

BIHAR HUMAN RIGHTS COMMISSION
9, Bailey Road

File No **BHRC/COMP.** 1720/09

Case of **SMT. ASHA SHRIVASTAV**

The proceeding was initiated on the complaint of Smt. Asha Shrivastava, Headmistress (under suspension) Sahu Jain Balika Uchch Vidyalaya, Mirganj, district Gopalganj. On notice of the school submitted reply and the matter was heard on different dates.

A preliminary objection was taken on behalf of the school management to the effect that the applicant has been dismissed from service on 30.1.2010 against which she has filed writ petition (CWJC No. 4953/2010) in the Patna High Court and the matter is sub judice. The Commission clarified that the present proceeding is limited to non-payment of subsistence allowance which involves one's livelihood and is therefore a human right issue. It goes without saying that notwithstanding the applicant's dismissal from service, she is entitled to subsistence allowance for the period prior to dismissal.

The dispute about non-payment may be considered separately for the periods (a) February 2008 to September 2008, (b) October 2008 to June 2009 and (c) July 2009 to 29.1.2010. As regards the period between February – September 2008 subsistence allowance was admittedly paid. However, according to the applicant, the amount was calculated excluding Sundays and holidays and thus full payment was not made. Shri M.N. Parbat, Advocate after taking instructions from the school management stated that in calculating the amount Sundays and holidays were included except when the applicant was absent on both the preceding and the following day of the relevant Sunday or holiday(s), as the case may be. He produced photocopy of the relevant record to bring home the point.

As regards the period between October 2009 and June 2009, the stand of the school management is that the bill/ absentee statement was duly sent to the District Education Officer on 27.9.2009 and it was the responsibility of the DEO to make payment. The case of the applicant is that the bill was indeed sent but when mistakes were pointed out by the office it was withdrawn. This is of course denied by the school management. Both parties relied on correspondence by the District Inspectress of Schools or office of the DEO to buttress their plea. In course of hearing Shri Parbat fairly stated that without going into the controversy, the management can send duplicate bill/ statement to the DEO, and a direction may be issued to him to make payment on the basis of the duplicate bill without insisting on the original. In the facts and circumstances, the Commission is of the view that the duplicate of the bill sent earlier with letter no. 36 dated 27.9.2009

may be treated as valid and payment be made on that basis without insisting on production of the original bill.

As regards the period from June 2009 upto the date of dismissal, the dispute centred around the question as to whether the applicant was required to sign the attendance register. The case of school management is that despite her suspension, the applicant was required to attend the school every day and sign the attendance register, and as she remained absent during this period she is not entitled to subsistence allowance. The contention of the applicant is that subsistence allowance cannot be denied on the above ground as a suspended employee is not required to sign the attendance register. On behalf of the school management reliance was placed on a rule framed in exercise of powers under proviso to article 309 of the Constitution of India which requires a government servant under suspension to remain present in the headquarters and sign the attendance register to become entitled to subsistence allowance. Reliance was also placed on a decision of the Supreme Court in U.P. State Textile Corporation Limited vs. P.C. Chaturvedi, 2006(1) PLJR 243 (SC). The Commission is of the view that without going into the larger question which involves legal issues and can not be gone into by the Commission in exercise of its jurisdiction under the Act, having signed the attendance register in the past, the applicant cannot contend to the contrary that she was not required to do so during the latter period.

It transpired in course of hearing that the District Education Officer Gopalganj vide his memo no. 930 dated 28.10.2009 re-fixed the headquarters of the applicant at Islamia Urdu Academy, Mirganj. The Headquarter having been changed, the fact that the applicant did not present herself in Sahu Jain Balika Uchch Vidyalaya became irrelevant. However, it is clear that the order took effect only from the date of issue i.e. 28.10.2009. On behalf of the applicant, photocopy of the attendance register of Islamia Urdu Academy, Mirganj was produced to show that she was always present in that school from 29.10.2009. Shri Parbat stated that he has no objection if the applicant is paid subsistence allowance for the period 29.10.2009 upto the date of dismissal on the basis of the attendance register/ bill which may be submitted by the Islamia Urdu Academy.

The Commission is conscious of the fact that notice has not been issued to Islamia Urdu Academy and no direction can be issued to it, but in order to shorten and put an end to the dispute, it is of the view that direction may be issued to the DEO to ask for the bill from Islamia Urdu Academy and on receipt thereof, pay subsistence allowance to the applicant on that basis. As regards the period from July 2009 upto 27/28.10.2009, in the absence of adequate proof on the point of applicant's presence in Sahu Jain Balika Uchch Vidyalaya, the Commission is unable to give any positive direction. Entitlement to subsistence allowance is a part of human right but payment can be made only as per rules. If the applicant has not followed

the rule, the Commission cannot make any direction in her favour which may be in conflict with the rules.

Accordingly, the file is disposed of with a direction to DEO Gopalganj to (a) take steps for payment of subsistence allowance to the applicant on receipt of the duplicate bill for the period October 2008 to June 2009; and (b) further take steps for payment of subsistence allowance for the period on 28.10.2009 to 29.1.2010 by calling for the bill etc. from Islamia Urdu Academy, Mirganj. This should be done by 31.10.2010.

Let a copy each of this order be sent to the applicant, Secretary Sahu Jain Balika Uchch Vidyalaya, Mirganj and the District Education Officer, Gopalganj.

Justice S.N. Jha
Chairperson