
(2004) 10 PAT CK 0008
In the Patna High Court
Case No : C.W.J.C. No. 4 of 2004

Manorma Kumari

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 05-10-2004

Acts Referred:

Citation : (2004) 4 PLJR 687

Hon'ble Judges : Chandramauli Kr. Prasad, J

Bench : Single Bench

Advocate : Pramod Mishra, P.C. Thakur and V.K. Mukul, for the Appellant;
Prabhat Kumar Singh for the State, for the Respondent

Final Decision : Allowed

Judgement

Chandramauli Kr. Prasad, J.—This application has been filed for quashing a portion of the order dated 4.9.2001 (Annexure-5) whereby, while revoking the order of suspension, it has been directed that the petitioner shall not be entitled for any other emolument other than subsistence allowance paid to her during the period of suspension. Further prayer made by the petitioner is to quash the order dated 3.5.2003 (Annexure-10) whereby the representation filed by the petitioner against the aforesaid order has been rejected by the Director of Primary Education. Shorn of unnecessary details, facts giving rise to the present application are that by order dated 4.1.2001 (Annexure-1) petitioner was put under suspension in contemplation of a departmental enquiry. Ultimately by order dated 4.9.2001 (Annexure-5) the order of suspension was revoked and the petitioner was visited with the penalty of censure. While revoking the order of suspension it was observed that the petitioner shall not get any emolument other than the subsistence allowance for the period of suspension. Petitioner aggrieved by the same preferred CWJC No. 12976 of 2002 (Manorma Kumari vs. State of Bihar and Ors.) and this Court by order dated 6.12.2002 relegated the petitioner to the remedy of representation before the Director, Primary Education. In the light of the liberty given, petitioner filed representation which has been rejected

by the Director of Primary Education by the impugned order dated 30th of May, 2003.

2. It is the assertion of the petitioner that before directing that the petitioner shall not be paid any emolument other than the subsistence allowance for the period of suspension, no show cause notice or opportunity of hearing was given to the petitioner.

3. Mr. Pramod Mishra, learned counsel for the petitioner contends that the action of the authority in directing that petitioner shall not be entitled for any emolument other than the subsistence allowance for the period of suspension, without giving him any show cause notice of opportunity of hearing renders the order illegal in the eye of law. In support of his submission he has placed reliance on a Division Bench judgment of this Court in the case of Sri Mahabir Prasad vs. The State of Bihar and Ors. (1988 PLJR 82) and my attention has been drawn to the following passage from the said judgment: -

"The petitioner, ought to have been given an opportunity to show cause why clauses (3) and (5) of Rule 97 should not be applied in his case. As that had not been done, the application is allowed and the impugned portion of the order contained in Annexure-1 which reads "The period of suspension be treated as on duty for the purposes of pension and gratuity but he will not get anything more beyond the subsistence grant already received by him during the period of suspension" is struck down as invalid. It would be open to the competent authority to consider the question de novo, after giving the petitioner a reasonable opportunity to show cause against the action proposed against him."

4. J.C. to S.C. Ill, however, submits that in the facts of the present case the authority rightly directed for withholding of emoluments, excepting the subsistence allowance for the period of suspension.

5. Having considered the rival contention, I find substance in the submission of Mr. Mishra and the case is squarely covered by the decision of this Court in the case of Mahabir Prasad (supra). Undisputedly no opportunity was given to the petitioner while directing for withholding of the salary for the period of suspension. This itself vitiates the impugned order. Respondents, if so advised, may give notice to the petitioner and on submission of the reply by her, take decision in accordance with law. In the result, the application is allowed, impugned orders are set aside with the liberty aforesaid. No cost.