

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19388 of 2018

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1. Dwarika Singh Son of Late Balbachan Singh, Resident of Village- Satuhari, P.O. and P.S.- Sikrol, Anchal- Nawanagar, District- Buxar.
 2. Vekrama Singh, Son of Late Sheonath Singh, Resident of Village- Belahari, P.O. Belahari, P.S. Sikrol, District-Buxar.
 3. Radha Mohan Singh, Son of late Ramadhar Singh, Resident of Village- Barkagaon, P.O. Barkagaon, Anchal- Itahri, District- Buxar.
 4. Baban Prasad, Son of Late Ram Nihora Kumhaar, Resident of Village- Khandricha, P.O. Khandricha, P.s. Sikrol, District- Buxar.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The District Magistrate, Buxar, District- Buxar.
3. The Superintendent of Police, Buxar, District- Buxar.
4. The District Welfare Officer-Cum-Conducting Officer, Buxar, District- Buxar.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Brij Mohan Kumar Singh, Adv.
For the Respondent/s : Mr. Manoj Kumar, (AC to GP-4)

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT

Date : 19-02-2024

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

2. Learned counsel for the petitioners has challenged Annexure- 10 *i.e.* order contained in Memo No. 021362 dated 29.08.2011 by which the petitioners have been removed from suspension and they have been exonerated from the charges with decision that the exoneration of charge has been made according to the law but the payment for the said

period was refused on the ground that no work, no pay.

3. Learned counsel for the petitioners submits that the petitioners are the poor employees. They have faced the adverse remarks of suspension, as well as also faced the departmental proceeding which resulted into their exoneration. He submits that the suspension and initiation of departmental proceeding is basically a stigma but subsequently, they have been exonerated, then thereafter they may not be taken further action of no work, no pay and therefore, they have challenged this order before this Court.

4. Learned counsel for the State submits that since during the said period, the petitioners have not worked, therefore, only for suspension allowances, nothing was decided to be paid. In support of his contention, learned counsel for the petitioners has relied on a judgment of ***Bijay Kumar Sinha & Anr. Vs. The State of Bihar through the Principal Secretary, Department of Health & Ors.*** reported in ***2016(4) PLJR 91***. Paragraph 6 of the said judgment is very much relevant which is stated below:

*“6. We have heard learned counsel for the parties and find no cause for interference in the appeal. The Full Bench judgment reported as **Malti Kumari’s** case (supra) held as under:-*

“We find considerable force in the submission on behalf of the State that the petitioner cannot blow hot and cold simultaneously. It is a settled principle of law that a person cannot retain the benefit of a part of the order and simultaneously challenge another part of the same order. Once the direction to be considered afresh for regularization was accepted and the subsequent order of regularization from September 2007 has not been challenged but accepted without demur by joining in September 2007, it is impermissible for her to question the very order for regularization by seeking salary for the period prior to regularization. The fact that the earlier period may have been counted by fiction for purposes of pension only cannot lay the foundation for a relief factually impossible. If regularization has been done subsequently and accepted, the question of wrongly being denied the right to work for the interregnum period does not arise. The principle of ‘No work, no pay’ therefore applies.””

5. Upon going through the pleadings of the parties and as well as the judgment, this Court is of the firm view that proceeding against the petitioners has been initiated in the light of the base law, *i.e.* C.C.A. Rules, 2005. The provisions relating

to payment after exoneration of suspension and exoneration from charge has been discussed in Rule 11 of C.C.A. Rules, 2005, particularly, Rule 11(3) of C.C.A. Rules, 2005 clearly states as follows:-

“(3) Where the disciplinary authority is of the opinion that the suspension was wholly unjustified, the Government Servant shall subject to the provisions of sub-rule (8) of this Rule, be paid such full pay and allowances to which he would have been entitled, had he not been suspended. While making such payment adjustment shall be made in respect of subsistence allowance and other allowances already paid:

Provided that where such authority is of the opinion that the termination of the proceedings instituted against the Government Servant had been delayed due to reasons directly for which the Government Servant is liable, it may, give the Government Servant an opportunity to make his or her representation and consider the representation, if any, submitted by him or her. After that it may direct, for reasons to be recorded in writing, that the Government Servant shall be paid for the period of such delay only such proportion of such pay and allowances as may be determined by it.”

6. Upon bare reading of the said law, under which the proceeding has been initiated against the petitioners, it is crystal clear that where the disciplinary authority is of the opinion that the suspension was wholly unjustified, the Government Servant shall subject to the provisions of sub-rule (8) of this Rule, be paid such full pay and allowances to which the delinquent would have entitled, had they not been suspended.

7. Here in the present case, the disciplinary authority has removed the suspension from the date of its order, as well as exonerated the petitioners from the charges which clearly indicates that in the opinion of the disciplinary authority, the suspension was wholly unjustified. Though, the word 'unjustified' has not been used by the disciplinary authority but from the language, this Court construe that the said suspension and charge was completely unjustified and in this view of the matter, this Court hereby decides that no work, no pay principle shall not apply here in the present case and therefore, the said part of the order is hereby set aside.

8. The disciplinary authority is directed to decide this matter afresh and also directed to pay, for which the petitioners are entitled within four months from the date of production of this order.

9. With this direction, the present writ application
stands allowed.

(Dr. Anshuman, J.)

sadique/-

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