

**(2006) 07 PAT CK 0073**  
**In the Patna High Court**  
**Case No : CWJC No. 9359 of 2004**

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|-------------------------------------|------------|
| Dr. Nagmani Kumar Sinha and Another | APPELLANT  |
| Vs                                  |            |
| The State of Bihar and Others       | RESPONDENT |

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**Date of Decision :** 19-07-2006

**Acts Referred:**

**Citation :** (2006) 4 PLJR 117

**Hon'ble Judges :** Chandramauli Kr. Prasad, J

**Bench :** Single Bench

**Advocate :** Rabindra Prasad, for the Appellant;

**Final Decision :** Allowed

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## Judgement

C.K. Prasad, J.—Prayer of the petitioners in this application is for payment of arrears of salary for the period 11.10.2000 to 20.5.2001 and for payment of non-practicing allowance from the date they joined the service till 28.2.2001. Counter affidavit has been filed in which it has been stated that salary for the period 11.10.2000 to 20.5.2001 has been paid to the petitioners, which assertion is not disputed by Mr. Rabindra Prasad, learned counsel for the petitioners.

2. This writ application is now confined to claim of the petitioners for payment of non-practicing allowance from the date they joined the service till 28.2.2001.

3. According to the petitioners, after their appointments, they for the first time, submitted their joining on 11.10.2000 in the office of the Director, Animal Husbandry, Bihar, from where they were deputed to the office of the Director, Institute of Animal Health and Production, Government of Bihar, Patna for training.

4. It is the stand of the petitioners that at the time of joining, they had submitted declaration that they will not indulge in private practice and claimed non-practicing allowance.

5. The respondents resist the claim of the petitioners on the ground that they, in

terms of the resolution, did not file the declaration form upto 31.5.2000 and as such, not entitled for non-practicing allowance. The respondents further aver that petitioners are not entitled for non-practicing allowance.

6. It is common ground that the allowance provided as non-practicing allowance, has been withdrawn from 1.3.2001.

7. Mr. Rabindra Prasad, appearing on behalf of the petitioners, submits that the petitioners, on joining their services on 11.10.2002, submitted their declarations and claimed non-practicing allowance from the date they joined. Therefore, said allowance cannot be denied to the petitioners only on the ground that the declaration forms were not submitted by 31.5.2000. He points out that they entered the service later than the last date of submission of declaration form for the employees who were in service.

8. Junior Counsel to A.A.G. IV reiterates the stand taken in the counter affidavit and submits that petitioners failure to file the declaration forms before 31.5.2000 shall disentitle them the allowance.

9. Having appreciated the rival submission, I find substance in the submission of Mr. Prasad and the plea taken in the counter affidavit, to use a mild expression, is absolutely absurd. It is not disputed that the petitioners joined the service on 11.10.2000 and expecting than to submit declaration forms even prior to their appointment, borders insanity. It is not in dispute that the petitioners at the time of joining had given their declarations.

10. Respondents, in the counter affidavit, have contended that petitioners shall not be entitled for non-practicing allowance as that privilege has been withdrawn.

11. Petitioners are not claiming the non-practicing allowances for all times. Their contention is that the State Government had withdrawn the said allowance w.e.f. 1.3.2001 and hence, they are entitled for non-practicing allowances till then. The State Government had withdrawn the non-practicing allowance w.e.f. 1.3.2001, hence, I do not find any justifiable reason to deny this allowance to the petitioners till it was withdrawn. I am of the opinion that the withdrawn. I am of the opinion that the petitioners shall be entitled for non-practicing allowance from the date they joined the service till 28th February, 2001.

12. Accordingly, I direct the respondents to pay to the petitioners the non-practicing allowance of the aforesaid period within three months from today.

13. In the result, this application is allowed with the direction aforesaid. In view of the unfair stand taken by the respondents in the counter affidavit, I also award a cost of Rs. 2500/- to be paid by the respondents to the petitioners.