
(2004) 10 PAT CK 0002
In the Patna High Court
Case No : C.W.J.C. No. 1386 of 2002

Muneshwar Mahto

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 08-10-2004

Acts Referred:

Citation : (2005) 1 PLJR 93

Hon'ble Judges : Radha Mohan Prasad, J

Bench : Single Bench

Advocate : Vishnu Kr. Sharma and Washi Ahamed Khan, for the Appellant;

Final Decision : Allowed

Judgement

Radha Mohan Prasad, J.—In this writ petition, prayer on behalf of petitioner is to direct the Respondents to pay post-retiral dues and other arrears, such as, pension, gratuity, clearness allowance, leave encashment, due bonus and increments, group insurance and salary of 17 months i.e. 3.9.1996 to 11.2.1998. A counter affidavit has been filed by the Executive Engineer, Road Construction Department, Path Pramandal, Nawadah (Respondent No. 4).

2. Learned counsel for the petitioner submits that from the counter affidavit it appears that all the dues have been paid except the salary for 17 months. He submitted that during the said period the petitioner was remanded in judicial custody while facing trial and finally has been acquitted vide judgment passed in Sessions trial No. 177 of 1997/35 of 1997 by the 2nd Additional District & Sessions Judge, Nawadah. A photostat copy of the said judgment has been annexed as Annexure-1. Learned Sessions Judge has held that prosecution has not succeeded in proving the charge as framed against the accused persons including the petitioner beyond reasonable doubt, and, accordingly, held them not guilty and acquitted them. Learned counsel submitted that the petitioner was Road Labourer when he was taken in custody. According to him, as per the provisions contained in Rule 178 of the Bihar Board's Miscellaneous Rules 1958

(hereinafter referred to as the Board's Misc. Rules) the petitioner is entitled for full amount of pay and allowances after his acquittal in criminal case for which he was arrested and kept in custody.

3. Earlier vide order dated 1.3.2002 the State Counsel was directed to file counter affidavit specifically on the point as to why up-till-now no order has been passed regarding the period for which the petitioner was in custody as per Rule 178 of the Board's Miscellaneous Rules. Despite the said order, no counter affidavit was filed in compliance thereof. The Court vide order dated 11.4.2002 after considering the provisions of Rule 178, by way of last indulgence directed the Respondents to file counter affidavit regarding compliance of the formalities for regularisation. It is really unfortunate that even until the last date i.e. day before yesterday when the matter was taken up there was no compliance. However, this Court granted further indulgence to come with compliance, but, till date there has been no compliance.

4. Rule 99 of the Bihar Service Code, which is similar to Rule 178 of the Board's Miscellaneous Rules provides that "A servant of Government against whom proceedings have been taken either for his arrest for debt or on a criminal charge or he is detained under any law providing for preventive detention should be considered as under suspension for any periods during which he is detained in custody or is undergoing imprisonment, and not allowed to draw any pay and allowances (other than any subsistence grant that may be granted in accordance with principles laid down in Rule 96) for such periods, until the termination of the proceedings taken against him or until he is released from detention and allowed to rejoin his duties as the case may be. An adjustment of his allowances for such period, therefore, be made according to the circumstances of the case, the full amount being only in the event of the Government servant being acquitted of blame or (if the proceeding taken against him, were for his arrest for debt) of its being proved that the Government servant's liability arose from circumstances beyond his control or detention, being held by any competent authority to be unjustified." Rule 178 of the Board's Miscellaneous Rules, which applies to all subordinate offices under the State Government to the extent it is not inconsistent with any instruction specifically issued by the Department concerned in relation to any particular office, provides that full amount is to be given only in the event of the Officer being acquitted of blame or if the imprisonment was for debt his being proved that the officer's liability arose from circumstances beyond his control.

5. In absence of any further instruction, learned counsel for the State has not been able to defend the action of the Respondents in not paying the full pay and allowances for the period in question to the petitioner even after his acquittal in the criminal case in connection with which he was arrested and kept in custody during the aforementioned period.

6. In view of the specific provision referred to above, this Court does not find any valid justification for withholding payment of the full pay and allowances for the

said period. It is well settled that suspension of the Government servant ceases to be effective from the date of conclusion of the criminal trial (where the suspension is on that account). Therefore, in my opinion, a Government servant, who was placed under suspension under Rule 99 of the Bihar Service Code, is on his acquittal entitled to pay and allowances etc. for the period in question in terms of Rule 178 of the Board's Miscellaneous Rules as well as Rule 99 of the Bihar Service Code, yet the Executive Engineer (Respondent No. 4), who is the concerned authority, has unnecessarily kept the said payment withheld since the petitioner's acquittal long back on 11.2.1998 despite grant of several indulgences ever since filing of the present writ petition. This only shows his gross callousness and mala fide attitude and accordingly this Court finds it to be a fit case for awarding a cost of Rs. 5,000/- to be paid by him from his pocket to the petitioner. Writ application is, thus, allowed. Respondent No. 4 is directed to pay the entire pay and allowances after adjusting the subsistence allowance, if any paid, for the aforementioned detention period i.e. 3.9.1996 to 11.2.1998 alongwith the amount of cost to the petitioner within two weeks of the receipt/production of a copy of this order, failing which the petitioner will be at liberty to file two pages affidavit for revival and initiating action against Executive Engineer.