

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7875 of 2015

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Indrajeet Prasad Sinha, Son of Late Arjun Singh, Resident of Village -
Tikaitpur, Post - Neora, Police Station - Bihta, District - Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Urban Development
Department, Patna.

2. The Principal Secretary, Urban Development Department, Bihar, Patna.

3. The Patna Municipal Corporation, through the Municipal Commissioner,
Patna.

4. The Municipal Commissioner, Patna Municipal Corporation, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shravan Kumar, Sr. Advocate.
Mr. Dinesh Maharaj, Advocate.

For the Respondent/s : Smt. Namrata Mishra, GA 13
Mr. Alok Ranjan, AC to GA 13

For the Corporation : Mr. Ranjeet Kumar Pandey, Advocate.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

2 19-05-2015 Heard learned counsel for the parties as with regard to

the following prayer made in this writ application:

"1. That this application is being filed for issuance of appropriate writ/writs, order/orders, direction/directions with regard to the quashing of the remark as contained in annexure 2 dated 05.04.2012 as well as the order of suspension dated 21.05.2012 along with the charge framed under Memo No. 770 dated 14.02.2015 and also for payment of the dues salary and other legitimate claim of the petitioner, in accordance with the law."

2. Mr. Shravan Kumar, learned senior counsel appearing on behalf of the petitioner, in support of the aforementioned prayer, has submitted that first of all the petitioner



was subjected to a punitive order of transfer dated 05.04.2012 wherein certain adverse entries was sought to be recorded even without affording an opportunity of hearing to him. In the same breath, he also assails the order of suspension of the petitioner dated 21.05.2012 on the ground that memo of charge was not framed within a period of three months and, therefore, Rule 9 of the Bihar Government Servant (Classification, Control and Appeal) Rules, were clearly violated.

3. He finally also assails that the impugned order dated 14.02.2015 framing the charge against the petitioner, which according to him, is bad on two scores, namely, the petitioner, having already retired on 31.01.2015, and the charges not being in relation to any gross misconduct and/or financial loss as well as the departmental proceeding being delayed over a period of three years from the date of suspension of the petitioner.

4. Learned counsel for the respondents, on the other hand, while defending the impugned order, has submitted that first of all whatever was recorded in the order of transfer dated 05.04.2012 cannot be now challenged by the petitioner when he has already retired from service. Such adverse entry recorded under the order dated 05.04.2012 in the service record of the petitioner, had given him a cause of action till he was continuing

in service, but the petitioner did not assail that order till he continued in service i.e. 31.01.2015 and, therefore, now he cannot be allowed to assail the said order.

5. Learned counsel for the respondent has also submitted that for the same reason, the petitioner cannot be allowed to assail the order of suspension dated 21.05.2012 and at least, on the ground of memo of charge on being framed within a period of three months because that could have also be done by the petitioner till he was retired. After the retirement of the petitioner, the effect of order of suspension had automatically come to an end and now everything will depend on the result of the departmental proceeding which has already been initiated against the petitioner by framing memo of charge on 14.02.2015.

6. In the considered opinion of this Court, there are two aspects which would really basically important for examining the case of the petitioner. Admittedly, the petitioner is a permanent employee of Patna Regional Development Authority (hereinafter referred to as 'the P.R.D.A.') and he was guided by the service conditions of the P.R.D.A. If the P.R.D.A. has adopted the provisions of Bihar Service Code and Bihar Pension Rules, those provisions can also be made applicable to him.

7. The challenge, therefore, to an adverse entry sought



to be made in his service by an order of transfer dated 05.04.2012, cannot be now examined and, in fact, will serve no purpose because if those adverse entries were to be taken into considering during the period of service of the petitioner that also came to an end on 31.01.2015. To that extent, the prayer for quashing of the order dated 05.04.2012, as contained in Annexure-2, is wholly belated and, in fact, misconceived. It is, accordingly, rejected.

8. The next prayer of the petitioner for quashing of the order of suspension at this stage by filing this writ application on 18.05.2015 when he has already retired from service with effect from 31.01.2015 will be of no effect. The petitioner after retirement cannot be treated to be under suspension. It is only the effect of the order of suspension which is being sought to be applied in the impugned order that a contemplated departmental proceeding has been sought to be initiated and concluded by framing of charge on 14.02.2015 which is well permissible in law as was held by the Full Bench of this Court in the case of ***Shambhu Saran vs. The State of Bihar and Ors.***, reported in ***2000(1) PLJR 665***.

9. The only plea now sought to be raised by Mr. Kumar that said charges are not in relation to either a grave misconduct or causing pecuniary loss to the authority is a matter



of defence to the petitioner. Such defence has to be disclosed by the petitioner by filing his written statement of defence, as alleged in memo of charge issued to him on 14.02.2015. Admittedly, the petitioner has not filed such written statement of defence till today and has been only representing as with regard to the impugned order dated 14.02.2015. That plea cannot be a way of delaying pending departmental proceeding by the delinquent.

10. In that view of the matter, while this Court would decline to interfere with an order of suspension dated 21.05.2012 inasmuch as the fact thereafter has already come to an end on the day of retirement i.e., on 31.01.2015 but then, as the petitioner still remains deprived by all his retirement benefits and/or other payable amount, which can have become admissible to him, had the order of suspension dated 21.05.2012 not been passed against him, this Court would direct firstly the petitioner to file his written statement of defence within a period of four weeks from today. If the petitioner files such written statement of defence, the same shall be examined by the disciplinary authority with a view as to whether the charges framed against the petitioner may be brought within the fold of grave misconduct and/or causing pecuniary loss only on the grounds on which proceeding under Rule 43(b) of the Bihar Pension Rules might be continued against the person after

his retirement from service.

11. If the disciplinary authority comes to the conclusion that charges are in relation to either the gross misconduct and/or causing pecuniary loss, he may straight way close the proceeding by passing a premature order but then if he has found that thereafter charges have been framed against the petitioner do related to grave misconduct and/or causing pecuniary loss, the departmental proceeding shall continue. The disciplinary authority, who shall immediately thereafter appoint enquiry officer and shall communicate to the enquiry officer to proceed with the enquiry and if the petitioner cooperates with such enquiry also, which must be brought to an end within a period of six months from the date the enquiry officer starts the departmental proceeding in the manner indicated above.

12. It goes without saying that all the payments and the entitlement of the petitioner shall remain subject to the result of the departmental proceeding and/or the order to be passed by the disciplinary authority as with regard to continuation of departmental proceeding.

13. If the petitioner is entitled for payment of pension, he will be given 90% of the provisional pension during the pendency of the departmental proceeding and if any pension is

payable to the employees of the P.R.D.A., the petitioner will also be paid the same amount, which is paid to the employees of the P.R.D.A. facing enquiry after retirement.

14. With the aforementioned observation and direction, this writ application is disposed of.

15. Nothing said in this order, however, shall come in the way of the respondents to also release such of the retirement benefits which is payable to a retired employee of the P.R.D.A. facing departmental enquiry.

(Mihir Kumar Jha, J)

Sujit/-

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