

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9369 of 2014

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Sudhakar Pandey son of Late Himmat Pandey, Village- Jitwarpur, P.S.- Govindganj, District- East Champaran, Bihar and resident of Flat No. C-104, Anand Vihar Complex, Road No. 1, New Patliputra Colony, Patna
..... Petitioner/s

Versus

1. The State of Bihar, through the Chief Secretary, Government of Bihar, Patna
2. Principal Secretary, Department of General Administration, Government of Bihar, Patna
3. Principal Secretary, Department of Sugarcane Industry, Government of Bihar, Patna
4. Under Secretary to the Government, Department of Sugarcane Industry, Govt. of Bihar, Patna
..... Respondent/s

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Appearance :

For the Petitioner/s : Mr.J.P.Shukla, Sr.Advocate
Mr. Ravindra Kumar Shukla, Advocate
For the Respondent/s : Mr. P.N.Shahi, AAG 10
Mr.Arvind Kumar, SC 13
Mrs.Ratna Kumari, AC to SC 13

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL ORDER

8 07-01-2015

The petitioner has filed the present writ petition under Article 226 of the Constitution of India with twin prayers: firstly, for setting aside the Notification No. 322 dated 7th February, 2014 issued under the signature of the respondent Under Secretary, Department of Sugarcane Industry, Govt. of Bihar, Patna, as contained in Annexure-6 to the writ petition, whereby and whereunder the petitioner has been put under suspension in exercise of powers under Rule 9 (1) (c) of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter to be referred to as “the Rules, 2005” for the sake of brevity); secondly, for setting aside the Resolution No. 03-13/1990 dated 25th March, 2014 also issued under the signature of the respondent Under Secretary, as contained in annexure-7 to the



writ petition, whereby a fresh departmental enquiry in terms of Rule 18 (1) of the Rules, 2005 has been started and the Joint Commissioner of Sugarcane, Bihar has been appointed as the Conducting Officer and Special Sugarcane Officer, Gopalganj has been appointed as the Presenting Officer for conclusion of the aforesaid departmental proceeding in accordance with the procedures prescribed under Rule 17 of the Rules, 2005 within a period of three months.

2. At the very outset, it has to be noted that in view of order of stay passed on 29.05.2014 by a Bench of this Court (Coram: Samarendra Pratap Singh,J.), the aforesaid departmental proceeding has not been concluded and is still pending.

3. Shorn of unnecessary details, certain facts which are not in serious dispute are required to be noticed. The petitioner, while posted and working as Special Sugarcane Officer, Gopalganj, was apprehended by the police on 19.02.2009 allegedly accepting bribe from one Manoj Kumar Shahi. Accordingly, Vigilance P.S.Case no. 13 of 2009 under Sections 7/13(2) read with Section 13 (1) (d) of the Prevention of Corruption Act, 1988 was instituted in which the petitioner was named as an accused. The FIR of the aforesaid case has been brought on the record as Annexure-1 to the writ petition. In view of arrest of the petitioner in the aforesaid criminal case, the petitioner was placed under suspension by Notification no. 361 dated 04.03.2009 (Annexure-2) in terms of Rule 9 (2) (a) of the Rules, 2005 with effect from 19.02.2009. Subsequently, the petitioner was released on bail in aforesaid criminal case, whereafter he gave his joining in the department on 15.06.2009, which was accepted and order of suspension was revoked by



Notification No. 1025 dated 29.06.2009 in terms of Rule 9 (3) (i) of the Rules, 2005. It is also an admitted fact that a departmental proceeding was started against the petitioner for certain charges by a resolution contained in Memo No. 1380 dated 31.08.2009 and the then Joint Director, (Sugarcane Development) Headquarter, Patna was appointed as the Conducting Officer. The petitioner was called upon to file his show cause with respect to the charges in the aforesaid departmental proceeding. The petitioner submitted his show cause denying the charges levelled against him. The Inquiring Officer after close of enquiry submitted his inquiry report as contained in Annexure-4 to the writ petition. According to the petitioner, the charges levelled against him were not found supported in the aforesaid departmental proceeding and accordingly he was exonerated from the charges. However, according to the respondents, the departmental inquiry was conducted in perfunctory manner and all the evidences/materials were not recorded and were not taken into consideration by the Inquiring Officer, while submitting his inquiry report (Annexure-4). It is the admitted case of the parties that no final decision has been taken with respect to the aforesaid departmental inquiry. On perusal of the document as contained in Annexure-5, it appears that the disciplinary authority was of the opinion that in a case where the delinquent is arrested while allegedly accepting bribe, it would not be proper to exonerate him in the departmental proceeding before conclusion of the criminal trial. He further opined that final order should be passed in the departmental proceeding on the basis of findings recorded in the criminal trial pending against the petitioner.

