
(2005) 01 PAT CK 0080
In the Patna High Court
Case No : CWJC No. 10331 of 1999

Shyam Nandan Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 20-01-2005

Acts Referred:

Citation : (2005) 1 PLJR 545

Hon'ble Judges : Shiva Kirti Singh, J

Bench : Single Bench

Advocate : Md. Helal Ahmad, for the Appellant; J.D. Singh, M/s Bipin Bihari Singh and Jitendra Kr. Singh for the Respondent No. 5, for the Respondent

Final Decision : Allowed

Judgement

Shiva Kirti Singh, J.—Heard the parties. At the relevant time in October, 1999 when this writ petition was filed the petitioner was posted as Assistant Teacher in Hit Narayan Kshetriya Ucyhchya Vidyalaya, Ara. His prayer in the writ petition was for a direction to the respondents to release the arrears of salary due to the petitioner since May, 1999 till date and also current salary and consequential benefits like fixation of increments in accordance with law. Due to long pendency of the writ petition at the stage of admission a supplementary affidavit was filed in December, 2004 to bring on record the latest relevant facts. The subsequent developments, inter alia, show that subsequently petitioner has been transferred to another school where he joined on 23.6.03 and since then he is getting regular salary. Hence, in the supplementary affidavit the prayer is for a direction to the respondents for payment of arrears of salary till June, 2003. All the parties were heard in detail through their respective counsel at the stage of admission itself.

2. From the writ petition, supplementary affidavit, counter affidavits filed on behalf of District Education Officer, Bhojpur at Arrah (respondent No. 4) and Shri Bishwanath Singh, Headmaster of the School (Respondent No. 5) it appears that from, 6.2.99 to 7.5.99 State Government Employees including teachers were on

strike and hence their salary was disrupted. Salary for the month of May, June and July, 1999 was released but the same was not paid to the petitioner on account of the Headmaster of the school, respondent No. 5 keeping that money in the account of another employee. Petitioner's case is that the aforesaid action of respondent No. 5, the Headmaster was arbitrary, against law and for extraneous consideration. Petitioner's further case is that when the petitioner complained before the higher authorities such as before the District Education Officer and the Regional Deputy Director of Education, Patna through letters written between 27.8.99 and 8.9.99 (Annexures 9 to 9/4), the Headmaster got further annoyed, particularly because of Annexure-8 dated 21.8.99 whereby the District Education Officer, issued a show cause notice to the Headmaster as to why salary of the petitioner for the months of May, June and July, 1999 had not been paid after the same was withdrawn from the treasury. Due to such annoyance allegedly the Headmaster, respondent No. 5 forcibly prevented the petitioner from signing the attendance register in the school since 30.8.99 and also scratched out petitioner's signature on the attendance register for the period 16.8.99 to 28.8.99. Then the petitioner filed this writ petition on 11.10.99 for arrears of salary. The supplementary affidavit of the petitioner and his rejoinder to counter affidavit of respondent No. 5 discloses that on 17.12.99 a son of respondent No. 5 lodged a criminal case being Ara-Nawadah P.S. Case No. 300 of 1999 in which petitioner was taken into custody on 13.3.2001. He was released on bail on 18.6.2001. The bail order passed by the Sessions Court on 15.6.01 has been annexed as Annexure-A to the counter affidavit of respondent No. 5. That shows that the informant of the criminal case alleged that he was cheated by the petitioner and one another person on the pretext of getting him employment. Petitioner's further case is that on account of said criminal case he was placed under suspension which was revoked on 16.4.02 and thereafter he went to join the school but was not permitted by respondent No. 5 to join. Thereafter petitioner filed a writ petition bearing C.W.J.C. No. 453 of 2002 in this court for a direction that his joining should be accepted by respondent No. 5. That writ petition was disposed of in favour of the petitioner by order dated 27.7.03 (Annexure-12). The order shows that this court observed that the Director, Secondary Education should consider taking suitable disciplinary action against respondent No. 5, including suspension, in accordance with law. The Director issued a show cause dated 30th March, 2003 to respondent No. 5 as contained in annexure-13 but respondent No. 5 preferred L.P.A. No. 243/03 which was disposed of by order dated 28.3.03 (Annexure-8/5). The Division Bench ordered that in case the respondent accepted the joining of the writ petitioner as soon as he appears before him, then there will be no need for further proceeding against him otherwise, the Director, Secondary Education will proceed against him and shall also take steps for his transfer from the said school. After that petitioner's joining was accepted on 2.4.03 and on his transfer to another school he was relieved on 21.6.03 and joined the other school on 23.6.03. According to pleadings, particularly of respondent No. 4, petitioner is getting regular salary since then. It also appears from counter affidavit of

