993 to 04.04.1994, whereupon he had stood dismissed from service by an order of punishment dated 27.06.1994, which though was set aside by an order dated 02.02.2012, passed by a co-ordinate Bench of this Court and the matter was remanded back to the disciplinary authority for conduct of fresh departmental proceeding qua the petitioner herein, however, the learned Single Judge, by the said order dated 02.02.2012 had not only directed that the petitioner would remain under suspension till the final order is passed in the fresh inquiry but had also directed that the salary for the period of dismissal till the date of passing of the order dated 02.02.2012, shall be subject



to the final order to be passed in the fresh departmental proceeding. Thereafter, the final order has also been passed in the fresh departmental proceeding as long back as on 01.08.2014, whereby and whereunder the petitioner has been inflicted with the punishment of withholding of annual wage increment for two years, equivalent to three black marks, as also forfeiture of wages/allowances for the period, the petitioner had absconded unauthorizedly, apart from adjusting the said period as extraordinary leave. It has also been directed that for the period of suspension, the petitioner would not be entitled to any amount except what has already been paid to him and the period of suspension shall be regularized against his half-earned Leave as also he would not be paid any subsistence allowance for the period he remained in jail custody.

11. Consequently, taking into account the aforesaid facts and circumstances of the case, this Court finds that for the period of unauthorized absence i.e. starting from 01.09.1992, the petitioner is not entitled to any pay/allowance and as far as the period of incarceration of the petitioner is concerned, i.e. from 13.11.1993 to 04.04.1994, he is not entitled to any pay/allowance or any amount of subsistence allowance. As regards the period of suspension, i.e. from a period prior to passing of the order of punishment of dismissal from service dated 27.06.1994 up to the date of passing of the second order



of punishment dated 01.08.2014, upon remand by the Hon’ble High Court, is concerned, the petitioner is not entitled to anything beyond what he has already been paid. As far as the period w.e.f. 01.08.2014 is concerned, since the suspension of the petitioner has stood revoked, he is not entitled to any subsistence allowance for the said period. Thus, the present writ petition is bereft of any merit, hence, is fit to be dismissed. In any view of the matter, the petitioner has not uttered even a single word to show his entitlement for subsistence allowance for the year 2014 to 2018, which depicts the dishonest intention of the petitioner and warrants imposition of cost for pursuing a vexatious litigation, however, this Court has restrained itself from taking any punitive action qua the petitioner herein.

12. Having regard to the facts and circumstances of the case and for the forgoing reasons, I do not find any merit in the present writ petition, hence the same stands dismissed.

(Mohit Kumar Shah, J)

Saurav/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	14.05.2024
Transmission Date	NA