4. Learned senior counsel appearing on behalf of the



petitioner while assailing the validity and correctness of the impugned notification as contained in Annexure- 6 and the impugned resolution as contained in Annexure-7 has submitted that in view of notification No. 1025 dated 29.06.2009 revoking the order of suspension, the petitioner was posted at different places and was allowed to discharge his duties on the post of Special Sugarcane Officer. It is contended that after more than four years, the petitioner could not have been placed under suspension once again by impugned notification dated 07th February, 2014 (Annexure-6). According to him, the impugned order of suspension is bad in law, contrary to the mandate of Rule 9 (1) (c) of the Rules, 2005, and is, therefore, liable to be set aside by this Court. So far as the impugned resolution dated 25th March, 2014 (Annexure-7) is concerned, learned senior counsel has vehemently argued that for the same set of charges, the petitioner cannot be subjected to a fresh departmental proceeding. According to him, once a departmental proceeding was initiated and the Inquiring Officer had submitted his inquiry report as contained in Annexure-4 exonerating him from the charges as also in view of the order passed by the disciplinary authority as far back as on 5.08.2010 (Annexure-5), the respondent Under Secretary could not have directed for fresh departmental inquiry against the petitioner for same set of charges by the impugned Resolution dated 25th March, 2014. He next contended that the impugned resolution dated 25th March, 2014 (Annexure-7) is contrary to the mandate of Rule 18 (1) of the Rules, 2005 and is, therefore, liable to be set aside by this Court. In support of the above contentions, he has placed reliance on several judgments of this Court as also the Hon'ble Apex Court.



5. Learned Additional Advocate General 10, appearing on behalf of the respondents, has opposed the prayer and has supported the impugned notification as contained in Annexure-6 and impugned resolution as contained in Annexure-7. According to him, since criminal case is still pending against the petitioner, therefore, the State authority is well within his jurisdiction to pass order for placing the petitioner under suspension in terms of Rule 9 (1) (c) of the Rules, 2005. So far as the impugned resolution as contained in annexure 7 is concerned, it is contended by learned Additional Advocate General that the term “**PUNAH**” has loosely been used in the impugned resolution and, in fact, the matter has been remanded to the Inquiring Officer for further inquiry. According to him, all these facts have been clarified in the counter affidavit filed on behalf of the respondent nos. 1 to 4. Therefore, it is pleaded that if impugned notification (Annexure-6) and the impugned resolution as contained in Annexure 7 as also the averments made in the counter affidavit filed on behalf of the respondent nos. 1 to 4 are read together, then it would be evident that the impugned notification as contained in Annexure-6 and the impugned resolution as contained in Annexure-7 are in consonance with the provisions of the Rules, 2005 and are fit to be affirmed.

6. In order to appreciate the submissions made by learned senior counsel and learned Additional Advocate General 10, appearing on behalf of the parties, it would be appropriate to re-produce the Rule 9 (1) to 9 (3) as also Rule 18 (1) to (7) of the Rules, 2005, which are as follows:

“9. Order of suspension : (1) The appointing authority or any authority to which the appointing authority is subordinate or the disciplinary authority or any other authority empowered in that behalf by the

Government by general or special order, may place a government servant under suspension when –

(a) a disciplinary proceeding against the Government Servant is contemplated or is pending, or

(b) in the opinion of the authority aforesaid, the government servant has engaged himself or herself in activities prejudicial to the interest of the security of the State, or

(c) a case against the government servant in respect of any criminal offence is under investigation, inquiry or trial and the competent authority is satisfied that it is expedient to suspend the Government Servant in public interest.

