
(2020) 05 JH CK 0075
In the Jharkhand High Court
Case No : Writ Petition(S) No.4779 Of 2017

Uma Shankar Malviya

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 14-05-2020

Acts Referred:

Bihar Service Code, 1952 — Rule 96

Citation : (2020) 05 JH CK 0075

Hon'ble Judges : Dr. S. N. Pathak, J

Bench : Single Bench

Advocate : Mahesh Tewari, Abhishek Kumar Dubey, Dr. A.K. Singh, Kr. Poonam Verma, Navin Kumar Singh

Final Decision : Allowed

Judgement

1. The petitioner has approached this Court with a prayer for a direction upon the respondents particularly respondent Nos. 6 to 7 to send to this Court all the records appertaining to the issuance of the letter No. 22 dated 13.01.2017 (Annexure-18) issued by the respondent No.7, Executive Engineer, Road Construction Department, Road Division, Lohardaga, wherein the respondents have not paid the subsistence allowance to the petitioner for the period from 03.03.2014 to 09.09.2016 on the ground that during his period of suspension, the petitioner did not report at the Head Quarters and the matter of payment of subsistence allowance was pending before this Hon'ble Court and also the salary for which the petitioner is entitled to receive for the period from 01.01.2014 to 03.03.2014 in view of the fact that vide order dated 08.01.2014, the suspension order of the petitioner was revoked and he was not under suspension for that period i.e. from 01.01.2014 till 03.03.2014 and as such, he is entitled for the salary for that period. Further, prayer has been made for a direction upon the respondent No.6 & 7 to make the payment of the dues for which the petitioner is entitled in lieu of being suspension allowance on and from 03.03.2014 till 09.09.2016 and further the salary for the period from 01.01.2014 till 03.03.2014

i.e. the period under which he was not under suspension and was eligible for the salary which has not been paid to the petitioner. Further, prayer has been made for a direction upon the respondents to make the payment of the same in view of the fact that petitioner is entitled for the subsistence allowances along with interest @ 18% per annum for causing delay in making payment of the same.

2. The case of the petitioner lies in a narrow compass. The petitioner is an employee of the Road Construction Department. He was taken into custody on 13.03.2012 by the CBI and he remained in custody till 21.05.2012. Consequent thereupon he was suspended vide office order No. 478 dated 20.04.2012 issued from the office of the Superintending Engineer, Road Circle, Ranchi. Thereafter, he reported at RIMS, Ranchi as in the aforesaid office order, the Head Quarter of the petitioner was not fixed. It is further the case of the petitioner that he was released from custody pursuant to order passed by this Hon'ble Court in B.A. No. 2972 of 2012. Thereafter, vide office order contained in Memo No.28 dated 05.01.2013, the head quarter of the petitioner was fixed at Circle Office, Road Construction Department, Road Circle, Ranchi, where he reported on 22.04.2013 but the said letter dated 05.01.2013 was never served upon the petitioner, and he came to know about the said letter through another letter issued vide Memo No. 486 dated 20.04.2013, which was served upon him on 22.04.2013. On 08.01.2014, the suspension of the petitioner was revoked vide Office Order No. 41 issued from the office of the Superintending Engineer, Road Circle, Ranchi and in compliance thereof he gave his joining at RIMS, Ranchi. Subsequently, the petitioner was once again put under suspension vide Office Order No. 325 dated 03.03.2014 and his Head Quarter was fixed at the office of the Road Division, Ranchi (Rural). Thereafter, he reported on 04.03.2014 at Road Division, Ranchi (Rural) and made representation before the Superintending Engineer to revoke suspension order. However, as no action was taken, the petitioner had approached this Court by filing a writ petition being W.P.(S) No.1679 of 2014, which was disposed of vide order dated 04.05.2017 with a direction upon the respondents to conclude the departmental proceeding, within a period of one year and if the same is not concluded, the order of suspension shall automatically stand vacated. In the meantime, the petitioner was once again taken into custody in connection with E.D. Case on 06.04.2015 and he remained in custody till 29.07.2016. It is further the case of the petitioner that upon his release from custody, he approached the office of the Superintending Engineer, Road Circle, Ranchi where he was informed that in light of reorganization of the Road Division, Ranchi (Rural) into Road Division, Lohardaga, his Headquarter is now changed and it was directed to join at Road Division, Lohardaga vide letter No. 968 dated 02.09.2016. Accordingly, he joined at Road Division, Lohardaga on 10.09.2016.

