
(2011) 03 PAT CK 0073
In the Patna High Court
Case No : CWJC No. 7807 of 2010

Md. Gufaran Ahmad

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 09-03-2011

Acts Referred:

Citation : (2011) 59 BLJR 2529 : (2011) 2 PLJR 803

Hon'ble Judges : J.N. Singh, J

Bench : Single Bench

Judgement

J.N. Singh, J.—Heard learned Counsel for the Petitioner as well as learned Counsel for the State.

2. Petitioner, who is an Executive Engineer working in the Rural Works Department, was suspended on 12.9.2007. Charges were framed against him only on 15.7.2009. Since the proceeding remained pending for more than two years, Petitioner moved this Court through CWJC No. 13054 of 2009. On 5.10.2009, when the writ application was taken up by this Court, Petitioner raised the question of legality of continuance of his suspension in view of Rule 9(vii) of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005. Since the charges had been framed, this Court did not go into that question. However, it was also contended that the Petitioner had not been paid subsistence allowance since the date of his suspension. Therefore, while disposing of the writ application, by order dated 9.10.2009 as contained in Annexure-9, this Court directed the Respondents to pay the subsistence allowance of the Petitioner within one month from the date of receipt/ production of a copy of the order and dispose of the proceeding within a period of six months thereafter failing which suspension was to be treated revoked.

3. Annexure-10 shows that the said order of this Court dated 9.10.2009 was served in the Rural Works Department on 19.10.2009. Thus, within one month, thereafter i.e. by 19.11.2009, the entire subsistence allowance of the Petitioner had to be paid. But the same was not paid, neither any order of revocation of

suspension was issued. Therefore, Petitioner filed this writ application on 3.5.2010.

4. Learned Counsel for the Petitioner informs this Court that subsequently Petitioner also filed a contempt application on 6.8.2010.

5. From the counter affidavit, it appears that after filing of the contempt application, an amount of Rs. 79,240/- was deposited in the account of the Petitioner by advice dated 30.8.2010 towards his subsistence allowance as it appears from Annexure-C with the counter affidavit. It further appears that thereafter by notification contained in Memo No. 11163 dated 4.10.2010 issued from the Rural Works Department, suspension of the Petitioner was revoked, vide Annexure-A with the counter affidavit.

6. Learned Counsel for the Petitioner submits that although the Petitioner's suspension was revoked by notification dated 4.10.2010, he has been posted only on 9.2.2011.

7. It is apparent that in spite of clear orders and directions of this Court passed in the earlier writ application of the Petitioner on 9.10.2009, Respondents were only waiting for filing of a contempt application by the Petitioner to comply the same. Clearly, they had scant regards to the orders of this Court till they were threatened with a proceeding of contempt by the Petitioner by filing a contempt application. This is a gross case of disobedience of the orders of this Court for which no explanation has been furnished in the counter affidavit. However, this matter can be looked into by the appropriate Bench where the contempt proceeding is pending, and this Court does not intend to initiate any action against the Respondents in this matter.

8. However, Respondents were directed to pay the subsistence allowance of the Petitioner within one month from the date of receipt/production of a copy of the order before the concerned Respondents which was received by 19.10.2009. Respondents were duty bound to release subsistence allowance of the Petitioner by 19.11.2009 which they have delayed for almost nine months.

9. Learned Counsel for the Petitioner submits that Petitioner remained under suspension for 37 months for which subsistence allowance has been paid to him only to the tune of Rs. 79,240/- which is apparently ridiculous. As under the Rules, Petitioner shall be entitled to 50% of his salary as subsistence allowance which may come around Rs. 25,000/- per month.

10. Since the Respondents were directed to pay subsistence allowance to the Petitioner within one month which period expired on 19.11.2009, this Court directs the Principal Secretary, Rural Works Department to pay an interest at the rate of 10% on the amount of the subsistence allowance paid as per Annexure-C from 19.11.2009 itself till 30.8.2010 when the amount was transferred in his account.

11. The Principal Secretary, Rural Works Department, Government of Bihar, Patna

is also directed to get the subsistence allowance of Petitioner calculated for the entire period of his suspension as per law and direct for release of the remaining amount to the Petitioner within one month from the date of receipt/production of a copy of this order along with an interest at., the rate of 18% on the amount from 19.11.2009 till it is paid to the Petitioner. The Principal Secretary is made personally responsible for release of all the amount and get the same paid to the Petitioner within one month from the date of receipt/production of a copy of this order. However, the interest part of the amount shall not be debited from the public exchequer. The Principal Secretary is directed to hold an enquiry as to which officer was responsible for not correctly calculating and paying subsistence allowance of the Petitioner within one month from the date of receipt/production of earlier order of this Court and in compliance to the same and, after complying with the Principles of Natural Justice, he shall be at liberty to realize the said amount of interest from the salary of the officer found responsible. This must be done by the Principal Secretary within three months from the date of release of the entire amount of the Petitioner.

12. The writ application is disposed of with the aforesaid observations and directions.