(2) A Government Servant shall be deemed to have been placed under suspension by an order of appointing authority with effect from the following date-

(a) from the date of his or her detention, if he or she is detained in custody, whether on a criminal charge or otherwise for a period exceeding forty-eight hours;

(b) from the date of his or her conviction, if, in the event of a conviction for an offence he or she is sentenced to a term of imprisonment exceeding forty-eight hours and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction.

EXPLANATION.- The period of forty-eight hours specified in clause (b) of this sub-rule shall be computed from the date of commencement of the imprisonment after the conviction and for this purpose intermittent periods of imprisonment, if any, shall be taken into account.

(3) (i) After the custody period under sub-rule (2), the period of deemed suspension shall be deemed to end when the Government Servant give his joining and the joining shall be accepted.

(ii) If a decision is taken to suspend the Government Servant again under sub-rule

(1) (a), or (b) or (c), then such action may be taken only after acceptance of joining and by issuing a separate order”.

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“18: Action on the inquiry report.- (1) The disciplinary authority, if it is not itself the inquiring authority may, for reasons to be recorded by it in writing, may remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of Rule 17 as far as may be.

(2) The disciplinary authority, after receipt of the enquiry report as per Rule 17 (23) (ii) or as per sub-rule (1), shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own finding on such charge, if the evidences on record is sufficient for the purpose.

(3) The disciplinary authority shall forward or cause to be forwarded a copy of the inquiry report, together with its own findings, if any, as provided in sub-rule (2), to the government servant who may submit, if he or she so desires, his or her written representation or submission to the disciplinary authority within fifteen days.

(4) The disciplinary authority shall consider the representation or submission, if any, submitted by the Government Servant before proceeding further in the manner specified in sub-rules (5) and (6).

(5) If the disciplinary authority having regard to its findings on all or any of the articles of charge, is of the opinion that any of the penalties specified in clauses (i) to (v) of Rule 14 should be imposed on the Government Servant, it shall, notwithstanding anything contained in Rule- 19, make an order imposing such penalty.

(6) If the disciplinary authority, having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the inquiry is of the opinion that any of the penalties specified in clauses [(vi) to (xi)] of Rule 14 should be imposed

on the Government Servant, it shall make an order imposing such penalty and it shall not be necessary to give the Government Servant any opportunity of making representation on the penalty proposed to be imposed.

(7) Notwithstanding anything contained in sub-rules (5) and (6), in every case where it is necessary to consult the Commission, the Commission shall be consulted and its advice shall be taken into consideration before making any order imposing any penalty on the Government Servant.”

7. After having heard the parties and taking into consideration the materials on record, this Court finds that the petitioner was placed under suspension by Notification No. 361 dated 04.03.2009 (Annexure-2 to the writ petition) in accordance with the provisions of Rule 9 (2) (a) of the Rules, 2005 with effect from 19.02.2009 i.e. from the date of his arrest in a criminal case lodged against him. This Court further finds that in view of release of the petitioner on bail the joining given by the petitioner on the post was accepted by the competent authority of the respondent-State and aforesaid order of suspension was revoked by issuing Notification No. 1025 dated 29.06.2009 in accordance with Rules 9 (3) (i) of the Rules, 2005. Under the scheme of Rule 9 of the Rules, 2005, the petitioner could have been placed under suspension in terms of Rule 9 (3) (ii) of the Rules, 2005 if the respondent-authority was of the opinion that he is required to be placed under suspension in terms of Rule 9(1) (a), or (b) or (c) of Rules, 2005. Admittedly, that power was not exercised by the respondent-authority at the relevant time. However, after more than four years by the impugned Notification No. 322 dated 7th February, 2014 (Annexure-6) the petitioner has been placed under suspension once again in terms of Rule 9 (1) (c) of the Rules,

2005.

