
(2005) 02 PAT CK 0122
In the Patna High Court
Case No : CWJC No. 10120 of 2004

Shashi Bhushan Pandey

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 15-02-2005

Acts Referred:

Citation : (2005) 4 PLJR 575

Hon'ble Judges : Chandramauli Kr. Prasad, J

Bench : Single Bench

Advocate : Mayanand Jha and Umesh Kr. Verma, for the Appellant; Umesh Prasad, for the Respondent

Final Decision : Allowed

Judgement

Chandramauli Kr. Prasad, J.—This application has been filed for issuance of a writ in the nature of mandamus commanding the respondents to pay to the petitioner the salary for the period 10.8.2000 to 27.5.2001 as also the salary for the period September to November, 1995. Short facts giving rise to the present application are that the petitioner was appointed as Health Educator in the year 1994 by order dated 18.11.1995. His service was terminated. He alongwith other persons whose services were terminated filed C.W.J.C. No. 4834 of 1996 (Satish Kumar & Ors. vs. The State of Bihar & Ors.) before this Court. this Court, by order dated 10th of August, 2000, found the termination of the service of the petitioner to be not in accordance with law and accordingly, quashed the same. However, this Court, denied to the petitioner the back wages but observed that "the petitioners would be entitled to continuity of seniority as if the impugned order was never passed".

2. It is the assertion of the petitioner that the order of this Court was brought to the notice of the respondents on 28.8.2000 and thereafter reminders were also sent on 28.2.2000 and 7.11.2000. However, petitioner was not given any place of posting and left with no option, he filed M.J.C. No. 3699 of 2000 for initiating a proceeding for contempt and only thereafter, by order dated 23.5.2001,

petitioner was posted in the office of the Civil Surgeon, Bhagalpur. It is the stand of the petitioner that in pursuance of the said order, he joined on 28.5.2001. It is his grievance that he has not been paid his salary from the date the order of termination was set aside i.e. 10.8.2000 till 27.5.2001. Further stand of the petitioner is that his salary for the months September to November, 1995, prior to the termination of his service, has also not been paid.

3. Counter affidavit has been filed on behalf of respondent No. 3 in which it has been stated that the petitioner was not waiting for posting from 10.8.2000 to 27.5.2001 and as he had not worked for the aforesaid period, he is not entitled for salary of the said period.

4. Rejoinder to the counter affidavit has been filed in which it has been stated that one Md. Rafi Ahmad alias Md. Rafi Ali Ahmad, whose service was also terminated alongwith the petitioner, preferred C.W.J.C. No. 4834 of 1996, who has been given the salary for the period 10.8.2000 till his posting in pursuance of the order of the Court passed in the writ application.

5. Dr. Mayanand Jha, appearing on behalf of the petitioner, submits that in view of the order of this Court setting aside the termination of service, petitioner may not be entitled for the back wages but certainly shall be entitled for payment of the salary for the subsequent period. He points out that the petitioner brought to the notice of the respondents about the order passed by this Court but they did not give him a place of posting immediately, hence, he cannot be held responsible. He submits that exactly in the same circumstance, this Court, by order dated 18.1.2005 passed in C.W.J.C. No. 7803 of 2004 (Sachchidanand Pandey vs. The State of Bihar & Ors.) directed for payment of the salary. He has drawn my attention to the following passage from the said judgment:-

"xxx Respondents did not give him a place of posting and kept him waiting for posting till the order dated 19.5.2001 whereby he was posted in the office of the Civil Surgeon, West Champaran. De-lay in providing the petitioner the place of posting, cannot be attributed to him and it is well settled that a person cannot be allowed to suffer on account of failure on part of the other side Here, the petitioner is denied the salary for the period he was waiting for posting for which the blame cannot be put on him."

6. Junior Counsel to Govt. Pleader No. VI, however, contends that as the petitioner had not worked for the period. he is not entitled for payment of the salary on the principle of no work no pay.

7. Having considered the rival submission, I find substance in the submission of Dr. Jha and the decision relied on by him supports his contention Undisputedly, the petitioner brought to the notice of the respondents the order passed by this Court. The respondents, instead of taking immediate action, kept the matter pending and issued the order of posting only when petitioner initiated a proceeding for contempt. Petitioner did not work for the period in question at his own sweet-will but he was not allowed to work as he was not given a place of

posting, in such circumstance, I am of the opinion that the principle of no work no pay shall not be attracted. Accordingly, I hold that the petitioner shall be entitled for salary for the period 10.8.2000 to 27.5.2001.

8. As regards the grievance of non payment of salary for the months September to November, 1995. I am of the opinion that petitioner shall be well advised to represent before the authority for the said purpose. In case, he files representation within four weeks, the authority concerned shall dispose of the same within three months from the date of its filing and in case, on consideration of the representation, any amount is found due to the petitioner, same be also paid to him within the period aforesaid. In the result, the application is allowed with the direction aforesaid. No cost.