
(2010) 08 PAT CK 0188
In the Patna High Court
Case No : CWJC No. 11902 of 2004

Rajendra Prasad Kesary

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 06-08-2010

Acts Referred:

Citation : (2011) 1 PLJR 526

Hon'ble Judges : Ajay Kr. Tripathi, J

Bench : Single Bench

Judgement

Ajay Kr. Tripathi, J.—Heard learned Counsel for the parties.

2. Six charges were drawn up against the Petitioner for his act of omission and commission while being posted as an Executive Officer of Samastipur Municipality. The enquiry officer did not find him guilty on three counts but on three charges finding of guilt was recorded. After giving the opportunity of hearing to the Petitioner, punishment order came to be passed which is contained in Annexure-14 and is dated 10.5.2001. The punishments are censor for year 1996-1997, holding of one increment with cumulative effect, non-payment of salary for the period 1.1.97 to 5.4.2000 and the period in question was treated to be unauthorized leave.

3. With regard to the submission which has been made regarding the departmental enquiry there does not seem to be much substance in the submission not because of the findings recorded by the enquiry officer but due to the document which has been brought on record by the Petitioner himself. It is not a case that no charge could be made out against the Petitioner. Some of those findings have basis which may not amount to very serious misdemeanor and that is why the punishment of censor and withholding of only one increment with cumulative effect were passed.

4. The non-payment of salary to the Petitioner for the period 1.1.1997 to 5.4.2000 is the third punishment. According to the Petitioner this was the period

he was waiting for positing and that period cannot be said to be unauthorized. But there is a clear indication that after the Petitioner was repatriated to his parent department and was given a posting he did not join for one reason or the other till a notification came to be issued contained in Annexure-9 which is dated 6th April, 2000.

5. Non-payment of salary for this period is one of the punishments but the Court, in the totality of the circumstance of the punishment, gives an opportunity to the Petitioner that he may move the concerned authority on this aspect and if the Petitioner has any kind of leave which could be adjusted for the period i.e. 1.1.97 to 5.4.2000 then the same may be utilized to cover up the period in question and the salary for this period against that leave may be paid. But if there is not enough leave to his credit which can make him entitled for salary then it will be yet another issue and for which the Respondents will inform the Petitioner about the actual state of affairs for the period i.e. 1.1.97 to 5.4.2000.

6. This writ application is disposed of with the above observation only with regard to withholding of salary for the period in question. No interference is required with regard to other punishments as such.