8. On plain scrutiny of the scheme of Rule 9 of Rules, 2005, this Court is of the opinion that while exercising the powers under Rule 9 (1) (c) of Rules, 2005 for placing a government servant under suspension two conditions must be fulfilled; firstly, there must be a criminal case pending against the government servant either under investigation, inquiry or trial; and secondly, the competent authority must record his satisfaction that it is expedient to suspend such government servant in public interest. So far as the present case is concerned, this Court finds that it is true that a criminal case namely, Vigilance P.S. Case No. 13 of 2009 is still pending trial against the petitioner fulfilling the first condition, but so far as the second condition is concerned, that appears to be completely missing from the impugned notification as contained in Annexure-6 placing the petitioner under suspension in terms of Rule 9 (1) (c) of the Rules, 2005. This Bench had occasion to consider and decide the identical issue by its judgment and order dated 08.10.2014 passed in CWJC No.8229 of 2014 (Arvind Kumar Singh Vs. The State of Bihar), wherein in paragraph 6 it was held as follows:

“ From plain reading of the Rule 9 (1) (c) of the Rules, 2005, it is evident that in all the cases where a criminal case is pending the government servants are not required to put under suspension. Rule 9 (1) (c) of the Rules, 2005 does not mandate that a government servant be necessarily put under suspension on the ground of pendency of criminal case against him. It only contemplates that in case of pendency of criminal case either under investigation or inquiry or trial, a government servant can be put under suspension, by the competent authority, if he/she is satisfied that suspension of such government servant is expedient in the public interest.”



9. It would be relevant to mention here that a Full Bench of our own High Court in the case of **State of Bihar Vs. Gyan Kumar Ram [2009 (4) PLJR 272]** while considering the scheme, scope and mandate of Rule 9 (1) (a) and 9 (7) of the Rules, 2005 has observed in paragraph 12 of the judgment that “it is a well entrenched concept that when the manner of exercising power is laid down, such power is to be exercised in the manner prescribed or not at all.”

10. The submission of the learned Additional Advocate General 10 that public interest involved and expediency for putting the petitioner under suspension though are not reflected in the impugned notification, but these aspects of the matter have been squarely explained in the counter affidavit filed on behalf of the respondent nos. 1 to 4 and therefore, same may be treated as a part of the impugned notification dated 7th February, 2014 (Annexure-6) cannot be countenanced in view of judicial pronouncement made by the Hon’ble Apex Court in the case of **Mohinder Singh Gill Vs. The Chief Election Commissioner [(1978) 1 SCC 405 : AIR 1978 SC 851]**. Paragraph 8 of the aforesaid judgment is relevant and is reproduced hereinbelow:

“The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out.”

11. For the above reasons, this Court is of the opinion that impugned notification dated 07.02.2014 (Annexure-6) putting the petitioner under suspension in terms of Rule 9 (1) (c)

of the Rules, 2005 cannot be sustained, particularly, in view of the fact that the competent authority has not recorded his satisfaction showing the expediency for putting the petitioner under suspension in public interest on the ground of pendency of the aforesaid criminal case.

12. Now, coming to the impugned Resolution dated 25th March, 2014 (Annexure-7), this Court finds that initially a departmental proceeding was started by Resolution contained in Memo No. 1380 dated 31st August, 2009 (Annexure-3). Memo of charge was served upon the petitioner and the petitioner submitted his written statement in his defence denying those charges. Regular departmental inquiry was conducted by the then Joint Director (Sugarcane Development), Headquarter, Patna who was appointed as Inquiring Officer. Finally, inquiry report was submitted by the Inquiring Officer on 22.06.2010 with a finding that charges framed against the petitioner have not been proved. However, Inquiring Officer was of the opinion that final decision may be taken in the aforesaid departmental proceeding after the judgment is pronounced by the trial court in the Vigilance case pending against the petitioner. The Inquiry report dated 22.06.2010 has been brought on record as Annexure-4 to the writ petition.

