

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14263 of 2024

Vijay Kumar Chaudhary Son of Late Jadunandan Chaudhary Resident of 223 M.I.G, Shantikunj, Lohia Nagar, Kankarbagh Colony, Police Station Kankarbagh, District Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Health and Family Welfare Department, New Secretariat, Bailey Road, Patna.
2. The Additional Secretary, Health and Family Welfare Department, New Secretariat, Bailey Road, Patna.
3. The Joint Secretary, Health and Family Welfare Department, New Secretariat, Bailey Road, Patna.
4. The Under Secretary, Health and Family Welfare Department, New Secretariat, Bailey Road, Patna.
5. The Civil Surgeon-cum- Chief Medical Officer, Araria.
6. The Incharge Medical Officer, Raniganj, Araria.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Rupak Kumar, Adv
For the Respondent/s : Mr. Amish Kumar, AC to AG

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL ORDER

2 20-09-2024 Heard Learned Counsel for the petitioner and Learned Counsel for the State.

2. The present writ petition has been filed for quashing of the order dated 01.07.2024 contained in Memo No. 519 (9) dated 03.07.2024 issued by the Additional Secretary to the Government, Health Department, Bihar, whereby and whereunder the representation dated 20.02.2024 filed by the petitioner for payment of subsistence allowance for the period from February 2012 to 22.06.2022 in pursuance of order dated



13.02.2024 passed in C.W.J.C. No. 5574 of 2022 has been rejected. Further prayer has been made for directing the respondents to pay subsistence allowance to the petitioner with effect from February 2012 to 22.06.2022 at the rate of 45% taking into consideration the 2nd and 3rd dynamic A.C.P. granted to the petitioner with effect from 25.11.2008 as the petitioner had been paid subsistence allowance from June 2008 to January 2012.

3. Learned Counsel for the petitioner submits that petitioner had earlier moved before this Court in C.W.J.C. No. 5574 of 2022 in which this Hon'ble Court was pleased to direct the petitioner to file a fresh representation before the Additional Chief Secretary, Department of Health, Government of Bihar and directed to the concerned authority to pass a reasoned and speaking order on the representation filed by the petitioner within six weeks thereafter. Learned Counsel further submits that petitioner had filed the representation and the final order was passed which is impugned. Counsel further submits that in the reasoned order the denial of payment of Subsistence Allowance during the suspension period with effect from Feb, 2012 to 22.06.2022 has been made on the ground that the petitioner had not produced his joining letter as well as shown



his presence due to which subsistence allowance could not be accepted. Learned Counsel for the petitioner, in this regard, submits that vide Annexure P/3 and Annexure P/4 he had submitted his joining to the Civil Surgeon-cum-Chief Medical Arraria on 09.07.2010 and subsequently, to Inchage, Medical Officer, Raniganj Araria on 10.07.2021. He further submits that his joining was acknowledged by the Joint Secretary, Department of Health as well as the Chief Medical Officer, vide Annxure P/8 and Annexure P/9 in which it has been mentioned that petitioner had submitted his joining on 09.07.2010 after leaving from Jail on 30.06.2010. Counsel further submits that from the letters of Chief Medical Officer, Raniganj Araria and Joint Secretary, Department of Health, it becomes crystal clear that petitioner had submitted his joining on 09.07.2010 in the Office of Civil Surgeon, Araria. Counsel further submits that Rule IX (3) of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 clearly indicates that custody period of the Government Official shall be treated as suspension of the concerned employee and after release from custody, the Government Servant shall have to provide his joining and shall be accepted by the concerned authority and it shall be at the discretion of the disciplinary authority that he was again



suspended by a fresh letter in which the headquarter for the suspension period shall be indicated. Counsel further submits that from the pleadings made by the Counsel for the State in the earlier writ petition i.e. in C.W.J.C. No. 5574 of 2022, at paragraph 11 which he has annexed at page 44 of the present writ petition. The payment of subsistence allowances upto January 2012 has been paid to him and after Feb, 2012 till 22.06.2022 subsistence allowance has not been paid. Therefore, when he placed this matter before this Hon'ble Court the Hon'ble Bench has directed to the Officials to take a decision within two weeks in his regard and impugned order be set aside and respondent authority be directed to pay the subsistence allowance to the petitioner.

4. Learned Counsel for the State on the other hand submits that the most relevant letter is the letter which is annexed as Annexure P/2 i.e. Letter No. 435 (9) dated 22.06.2022 in which it has been indicated that with regard to the payment of the subsistence allowance, a separate order has been issued vide order no. 431(9) dated 22.06.2022. Counsel further submits that the petitioner has neither placed the earlier order No. 431 (9) dated 22.06.2022 in C.W.J.C. 5574 of 2022 nor he has challenged or produced the said letter in the present writ



petition i.e. C.W.J.C. No. 14263 of 2024. He further submits that due to non production of the said order No. 431 (9) dated 22.06.2022, the earlier order was passed and again petitioner wants a fresh order from this Hon'ble Court suppressing the fact that one order has already been passed vide order No. 431 (9) dated 22.06.2022. He submits that in the present order impugned, the acknowledgment of the said letter no. order No. 431 (9) dated 22.06.2022 has again made in Paragraph IV of the impugned order which has not been produced by the petitioner neither in the earlier writ nor in the present writ and he wants to obtain order from this Court suppressing the said letter on which the department has already passed order on the Subsistence Allowances.

5. Upon specific query from the Counsel for the petitioner that whether the said order No. 431 (9) dated 22.06.2022 about which it has been indicated as to why subsistence allowances has not been granted to him during the suspension period, still subsists ? He submits that the said letter has not been communicated to him due to which he is completely unaware of the same.

6. After hearing the parties and perusal of the letters, the argument of the petitioner could not be accepted due to the



reason that the petitioner had acknowledged letter no. 435 dated 22.06.2022. In this letter dated 22.06.2022, there is an indication about issuance of letter no. 431 (9) dated 22.06.2022 in paragraph no. 3. In this background, it transpires to this Court that petitioner has not filed this writ petition with clean hands and suppressed letter no. 431 (9) dated 22.06.2022.

7. As such, the present writ petition stands dismissed.

(Dr. Anshuman, J)

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