

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.295 of 2017

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Lalita Singh son of Late Raj Govind Singh, C/o- Vill+P.O. Dalsagar, P.S. Buxar
(Industrial Area), District Buxar, Bihar

.... Petitioner/s

Versus

1. The State of Bihar
2. Shri Raman Kumar, present District Officer, Buxar, Bihar
3. Shri Sandip Pondrik, present Collector, Buxar, District Buxar, Bihar
4. Shri Ajay Yadav, present Collector, Buxar, District Buxar, Bihar
5. Shri Anand Kishore, present Commissioner, Patna Sub Division, Patna, Bihar
6. Er.L.S.N. Bala, Present Commissioner, Patna Sub Division, Patna, Bihar
7. Shri Pramod Kumar, Present Sub Divisional Officer, Dumraon, District Buxar.
8. Shri Rajnikant present Sub divisional Officer, Dumraon, District Buxar, Bihar
9. Shri Jagdish Prasad Present Sub Divisional Officer, Dumraon, District Buxar.
10. Shri Rajendra Prasad, Present Sub Divisional Officer, Dumraon, District Buxar.
11. Shri B.B.Tiwari, Present Sub Divisional Officer, Dumraon, District Buxar.
12. Shri Ajay Kumar Singh, Present Block Development Officer, Block Rajpur District Buxar.
13. Shri Amit Prakash presently Block Development Officer, Block Rajpur District Buxar.
14. Shri Kanhaiya Lal Harijan, presently Nazir District Buxar, Bihar
15. Shri Triveni Giri, Presently Assistant Nazir , District Buxar, Bihar
16. Shri Smriti presently Block Development Officer, Kesath District Buxar, Bihar.
17. Shri Krishna Murari Prasad Gupta, presently Block Development Officer, Kesath District Buxar Bihar
18. Shri Sunil Kumar presently Nazarat Deputy Collector, District Buxar Bihar
19. Shri Nazir Hussain presently Nazarat Deputy Collector, District Buxar, Bihar
20. Shri Rajesh Kumar Singh, presently Nazarat Deputy Collector, District Buxar, Bihar
21. District Provident Fund Officer, Bhojpur, Ara, Bihar

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Lalita Singh, (in person)
Mr. Siddharth Prasad, Amicus Curie

For the Respondent/s : Mr. Anil Kr. Singh -GP26
Mr. Nawal Kishore Singh, A.C. to G.P.26

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 31-07-2017



The petitioner though has filed his writ petition in person but it is considering his physical condition that this Court requested Mr. Siddharth Prasad learned advocate to appear on behalf of the petitioner as a legal aid to the needy. It is on request of the Court that Mr. Prasad on going through the pleadings on record has submitted that the respondents have completely misread the judgment and order of this Court passed in C.W.J.C. No. 16197 of 2001, a copy of which is placed at Annexure-1 to the writ petition for calculating the amount of subsistence allowance admissible to the petitioner. He further submits that even though the petitioner has been dismissed from service for the third time vide the order placed on record at Annexure-E to the counter affidavit but yet is entitled to payment of provident of fund amount which surprisingly has not been paid.

According to Mr. Prasad, the writ petitioner was dismissed from service vide order passed on 29.10.2001. The dismissal was questioned before this Court in C.W.J.C.No.16197 of 2001 and a bench of this Court taking note of the procedural default committed by the respondents quashed the dismissal order and remitted the matter for fresh disposal of the disciplinary proceeding in accordance with law and held that since the petitioner was continuing under suspension prior to his dismissal by the impugned order dated 29.10.2001 which has been quashed today, the petitioner shall be



deemed to be placed under suspension and would continue until passing of a final order. He submits that the Bench while allowing subsistence allowance to the petitioner from the date of the judgment i.e. 20.7.2009 has held that the rest of the payment would depend on the outcome of the departmental proceeding.

