

(2026) 08 PAT CK 2526

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No.9639 of 2016

Ram Lakhan Prasad Singh

APPELLANT

Vs

The State Of Bihar & Ors.

RESPONDENT

Date of Decision : 03-08-2026

Acts Referred:

Indian Penal Code — Section 302
Bihar Board's Miscellaneous Rules, 1958 — Rule 178
Bihar Service Code — Rule 96, 99, 100
CCA Rules, 2005 — Rule 9(2), 9(3), 10, 11 (3)

Citation : (2026) 08 PAT CK 2526

Hon'ble Judges : Ritesh Kumar, J

Bench : Single Bench

Advocate : Mr. Sunil Kumar, Advocate, Mr. Akash Raj, A.C. to G.A.5

Final Decision : Dismissed

Judgement

Date : 03-08-2026 Heard the learned counsel for the petitioner and the learned counsel appearing on behalf of the State.

2. The present writ petition has been filed for the following reliefs:

"I. For a direction to the respondent

to make payment of his salary for the period from 01.12.1999 to 27.06.2000 with interest and consequential benefits thereon. During the said period the petitioner remained in jail custody in connection with Kadamkuan P.S. Case No.650/1999 under Section 302, Sessions Trial No. 242/2005. The said criminal case ended in acquittal.

(ii) And also for any other relief/reliefs, order/orders, direction/directions for which the petitioner will be entitled in the eye of law as well as in the facts of the case."

3. Vide order dated 01.07.2025 passed in this case, I.A. No.02/2025 was allowed and the prayer made therein was made part and parcel of the present writ petition. The same are re-produced hereinbelow:

"1. For quashing of order bearing memo No. - 2510/ Patna dated 27.09.2016

(Annexure-8 of this I.A. Petition) passed by Joint Secretary (Management), Department of Water Resources, Govt. of Bihar, Patna by which custody period of 210 days of the petitioner has been treated as extra ordinary leave.”

SUBMISSIONS ON BEHALF OF THE PETITIONER

4. The learned counsel for the petitioner submits that the petitioner, while working in the services of the State Government, was falsely implicated in a criminal case bearing Kadamkuan P.S. Case No.650 of 1999 under Section 302 of the Indian Penal Code, which gave rise to Sessions Trial No.242 of 2005. The petitioner was apprehended and was sent to judicial custody on 01.12.1999. He remained in custody till 27.06.2000. Subsequently, the criminal case bearing Sessions Trial No.242 of 2005, culminated in acquittal of the petitioner vide judgment dated 06.07.2010 passed by the learned Additional District & Sessions Judge-14, Patna. The learned counsel for the petitioner submits that thereafter the petitioner filed representation before the authorities concerned and since the petitioner already superannuated during pendency of the criminal case on 31.01.2004, he requested the authorities concerned to make payment of salary for the period he remained in custody i.e. 01.12.1999 to 27.06.2000. It has been submitted that the petitioner filed a representation on 04.02.2015 before the Joint Secretary of the Water Resources Department, however no decision was taken on the representation filed by the petitioner, therefore the petitioner filed the present writ petition. He submits that during pendency of the writ petition, the respondent authorities vide order contained in Memo No.2510 dated 27.09.2016 issued under the signature of the Joint Secretary (Management), Water Resources Department, Government of Bihar, Patna, gave two options to the petitioner, either to treat the said period i.e. 01.12.1999 to 27.06.2000 towards extra ordinary leave or to calculate the said period of 210 days towards earned leave which was remaining in the account of the petitioner for 204 days. However, the petitioner refused to accept the options given by the department, therefore by the impugned order the period during which the petitioner was under custody for 210 days was approved as extra ordinary leave. The learned counsel for the petitioner submits that Rule 178 of the Bihar Board's Miscellaneous Rule, 1958 provides that when any servant of Government is committed to prison, either for debt or on a criminal charge, he is to be considered as under suspension from the date of his arrest and not allowed to draw any pay until the termination of the proceedings against him, when an adjustment of his allowances will be made according to the circumstances of the case, the full amount being given only in the event of the officer being acquitted of blame, or, if the imprisonment was for debt, of being proved that the officer's liability arose from circumstances beyond his control. He submits that in terms of Rule 178, the petitioner was entitled for entire salary for the period during which he remained in custody. He further submits that in terms of Rule 99 of the Bihar Service Code which provides that a servant of Government against whom proceedings have been taken either for his arrest for debt or on a criminal charge or who 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 under going 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. Rule 99 further provides that an adjustment on his allowances for such period should therefore, be made according to the circumstances of the case. The full amount being given 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 justified. The learned counsel for the petitioner submits that in terms of Rule 99 of the Bihar Service Code and Rule 178 of the Bihar Board's Miscellaneous Rules, 1958, the petitioner is entitled for payment of entire salary for the period from 01.12.1999 to 27.06.2000 which he spent in custody. The learned counsel for the petitioner refers to an order dated 08.10.2004 passed in **C.W.J.C. No.1386 of 2002 (Muneshwar Mahto v/s The State of Bihar & Ors.)** wherein in similar circumstances while considering Rule 99 of the Bihar Service Code and Rule 178 of the Bihar Board's Miscellaneous Rules, the Hon'ble Single Judge proceeded to allow the writ petition and was pleased to direct for payment of salary for the said period to the petitioner.

