

**IN THE HIGH COURT OF JHARKHAND AT RANCHI****W.P.(S) No. 4722 of 2014**

Samuel Soren

..... Petitioner

**Versus**

- 1.The State of Jharkhand
- 2.The Secretary-cum-Commissioner, Road Construction Department, Government of Jharkhand, Ranchi.
- 3.The Superintending Engineer, Road Construction Department, Road Circle officiating from Dumka, P.O. & P.S. & District-Dumka.
- 4.The Executive Engineer, Road Construction Department, Road Division, Sahebganj officiating from Sahebganj, P.O. & P.S. & District-Sahebganj.
- 5.The Executive Engineer, Road Construction Department, Road Division, Godda, officiating from Godda, P.O. & P.S. & District-Godda.

..... Respondents

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**CORAM: HON'BLE MR. JUSTICE DEEPAK ROSHAN**-----  
For the Petitioner : Mrs.Ritu Kumar, Advocate  
For the Respondents : Mr. Abhijit Kr. A.C. to S.C.-I  
-----**C.A.V. On 17.06.2020                      Delivered on 25/6/2020.**

Heard learned counsel for the parties through V.C.

**2.** The instant application has been preferred by the petitioner for quashing the order contained in Memo No. 7165(S) dated 12.11.2007 passed by the Secretary, Road Construction Department, Jharkhand, Ranchi whereby the claim of the petitioner for payment of his salary from October 1990 to September, 2001 has been rejected and also for a direction upon the respondents to immediately and forthwith release the arrears of salary for the aforesaid period with interest.

**3.** This case has a chequered history. The petitioner was appointed on the post of Junior Engineer on 07.10.1983 in

the Public Works Department (Road), Government of Bihar, Patna in pursuance to which he gave his joining at Road Division, Godda. The further case of the petitioner is that one Sri Mahadev Prasad Choubey, Junior Engineer was transferred by office order contained in Memo No. 33 dated 17.06.1987 and the petitioner was transferred by office order contained in Memo No. 94 dated 22.12.1987 however, at the instance of the Executive Engineer, Road Construction Department, Road Division, Godda, the aforesaid office orders were cancelled by office order No. 38 contained in Memo No. 485 dated 12.03.1988 and the petitioner got his posting at Barahat Division under Road Division, Sahebganj (Annexure-1 to the writ application), where the petitioner immediately gave his joining and he was being paid his salary from Sahebganj Division without any hindrance. Further case of the petitioner is that suddenly his salary from October, 1990 was stopped without assigning any reason and without considering the fact that he was discharging his duties regularly. Forced with this situation the petitioner filed a writ application before this Court which was registered as W.P.(S) No. 830 of 2003 for a direction to the respondents to pay him the arrears of salary from October, 1990 till the date of filing of the application. A counter affidavit was filed on behalf of the respondent in the said case stating that the Government of Bihar vide letter No. 2842 (S) dated 03.05.1989 transferred the portion of Godda-Pirpaiti Road of stretches Mile 6 to Mile

16 from Road Division, Sahebgunj to Road Division, Godda. This portion constitutes the entire section charge of Junior Engineer and the Executive Engineer; Sahebganj transferred the road along with the section to Godda Division and also relieved Sri Samuel Soren, Junior Engineer to join at Godda with specific direction to the petitioner because the entire section had been transferred to the Godda Division. But the petitioner did not join at Godda nor made any representation either to the Executive Engineer, Sahebganj or anywhere in the department including the Engineer-in-Chief. A government servant is entitled to pay only against the specific duties of work. Since the petitioner did not join at Godda and he was already relieved from Sahebganj, he is not entitled for the payment. It was only on 07.02.2001 that the petitioner made a representation to the Executive Engineer, Road Division, Sahebganj for payment. If the petitioner joined at Godda and start working he will get the salary since the petitioner's cadre controlling officer is Engineer-in-Chief. The Government is directing the Engineer-in-Chief to take appropriate decision for payment of the petitioner for the period of his absence. During the pendency of the writ application, a meeting was held under the Chairmanship of Engineer - in - Chief - cum -Additional Secretary -cum- Special Secretary, Road Construction Department on 16.09.2005 and in pursuance to the decision taken therein the joining of the petitioner was accepted. The aforesaid writ

application was disposed of by order dated 19.06.2007 by giving liberty to the petitioner to make a representation before the Secretary, Road Construction Department, Jharkhand Ranchi within four weeks. It was also directed that the Secretary, Road Construction Department, Jharkhand, Ranchi will call for report/relevant documents from the concerned authorities and pass a speaking order in accordance with law. It was also directed that if any amount is found legally payable, the same must be paid and if any claim/part of it is found not payable the reasons must be communicated to the petitioner within two months from the date of receipt of the copy of the representation. Since, the order dated 19.06.2007 was not complied, the petitioner filed a Cont. Case (Civil) No. 772 of 2007. A show cause was filed in Cont. Case (Civil) No. 772 of 2007 annexing an order contained in Memo No. 7165 (S) dated 12.11.2007 by which the claim of the petitioner for payment of salary from October 1990 to September, 2001 was rejected treating the petitioner to be on unauthorized absence during this period. The said order has been challenged in the instant writ application.