It is submitted that the matter on being remitted was considered by the District Magistrate who vide order annexed at Annexure-D dated 24.09.2010 reaffirmed the dismissal order and held that the petitioner would be entitled to subsistence allowance only from the date of the order of the High Court passed on 27.7.2009 until his dismissal when in fact in terms of the direction of the High Court, the District Magistrate was required to consider his entitlement from the date of the dismissal of the petitioner vide order passed on 29.10.2001 which was set aside by the High court, until his dismissal by the fresh order passed on 24.9.2010 at Annexure-D. He submits that this order was questioned by the petitioner before the Commissioner who vide order passed on 8.1.2013/1.4.2013 has allowed the appeal and remitted the matter to the District Magistrate for fresh disposal. It is submitted that even the Commissioner while remitting the matter has held that the petitioner would be treated to be under suspension and entitled to the subsistence allowance for the period under suspension. It is submitted that on remand again the District Magistrate has for the



third time confirmed the dismissal of the petitioner vide order dated 17.7.2014 present at Annexure-E of the counter affidavit but has committed an illegality in allowing the subsistence allowance only from 24.9.2010 until disposal when in fact in view of the quashing of the dismissal order dated 29.10.2001 by the High Court vide order dated 20.7.2009 passed in C.W.J.C.No.16197 of 2001 the petitioner would be entitled to subsistence allowance for the entire period i.e. from 29.10.2001 when the petitioner was put under suspension until his dismissal on 17.7.2014. According to learned counsel the calculation by the respondents vide Annexure-I at page 54 is contrary to the High Court order as well as the provisions underlying the Bihar Government Servant Classification Control and Appeal Rules, 2005 which vests a right in a suspended employee to draw a subsistence allowance for the period of under suspension. It is further submitted that although some kind of statement is made as regarding provident fund amount but Mr. Nawal Kishore Singh A.C. to G.P.26 informs that some steps have been taken for payment of provident fund in which order of sanction has been passed.

I have heard learned counsel for the parties and I have perused the records. It is rightly contended by Mr. Prasad that the respondents have completely misread the judgment of the High Court. Even otherwise the provisions underlying Rule 10 of the 'disciplinary rules'



entitles a delinquent Government servant to subsistence allowance for the period under suspension and which right cannot be curtailed by the respondents by the impugned order. It is not in dispute that the petitioner was put under suspension on 7.6.2000 and was dismissed from service initially on 29.10.2001. This dismissal order dated 29.10.2001 was quashed by this Court vide order passed on the writ petition dated 20.7.2009 allowing subsistence allowance from the said date and stipulating that the other dues would be governed by the final order which would obviously include the payment of the subsistence allowance. This order of the High court has been misconstrued by the District Magistrate, Buxar in allowing the subsistence allowance to the petitioner with effect from 25.9.2010 as confirmed from the chart enclosed at Annexure-9 until the date of dismissal i.e. 17.7.2014. In the process the District Magistrate, Buxar has completely ignored the statutory provisions of Rule 10 which allows the delinquent to the subsistence allowance for the entire period of suspension and which in the present case would begin from 7.6.2000 until his dismissal on 17.7.2014.

In the circumstances discussed, the writ petition is allowed with the direction to the District Magistrate, Buxar to recalculate the subsistence allowance payable to the petitioner with effect from 7.6.2000 until his dismissal on 17.7.2014 in accordance with the



stipulations present under Rule 10 of the Bihar Government (Classification, Control and Appeal) Rules and pay the same to the petitioner within 8 weeks from today after adjusting the amount of subsistence allowance already paid to the petitioner.

In so far as the payment of provident fund is concerned, the Provident Fund Officer the respondent No.21 shall take all expeditious steps to ensure that the provident fund amount together with the interest admissible thereon is transferred to the petitioners account within 8 weeks from today.

Since this order has been passed in the presence of Mr. Nawal Kishore Singh learned A. C. to G.P. 26 and since the petitioner is appearing in person, this order being dictated in the open Court, will be a notice to the respondent for ensuring compliance.

This Court would express its appreciation to the services rendered by Mr. Siddharth Prasad to a needy litigant who has been forced to approach this Court for the reasons entirely attributable to the respondents.

Let a copy of this order be communicated to the petitioner by post at the cost of the State.

Bibhash/-

(Jyoti Saran, J)

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.08.2017
Transmission Date	NA