Resultantly, he was allowed to draw subsistence allowance from 10.09.2016. As the petitioner was denied subsistence allowance from 03.03.2014 to 09.09.2016 on the ground that he did not join the designated Headquarter and also the salary for the period from 01.01.2014 to 03.03.2014, he has been constrained to

knock the door of this Court.

3. Mr. Mahesh Tewari, learned counsel for the petitioner strenuously urges that the petitioner is entitled for subsistence allowance as claimed in prayer portion as well as salary of the period for which the suspension order was revoked. The respondents are harassing the petitioner for one or other reasons. He further submits that it is the right of the petitioner to get subsistence allowance, which cannot be denied by the respondents as it is a means of livelihood and not a bounty. Learned counsel further argues that the respondents have not considered the orders and directions of this Hon'ble Court, passed earlier and as such, they be saddled with cost as the in the earlier writ petition in I.A. No.6112 of 2014, an specific order was passed to release the subsistence allowances, if there are no other legal impediments.

4. On the other hand, counter-affidavit has been filed.

5. Mr. Navin Kumar Singh, learned counsel for the respondent-State and Dr. A.K. Singh, learned counsel for the respondent-RIMS jointly argue that already subsistence allowances have been paid to the petitioner for the period for which he is entitled to receive the same as per rules. However, since the petitioner did not join his designated Headquarter, he is not entitled for subsistence allowance for the period from 03.03.2014 to 09.09.2016. Learned counsel further argue that this writ petition is liable to be dismissed in limine as petitioner is unnecessarily filing writ petition though no cause of action has arisen as pursuant to earlier orders of this Court, subsistence allowance has already been paid to the petitioner as per his entitlement. Learned counsel further argue that the petitioner was taken into custody on 06.04.2015 i.e almost after a period of one year and one month of passing of suspension order dated 03.03.2014, but the petitioner did not join his designated headquarter during suspension period. This shows the willful negligence on the part of the petitioner and against the conduct of a Government Servant and rightly the subsistence allowance has been denied for the period from 03.03.2014 to 09.09.2016.

6. Be that as it may, having gone through the rival submissions of the parties and upon carefully examining the documents brought on record, it appears that the respondents have admitted in Counter-affidavit dated 09.02.2018 that from 01.01.2014 to 07.01.2014 is suspension period and from 08.01.2014 to 03.03.2014 is regular salary matter and payment of this period is still pending as absentee and service details of petitioner has still not been received from RIMS where petitioner joined after revocation of suspension and from 03.03.2014 to 05.04.2015, subsistence allowance was not paid as the petitioner did not join at his designated headquarter and from 06.06.2015 to 29.07.2016, the petitioner was under custody for which subsistence allowance has already been paid and lastly, from 30.07.2016 to 09.09.2016 after released from police custody, the petitioner did not join the designated headquarter and as such, no subsistence allowance has been paid and after 10.09.2016 till date regular subsistence allowance is being paid to the petitioner. The main grievances of the petitioner is

regarding payment of salary from 01.01.2014 to 03.03.2014 and subsistence allowance for the period from 03.03.2014 to 05.04.2015 and from 30.07.2016 to 09.09.2016. Before dealing deep into factual aspect and legal aspect, it would be appropriate to examine the relevant portion of Rule 96 of the Bihar Service Code, which reads as follows:-

"96 (1) A Government servant under suspension shall be entitled to the following payments, namely:

(a) Subsistence grant at amount equal to the leave-salary which the Government servant would have drawn, if he had been on leave, on half average pay, or on half pay and in addition cost of leaving allowance based on such leave-salary;.....