respondent No. 4 that decision has been taken in favour of petitioner to pay him salary for the period after suspension i.e. 16.4.02 to 1.4.03. In respect of period under custody and or suspension i.e. from 13.3.01 to 16.4.02 the stand of respondent No. 4 and State is that the subsistence allowance has been paid and a decision for the remaining part of salary will be taken after final disposal of the criminal case filed against the petitioner by son of respondent No. 5.

3. On behalf of petitioner it has been pleaded in rejoinder to the counter affidavit of respondent No. 5 that the superior officer the Regional Deputy Director, Education had deputed the petitioner to another school namely Baldeva High School, Danapur on 31.12.99 where petitioner joined on 3.1.2000 and worked till July, 2000 but in spite of communications made by the Headmaster, Baldeva High School enclosing petitioner's attendance report vide annexures 16 series, respondent No. 5 did not pay salary to the petitioner. Thereafter the arrangement of deputation was discontinued and when petitioner approached respondent No. 5 after 31.7.01 his joining was again not accepted. According to counter affidavit of respondent No. 4 no payment was made on the basis of annexure-16 because the order of Regional Deputy Director of Education deputing the petitioner to Baldeva High School, Danapur was not received by him or by the Headmaster, Petitioner has annexed a letter of District Education Officer dated 14.3.2000 as annexure 17 whereby respondent No. 5 was directed to pay the salary of the petitioner for the period. May, June and July, 1999 within 3 days. A report of the District Education Officer dated 13.7.02 has been annexed as annexure-11 to show that after revocation of suspension petitioner had approached respondent No. 5 for joining even in presence of the D.E.O. but respondent No. 5 did not accept the joining and on being asked to show cause he replied that petitioner had never approached him for joining. An order dated 28.6.04 passed in a Criminal Misc. Case bearing No. 35794/03 has been annexed as annexure-18 to show that this court, prima facie, found the criminal case against the petitioner vide Arra-Nawadah P.S. Case No. 300/99 fit for quashing and hence while issuing notice further proceedings have been stayed.

4. On behalf of petitioner it has been submitted that the facts and circumstances as well as various documents would show that petitioner's salary for May, June and July, 1999 was illegally embezzled by respondent No. 5 for a long period of time and it was only on 12.1.05 that a cheque dated 3.8.04 for the amount in question was handed over in court by learned counsel for respondent No. 5 to learned counsel for the petitioner and this fact has been recorded in the order sheet of this court dated 12.1.05. It has further been submitted that willingness of the petitioner to work and obstruction created by respondent No. 5 is apparent from the fact that petitioner intimated the high handed acts of respondent No. 5 to the higher authorities vide letters contained in annexures 9 series in the month of August and September, 1999 itself and filed this writ petition on 11.10.99. The report of the D.E.O. dated 13.7.02 contained in annexure-11 was also highlighted to show that the concerned official found that respondent No. 5 was acting arbitrarily and had falsely taken the stand in his reply to show cause

that petitioner had never reported for joining. It has further been submitted on behalf of petitioner that only with a view to create a defence and to put pressure upon the petitioner, respondent No. 5 got a criminal case lodged on 17.12.99 through his son for an alleged occurrence of September, 1998 to December, 1998 as would appear from annexure A/5, the bail order. It was further submitted that this court has prima facie found the criminal case fit for quashing and hence further proceedings have been stayed vide order dated 28.6.04 (annexure-18). According to learned counsel for the petitioner could not get salary since August, 1999 till June, 2003 only because of wrong, malicious and illegal acts of respondent No. 5 including the act of getting a criminal case filed by his son leading to detention of the petitioner in custody since 13.3.01 to 18.6.01 and on that account suspension till 15.4.02.

