

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1699 of 2014

IN

Civil Writ Jurisdiction Case No. 8229 of 2014

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1. The State of Bihar, through the Chief Secretary, Government of Bihar, Patna.
 2. The Principal Secretary, Rural Works Department, Government of Bihar, Patna.
 3. The Additional Secretary, Rural Works Department, Government of Bihar, Patna.

.... Appellants

Versus

Arvind Kumar Singh, son of Late Rup Narayan Singh, resident of village and P.O. Madhopur Hazari, P.S. Sahebganj, District Muzaffarpur, presently Superintending Engineer (under suspension), Rural Works Department, Work Circle, Siwan.

.... Respondents

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Appearance :

For the Appellants : Mr. Raju Giri, GP 30
Mr. Nikhil Kumar Agrawal, AC to GP 30
For the Respondent : Mr. S.B.K. Manglam, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 19-03-2015

The State of Bihar is in appeal against the order dated 08.10.2014 passed by the learned Single Judge in CWJC No.8229 of 2014.

2. The respondent herein is working as Superintending Engineer in the Rural Works Department, Government of Bihar. The 3rd appellant, Additional Secretary, Rural Works Department passed an order dated 18.02.2014 placing the respondent under suspension. It was mentioned that suspension was ordered in terms of Rule 9(1) (c) of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (For short, 'the Rules'). It was also mentioned

that the enquiry into allegations as to disproportionate assets held by the respondent is contemplated. The respondent filed the writ petition challenging the order of suspension.

3. The principal contention urged by him was that though Rule 9 (1) (c) of the Rules was invoked, the disciplinary authority, the 3rd appellant herein, did not record any satisfaction as to necessity to place him under suspension. The learned Single Judge allowed the writ petition and the order of suspension was set aside through order dated 08.10.2014.

4. Hence this appeal.

5. Heard Sri Raju Giri, learned Government Pleader No.30 for the State-appellants and Sri S.B.K. Manglam, learned counsel for the sole respondent.

6. It is fairly well settled that the power to place an employee under suspension is inherent in an appointing authority. At the same time, such power is required to be exercised in accordance with the Rules framed in that behalf.

7. Rule 9 (1) (a) (b) & (c) of the Rules reads as under :-

“ **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.”

8 From perusal of the aforesaid Rule it becomes clear that an employee can be placed under suspension under three contingencies, namely, a) when disciplinary proceedings are contemplated or are pending; b) when the government servant has engaged himself or herself in activities prejudicial to the interest of the security of the State and c) when a case against the government servant in respect of any criminal offence is under investigation, inquiry or trial. While in the case of the first two contingencies, it is not necessary to record any satisfaction, in the third instance, the disciplinary authority is placed under obligation to record satisfaction about the necessity to place the employee under suspension.

9 In the instant case, it is no doubt that the third appellant mentioned Rule 9(1) (c) of the Rules. However, in the order of suspension itself it was mentioned that the disciplinary proceedings are contemplated. It is not in dispute that by the time, the

order of suspension was passed, charge memo was served on the respondent. The facts of the case fit into Rule 9(1) (a). In that view of the matter, the necessity to record the satisfaction to place an employee under suspension does not exist.

10. It is fairly well settled that mere quoting an incorrect provision of law does not make any difference as long as undisputed facts in the order passed by a competent authority attract a particular provision. On the application of that principle, it becomes clear that the order of suspension can be treated as the one under Rule 9(1) (a) of the Rules. Therefore, we find it difficult to sustain the order passed by the learned Single Judge.

11. Learned counsel for the respondents submits that disciplinary proceedings were initiated only to harass his client before his retirement which is going to take place on 31.05.2015. The allegation against the respondent needs to be dealt with either in the pending criminal case or in the disciplinary proceedings. Therefore, we do not intend to express any opinion at this stage. At the same time, the interest of the petitioner should be protected. In case the disciplinary proceedings initiated against the respondent spill over by 31.05.2015, he cannot be denied the retirement benefits.

12. We, therefore, allow the appeal and set aside the order dated 08.10.2014 passed by the learned Single Judge in the writ

petition, subject to the condition that in case disciplinary proceedings initiated against the respondent are not concluded by 31.05.2015, the appellants shall release the retirement benefits to the respondent, to the extent permissible, in law. There shall be no order as to costs.

13. The interlocutory application, if any, shall stand disposed of.

(L. Narasimha Reddy, CJ)

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(Vikash Jain, J)