13. In the aforesaid factual matrix, under the scheme of Rule 18 (1) of the Rules, 2005, the disciplinary authority, if at all was not satisfied with the inquiry report, could have recorded his reasons and could have remitted the case to the Inquiring authority for further enquiry and for submission of fresh report after following the procedure prescribed under Rule 17 of the Rules, 2005. Alternatively, the disciplinary authority could have



exercised the powers under Rule 18 (2) of the Rules, 2005 by recording his disagreement with the findings of the Inquiring authority with respect to all or any of the articles of charges and after recording his reasons for such disagreement he could have recorded his own finding with respect to charges against the petitioner, if he was of the opinion that evidence on record was sufficient for recording such findings and thereafter he could have proceeded further in terms of Rule 18 (3), (4) and (5) and could have awarded punishment to the petitioner as prescribed there in terms of Rule 18 (5) of the Rules, 2005.

14. So far as the present case is concerned, this Court finds that when the inquiry report was submitted to the disciplinary authority, the powers vested in him was not exercised either in term of Rule 18 (1) or 18 (2) of the Rules, 2005, rather by his order dated 05.08.2010 (Annexure-5) he recorded his conclusion that final decision in the departmental proceeding will await the decision in the criminal trial pending against the petitioner. However, after more than three years thereafter by the impugned Resolution dated 25th March, 2014 (Annexure-7), a fresh departmental proceeding has been initiated against the petitioner for the same set of charges purportedly under Rule 18 (1) of the Rules, 2005. Under the scheme of Rule 18 (1) of the Rules, 2005, the respondent Under Secretary was not authorized to direct for fresh departmental enquiry against the petitioner for same set of charges. At best, after recording his reasons and after remitting back the case to the Inquiring Officer, he could have directed for further enquiry. Evidently, that has not been done in the present case. This Court is of the opinion that the impugned Resolution dated 25th March, 2014 (Annexure-7) is in teeth of

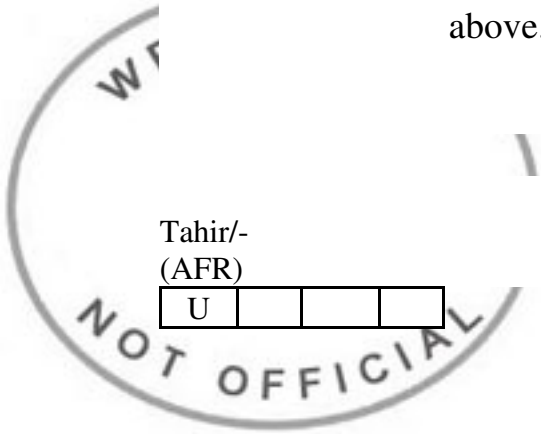


Rule 18 (1) of the Rules, 2005 and this cannot be sustained in law. The reasons supplied and supplemented by the respondents in the counter affidavit cannot be countenanced for justifying the impugned Resolution in view of the law laid down by the Hon'ble Apex Court in the case of **Mohinder Singh Gill (supra)**.

15. For the reasons recorded above, the impugned Notification dated 07.02.2014 (Annexure-6) as also the impugned Resolution dated 25.03.2014 (Annexure-7) are hereby set aside and quashed. However, this shall not preclude the respondent-State and its functionaries to pass a fresh order/orders strictly in accordance with law either in terms of Rule 9 or in terms of Rule 18 of the Rules, 2005.

16. Before this matter is finally concluded, this Court finds that the criminal case instituted against the petitioner as far back as in the year 2009 is still pending and has not been taken to its logical conclusion. In that view of the matter, learned Special Judge (Vigilance), Patna is hereby directed to take up the aforesaid criminal trial pending against the petitioner on priority basis and make all endeavour to conclude the same at an early date preferably within a maximum period of one year from the date of receipt/production of a copy of this order. The petitioner shall be obliged to co-operate in early conclusion of the aforesaid criminal trial and he shall not be granted unnecessary adjournments. If the petitioner fails to co-operate in early conclusion of the trial, then the learned court below shall be at liberty to cancel his bail bonds and take all coercive measure for securing his attendance for taking the trial to its logical end within the time prescribed by this Court.

17. In the result, the writ petition stands allowed to the extent indicated above with the observations/directions made above. However, the parties are left to bear their own costs.



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(Birendra Prasad Verma, J)