SUBMISSIONS ON BEHALF OF THE STATE

5. *Per contra*, the learned counsel appearing on behalf of the State submits that the petitioner remained in custody from 01.12.1999 to 27.06.2000 for his implication in a criminal act, which was not related to his duties and for the custody period the petitioner undergone, the department was forced not to take any work from him and therefore for the fault on the part of the petitioner, the respondent State cannot be fastened with a direction to make payment of salary to the petitioner.

CONSIDERATION

6. Having considered the rival submissions and after going through the records, it is not in dispute that the petitioner was made an accused in a criminal case bearing Kadamkuan P.S. Case No.650 of 1999 instituted under Section 302 of the Indian Penal Code, which gave rise to Sessions Trial No.242 of 2005. The petitioner was apprehended and was sent to judicial custody on 01.12.1999. He was released on bail on 27.06.2000. Subsequently the petitioner was acquitted in the said criminal case bearing Sessions Trial No.242 of 2005 vide order dated 06.07.2010 passed by the learned Additional District & Sessions Judge-14, Patna and thereafter the petitioner filed different representations before the respondent authorities for payment of his salary for the said period. Finally the petitioner was given two options, either to accept the period towards extra ordinary leave

or to get adjusted the period under earned leave, however the petitioner chose not to accept any of the options given by the department and ultimately the department on its own treated the period, spent by the petitioner behind the bar, towards extra ordinary leave. Rule 99 and 100 of the Bihar Service Code are substantially in para materia with Rule 9(2) and 9(3) of the CCA Rules, 2005. Custody leads to a deemed suspension automatically. After release from custody fresh orders of suspension may be passed if the Governments consider it fit. Otherwise the suspension comes to an end on release from custody and acceptance of joining. For consideration of the case of the petitioner for grant of salary for the period he remained under custody, this Court feels it apt to rely on certain judgments/orders, passed by this Hon'ble Court as well as the Hon'ble Supreme Court of India.

