
(2005) 07 PAT CK 0023
In the Patna High Court
Case No : CWJC No. 14626 of 2001

Felix Ekka

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 26-07-2005

Acts Referred:

Citation : (2005) 3 PLJR 660

Hon'ble Judges : Narayan Roy, J

Bench : Single Bench

Advocate : Sanjiv Kumar No. 1 and Uday Pratap Singh No. 1, for the Appellant;

Judgement

Narayan Roy, J.—Heard counsel for the parties. The grievance of the writ petitioner is that though he was appointed on compassionate ground on the post of an orderly peon by virtue of order, as contained in annexure 1 dated 15.11.1996 and he continued to work on that post, he has not been paid his salary from the very beginning. It is also the grievance of the petitioner that he is not being allowed to perform his duties from January 2001.

2. It is contended by learned counsel for the petitioner that the petitioner was appointed on compassionate ground on the post of orderly peon by virtue of order, as contained in annexure 1 dated 15.11.1996 and thereafter he joined the post on 30th November, 1996 under respondent No. 6 and he continued to work there but his salary was not paid. The matter thereafter was examined by respondent No. 6 and he recommended for payment of due salary to the petitioner vide annexure 2 dated 30th August, 1997, but still then his salary was not paid and now he is not being allowed to work from January 2001. It is further submitted that till date the petitioner has not been terminated from the post aforesaid and, thus, he would be deemed to be in service althrough.

3. A counter affidavit has been filed on behalf of respondent No. 6, wherein it is stated that the petitioner after his appointment never joined the post, and, therefore, no question of payment of salary to the petitioner arises.

4. Per se, it appears from annexure 2 that the petitioner had joined immediately after his appointment in the month of November 1996 itself and due recommendation was made for payment of his salary vide annexure 2 dated 30th August, 1997. No satisfactory explanation has been given in the counter affidavit about the letter dated 30th August, 1997.

5. The petitioner, thus, appears to have worked under the respondents up to 30th August, 1997 and in case, he absented thereafter, then there could have been a proceeding against him and he could have been terminated in accordance with law.

6. No averment has been made in the counter affidavit about the termination of the petitioner from services.

7. A person, who was appointed on compassionate ground, is being deprived of his salary negating the very concept of compassionate appointment.

8. In the writ application, it is averred that the petitioner although was in attendance, but after January 2001 he was not being allowed to work and he has not received even a penny.

9. Considering the facts and circumstances of the case and in view of the statement made in the counter affidavit, respondent No. 3, the Regional Deputy Director, Primary Education, Tirhut Division, Muzaffarpur is directed to examine the claim of the petitioner and to pass necessary orders for payment of his salary, in case he worked although on the post of orderly peon by virtue of the order, as contained in annexure 1 in accordance with law. If required, respondent No. 3 may hold on spot inquiry about joining and continuance of the petitioner in services. This exercise, however, must be completed by respondent No. 3 on priority basis, as the petitioner is being deprived of his salary, not beyond a period of four weeks from the date of receipt/ production of a copy of this order. In case respondent No. 3 would be satisfied that the petitioner joined pursuant to annexure 1 and continued to work on the post of orderly peon for some time, necessary direction shall be issued for payment on his due salary and for continuance of his services.