(b) (Any other compensatory allowance to which a Government servant may be entitled from time to time on the basis of pay which he received) on the date of suspension.

(2) No payment under sub-rule (1) shall be made unless the Government servant furnishes a certificate that he is not engaged in any other employment, business, profession or vocation.

(3) The subsistence grant shall be subject to a minimum limit of Rs.10 per month.

From perusal of the aforesaid Rules, it appears that petitioner had to furnish a certificate to the effect that he was not in gainful employment during the period of suspension and in absence of the same, subsistence allowance cannot be paid. The main contention of the respondents that the petitioner did not join the designated place is also disputed as nothing has been brought on record to show that petitioner did not join the designated place rather it is specific case of the petitioner that he had joined the designated place as directed. It is also nowhere argued, neither any documents have been brought on record to show that petitioner was asked to furnish a certificate regarding his engagement and he failed to do so. Utmost the respondents may ask for a certificate that the petitioner was not gainfully employed elsewhere during the aforesaid period, marking attendance is not required. The Hon'ble Apex Court in case of Anwarun Nisha Khatoon Vs. State of Bihar & Ors., reported in (2002) 6 SCC 703 has held that "in our view, this authority, far from assisting the Respondents, is against them. This authority shows that there is no requirement to mark attendance. To us also no rule could be shown which required a suspended employee to mark attendance. The Respondents can at the most ask for a certificate that the Appellant's husband was not engaged in any other employment, business, profession or vocation. The Appellant's husband having died, he could not have furnished such a certificate. At no stage have the Respondents asked the Appellant to give such a certificate. Thus the grant of subsistence allowance cannot be denied on the ground that such a certificate is not given." This view was supported from other judgment rendered in the case of Jagdamba Prasad Shukla v. State of U.P., reported in (2000) 7 SCC 90.

7. Service Rules also usually provide for payment of salary at a reduced rate during the period of suspension. (See: Fundamental Rule 53). This constitutes the "Subsistence Allowance". If there is no provision in the Rules applicable to a particular class of service for payment of salary at a reduced rate, the employer would be liable to pay full salary even during the period of suspension.

8. Further, the Hon'ble Apex Court in case of the O.P. Gupta Vs. Union of India & Ors., reported in (1987) 4 SCC 328 made the following observations with regard to subsistence allowance:-

"An order of suspension of a government servant does not put an end to his service under the government. He continues to be a member of the service in spite of the order of suspension. The real effect of suspension as explained by this Court in Khem Chand v. Union of India is that he continues to be a member of the government service but is not permitted to work and further during the period of suspension he is paid only some allowance -- generally called subsistence allowance -- which is normally less than the salary instead of the pay and allowances he would have been entitled to if he had not been suspended. There is no doubt that an order of suspension, unless the departmental inquiry is concluded within a reasonable time, affects a government servant injuriously. The very expression 'subsistence allowance' has an undeniable penal significance. The dictionary meaning of the word 'Subsist' as given in Shorter Oxford English Dictionary, Vol.II at p. 2171 is "to remain alive as on food; to continue to exist". "Subsistence" means -- means of supporting life, especially a minimum livelihood."

(Emphasis supplied) If, therefore, even that amount is not paid, then the very object of paying the reduced salary to the employee during the period of suspension would be frustrated. The act of non-payment of Subsistence Allowance can be likened to slow-poisoning as the employee, if not permitted to sustain himself on account of non-payment of Subsistence Allowance, would gradually starve himself to death.

9. In view of the above foregoing discussion, rules, guidelines and judicial pronouncement and as admittedly, the petitioner has not been paid the salary as well as subsistence allowance for the aforesaid period, the respondents are directed to pay the salary from 01.01.2014 to 03.03.2014 and subsistence allowance for the period from 03.03.2014 to 09.09.2016 after deducting the amount already paid, within a period of twelve week from the date of receipt of a copy of this order. However, the petitioner shall furnish a certificate specially taking a plea on affidavit that he has not been gainfully employed during the aforesaid period of suspension.

10. With the aforesaid observations and direction, instant writ petition stands allowed.