7. A Hon'ble Single Judge of this Hon'ble Court vide order dated 24.01.2012 passed in C.W.J.C. No.22827 of 2011 (**Shridhar Prasad v/s The State of Bihar & Ors.**) has held that suspension does not result in severance of the master servant relationship. The law provides for payment of subsistence allowance during the period of suspension. Rule 10 of the CCA Rules provide the manner in which the subsistence allowance has to be paid. Rule 11 (3) deals with the period of suspension when it is found to be wholly unjustified. In other cases the disciplinary authority is required to pass appropriate orders at the final stage with regard to the period of suspension. It therefore necessarily contemplates holding of a departmental proceeding. The logic and reasoning would be that the delinquent for no fault of his and for no justifiable reason was wrongly prevented by the department from performing duties. The cause of action then arises because of the conduct of the department unable to justify the suspension. If the suspension is occasioned not by the action of the department, but by operation of law leading to custody, the delinquent is not prevented from working by the department wrongly but is prevented from working by operation of the law. He however remains entitled to subsistence allowance. The issue of his suspension and his right to salary for this period of suspension when he was in custody cannot be intermingled. The consequence and the benefits that may flow shall depend upon the reason of the suspension. If the petitioner was taken into custody in pursuance of a criminal case, the department did not prevent him from working, his custody did so. The custody was not relevant to the department but arose out of the operation of the law which mandated an accused to be kept in custody. The principle of 'no work no pay' shall apply here with full force. It was the custody by enforcement of law which prevented the petitioner from working.

8. The Hon'ble Supreme Court of India in a case reported in **(2005) 8 SCC 747 (Baldeo Singh v. Union of India)**, wherein similar question was there, after considering the factual aspect in paragraph no.7, has recorded as under:-

"7. As the factual position noted clearly indicates, the appellant was not in actual service for the period he was in custody. Merely because there has been an acquittal does not

automatically entitle him to get salary for the period concerned. This is more so, on the logic of no work no pay. It is to be noted that the appellant was terminated from service because of the conviction. Effect of the same does not get diluted because of subsequent acquittal for the purpose of counting service. The aforesaid position was clearly stated in *Ranchhodji Chaturji Thakore v. Supdt. Engineer, Gujarat Electricity Board.*"

9. The Hon'ble Supreme Court of India in a case reported in **(2004) 1 SCC 121 (Union of India & Ors. v. Jaipal Singh)**, wherein similar question was there before the Hon'ble Supreme Court of India, in paragraph no.4 has held as under:

"4. On a careful consideration of the matter and the materials on record, including the judgment and orders brought to our notice, we are of the view that it is well accepted that an order rejecting a special leave petition at the threshold without detailed reasons therefor does not constitute any declaration of law by this Court or constitute a binding precedent. Per contra, the decision relied upon by the appellant is one on merits and for reasons specifically recorded therefor it operates as a binding precedent as well. On going through the same, we are in respectful agreement with the view taken in *Ranchhodji*. If prosecution, which ultimately resulted in acquittal of the person concerned was at the behest of or by the department itself, perhaps different considerations may arise. On the other hand, if as a citizen the employee or a public servant got involved in a criminal case and if after initial conviction by the trial court, he gets acquittal on appeal subsequently, the department cannot in any manner be found fault with for having kept him out of service, since the law obliges a person convicted of an offence to be so kept out and not to be retained in service. Consequently, the reasons given in the decision relied upon, for the appellants are not only convincing but are in consonance with reasonableness as well. Though exception taken to that part of the order directing reinstatement cannot be sustained and the respondent has to be reinstated in service, for the reason that the earlier discharge was on account of those criminal proceedings and conviction only, the appellants are well within their rights to deny back wages to the respondent for the period he was not in service. The appellants cannot be made liable to pay for the period for which they could not avail of the services of the respondent. The High Court, in our view, committed a grave error, in allowing back wages also, without advertting to all such relevant aspects and considerations. Consequently, the order of the High Court insofar as it directed payment of back wages is liable to be and is hereby set aside."