**4.** Learned counsel for the petitioner submits that the impugned order dated 12.11.2007 (Annexure-8 to the writ application) has been passed on surmises and conjectures as no transfer order was ever issued so far as the petitioner is concerned. She further contended that if the contention of the respondent is accepted that petitioner did not give his joining

at the transferred place at Godda in the month of August 1990 then it is very surprising as to why the respondents did not initiate any proceeding against the petitioner for unauthorized absence. She further contended that neither any transfer order was issued to the petitioner nor any proceeding for unauthorized leave was initiated and the petitioner continued to discharge his duties at Sahibganj. She further contended that if the Government of Bihar vide letter dated 03.05.1989 transferred the portion of Godda-Pirpaiti Road of stretches Miles 6 to Mile 16 from Road Division, Sahebganj to Road Division, Godda and the petitioner was also relieved to join at Godda because the entire section had been transferred to Godda then it is very surprising as to why the respondents did not bring the said orders including relieving order of the before this court. She further contended that the respondent no.2 while issuing the order dated 12.11.2007 (Annexure-8) ought to have communicated the said decision taken in the meeting held on 16.09.2005.

**5.** Learned counsel for the respondents reiterated the stand taken in the counter-affidavit and submits that in pursuance of the office Order No. 38 contained in Memo No. 485 dated 12.03.1988; petitioner was transferred from Road Division, Godda to Barahait Section under Road Division, Sahibganj. He further submits that Barahait Section of road under Road Division, Sahibganj along with J.E. and all relevant records has been handed over to Road Division,

Godda vide Order No. 2842 (s) dated 03.05.1989 of Road Construction Department, Bihar, Patna but the petitioner did not join at Godda and since he did not perform his duty so he is not entitled for salary and there is no infirmity in the impugned order and the instant writ application deserves to be dismissed. However on specific query by this Court about the transfer order issued to the petitioner he referred to Annexure-B to the counter-affidavit and submitted that the petitioner did not obey the order given by the department to join at Godda. At this stage it is pertinent to mention here that though by Annexure-B it transpires that Barahat Section which was initially under the Road Division, Sahibganj was transferred to Road Division Godda, but the copy of the said letter was given to the Superintending Engineer. He concluded his argument by submitting that since the petitioner did not work for the whole period he is not entitled for any salary for the aforesaid period.

**6.** Having heard learned counsel for the parties and looking to the facts and circumstances of this case, admittedly, the petitioner was not issued any show cause notice in respect of stoppage of his salary from October, 1990 nor has any departmental proceeding ever been initiated against him for the alleged unauthorized absence from October, 1990 till October, 2001. It also appears from the record that in pursuance to the Office order dated 12.03.1988 (Annexure-1 of the writ application) the petitioner immediately

gave his joining at Barahat Division under the Road Division, Sahibganj which was accepted and he was made In-charge of Barahat Section and he started discharging his duties regularly. At the cost of repetition, no separate transfer order and/or relieving order has been brought on record by the respondents showing that the petitioner was relieved from Godda. However, Annexure-D to the counter-affidavit cannot be ignored while passing the order in this Case which indicates that the Executive Engineer, Road Division Sahibganj, vide his letter No. 307 dated 11.07.2002 submitted the information to the Deputy Secretary, Road Construction Department and Superintending Engineer, Road Construction Department, Dumka to the effect that the petitioner was not working since 24.08.1990 so it would be incorrect to jump to the conclusion as to whether the petitioner was working at Sahibganj or he did not work at either of the place. Admittedly, petitioner moved before this Court only in 2003 and from record it appears that for the first time petitioner has represented the authorities in 2001. As such, it is questionable as to what precluded the petitioner to represent the department not before 2001 and move before this Court in 2003. However, looking to the impugned order it appears that the same has been passed on the basis of records available with the respondents and no personal hearing was given to the petitioner so as to substantiate his claim by filing documents. In this view of the matter interest

of justice would be sufficed if the impugned order as contained in memo no. 7165(S) dated 12.11.2007 be set aside and the case be remitted back to the Secretary, Road Construction Department, Jharkhand Ranchi with a direction to pass a fresh order within a period of 16 weeks from the date of receipt of copy of this order after giving proper opportunity to the petitioner following principles of natural justice and if found necessary, personal hearing should also be given to the petitioner to substantiate his claim by putting forth the documents, if any.

**7.** Ordered accordingly.

**(Deepak Roshan, J.)**

Amardeep/