5. Learned counsel for respondent No. 5 has submitted on the basis of counter affidavit of respondent No. 5 that respondent No. 5 was always willing to allow the petitioner to work in the school but petitioner himself never reported for joining his duties. In respect of salary for the months of May, June and July, 1999 a stand has been taken that petitioner had taken a loan of Rs. 30,000/- from respondent No. 5 and therefore salary of the petitioner was diverted and not paid. However, when the arguments began in this case a cheque for the dues of salary for the aforesaid three months was produced by learned counsel for respondent No. 5 and it was on the permission of this court that the same was accepted by learned counsel for the petitioner and this fact was recorded in the order dated 12.1.05.

6. Learned counsel for the State has submitted that in the facts of the case the department has taken a decision to pay the salary of the petitioner for the period 16.4.02 to 1.4.03 and actual payment will be made soon after the continuing strike by non-gazetted employees is called off. According to him a decision has also been taken to pay the salary for the period of custody and suspension i.e. 5.7.01 to 16.4.02 on the basis of outcome of the criminal case pending against the petitioner which led to his arrest. On the basis of annexure R/4/A dated 15.12.04 it was submitted that a show cause notice has been issued to respondent No. 5 for irregularities committed by him in respect of petitioner's salary for the months of May, June and July, 1999. The show cause notice indicates that after a considerable delay the District Education Officer, Bhojpur, Ara has now proceeded to make enquiry into the allegations made by the petitioner against respondent No. 5 which led to dislocation in payment of salary to the petitioner.

7. On a careful consideration of all the materials on record this court has no difficulty in holding that respondent No. 5 acted illegally in diverting petitioner's salary for the months of May, June and July, 1999. Although he has paid the said amount to petitioner's counsel at the time of conclusion of hearing of this case on 12.1.05 through a cheque dated 3.8.04, this does not fully absolve him of this lapse. This court further finds that respondent No. 5 has taken a defence which is

not supported by any reliable material and there is no contemporaneous report or order to show that petitioner was avoiding to work in the school. On the other hand, there are sufficient materials including circumstances and letters as well as reports to show that respondent No. 5 was harassing the petitioner and illegally preventing him from working in the school and getting his due salary. The report of the District Education Officer dated 13.7.02 contained in annexure-11 supports the submission advanced on behalf of petitioner that respondent No. 5 was found to be resorting to falsehood.

8. The then District Education Officer, Bhojpur at Ara avoided to perform his official duty by holding a proper enquiry in the matter after receipt of letters from the petitioner contained in annexures-9 series. This apparently emboldened respondent No. 5 and led to a protracted dispute. Petitioner got substantial relief only when the writ petition filed by the petitioner was disposed of against respondent No. 5 on 27.2.03 and when L.P.A. was also disposed of on 28.3.2003. The show cause notice issued by the District Education Officer, Bhojpur at Ara dated 15.12.04 contained in annexure R/4/A is a step in the right direction but is quite belated. The issues so far as they relate to claim of the petitioner have to be decided by this court.

9. In view of facts and circumstances of the case and the discussions made earlier this court finds the petitioner entitled for dues of salary since August, 1999 to 12.3.2001 when he was taken into custody. For the actual period of custody i.e. 13.3.2001 to 18.6.01 petitioner's salary will be paid to him as per availability of different kinds of leave to him which should be adjusted against that period of absence. For the period after 18.6.01 till revocation of suspension i.e. 16.4.02 petitioner should be paid arrears of salary treating him to be entitled for full salary as the Criminal case does not relate to his official duties and there is no departmental proceeding on that account. The arrears of salary for the period after 16.4.02 have been undertaken to be paid by the State and its officials. That should be paid within two months or as soon as the strike is called off. No order is being passed for arrears of salary for the period May, June and July, 1999 because respondent No. 5 had withdrawn the due amount for that period long back and now he has handed over a cheque for that amount to learned counsel for the petitioner.

10. It goes without saying that dues of petitioner's salary shall be calculated in accordance with law granting him all the benefits of annual increments etc. as per law and the same will be paid to him without any delay and in any case within a period of two months. This court deprecates the conduct of respondent No. 5 as Headmaster of a school. He is directed to pay a cost of Rs. 2,000/- to the petitioner within one month and submit a receipt to the concerned District Education Officer failing which this amount would be recovered from his salary by the District Education Officer and paid to the petitioner within a period of two months. The show cause notice issued against respondent No. 5 is on proper lines and such proceeding should be conducted expeditiously and in accordance

with law. The writ petition is allowed to the aforesaid extent.