10. The Hon'ble Supreme Court of India, while considering similar question in a case reported in **(1996) 11 SCC 603 (Ranchhodji Chaturji Thakore v. Superintendent Engineer, Gujarat Electricity Board, Himmatnagar (Gujrat) & Anr.)**, in paragraph no.3 has held as under:

"3. The reinstatement of the petitioner into the service has already been ordered by the High Court. The only question is whether he is entitled to back wages. It was his conduct of involving himself in the crime that was taken into account for his not being in service of the respondent. Consequent upon his acquittal, he is entitled to reinstatement for the reason that his service was terminated on the basis of the conviction by operation of proviso to the statutory rules applicable to the situation. The question of back wages would be considered only if the respondents have taken action by way of disciplinary proceedings and the action was found to be unsustainable in law and he was unlawfully prevented from discharging the duties. In that context, his conduct becomes relevant. Each case requires to be considered in its own backdrop. In this case, since the petitioner had involved himself in a crime, though he was later acquitted, he had disabled himself

from rendering the service on account of conviction and incarceration in jail. Under these circumstances, the petitioner is not entitled to payment of back wages. The learned Single Judge and the Division Bench have not committed any error of law warranting interference.”

11. A Hon’ble Division Bench of this Court in a judgment reported in **2023 (1) PLJR 855 (Sheo Nandan Singh vs. The State of Bihar & Ors.)** in paragraph nos.8 to 10 has held as under:

“8. Dismissal order is based on the conviction and it is not outcome of departmental inquiry. If the conviction order is set aside in a criminal appeal, in that event, the appellant is entitled to regulate the services depending upon the facts of the case. In the present case, inadvertently learned Single Judge has not set aside the order of dismissal dated 31.12.2015. Accordingly, we proceeded to set aside the order of dismissal dated 31.12.2015.

9. Appellant Sheo Nandan Singh is not entitled to monetary benefits from the date of dismissal, *i.e.*, from 31.12.2015 to 31st January, 2017 as he has not discharged the duties of the post. Further, if an employee is convicted and acquitted later the intervening period cannot be regulated as a duty. In other words, tax-payer money cannot be paid to an accused. No doubt he has been acquitted in both the criminal proceedings on 02.08.2017 and 13.02.2019. At the same time, during the intervening period from the date of dismissal, *i.e.*, dated 31.12.2015 till 13.02.2019, he was a convicted person.

10. In the light of these facts and circumstances, order of the learned Single Judge dated 02.05.2019 passed in CWJC No. 3965 of 2016 stands modified. The appellant-Sheo Nandan Singh is entitled to only monetary benefits from 1st February, 2017 with reference to the date that had he been in service he would have attained the age of superannuation and retired from service on 31st January, 2017. The intervening period from 31.12.2015 to 31.01.2017 be counted for the purpose of fixation of pension only. He is entitled to arrears of pension from 1st February, 2017 till date the same shall be calculated and disbursed in favour of him within a period of three months from the date of receipt of this order.”

12. Having considered the decisions of the Hon’ble Supreme Court of India as well as this Hon’ble Court, this Court is of the considered opinion that the petitioner was in custody on account of an act which does not relate to his duties and accordingly the principle of ‘no work no pay’ shall apply here. It was the custody by the enforcement of law which prevented the petitioner from working and the respondent authorities were prevented from taking work from the petitioner on account of him being in custody, therefore the respondent authorities cannot be saddled with a direction for making payment to the petitioner for the fault, which cannot be attributed to the respondent authorities. So far the order *i.e.* order dated 08.10.2004 passed in the case of **Muneshwar Mahto** (supra) relied upon by the learned counsel for the petitioner is concerned, it appears that while allowing the writ petition, the Hon’ble Single Judge did not take into consideration the judgments referred to in this order passed by the Hon’ble Supreme Court of India in similar nature of cases, therefore, the judgment relied upon by the learned counsel for the petitioner is not applicable here in view of the judgments of the Hon’ble Supreme Court of India as well as of this Hon’ble Court, referred to above.

13. In view of the above, this Court does not find any merit in the writ petition and accordingly, the same is dismissed.

14. Pending application(s), if any, shall also stand disposed of.