

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.410 of 2015

IN

Civil Writ Jurisdiction Case No. 14057 of 2013

- =====
1. The State of Bihar, through the Secretary, Rural Works Department, Government of Bihar, Visheshwariya Bhawan, Bailey Road, Patna.
 2. The Secretary, Rural Works Department, Govt. of Bihar, Visheshwariya Bhawan, Bailey Road, Patna (Bihar).
 3. The Principal Secretary-cum-Additional Commissioner, Department Enquiry, Water Resources Department, Govt. of Bihar, Patna (Bihar).
 4. The Joint Secretary, Rural Works Department, Govt. of Bihar, Visheshwariya Bhawan, Bailey Road, Patna (Bihar).
 5. The Officer on Special Duty, Rural Works Department, Govt. of Bihar, Visheshwariya Bhawan, Bailey Road, Patna (Bihar).

.... Appellants

Versus

1. Mithilesh Kumar S/o Sri Jang Bahadur Ram R/o - Flat No. - 201/A, Jagdeo Ashiana Apartment, P.O. - Ashiana Nagar, P.S. - Rajeev Nagar, Town & District - Patna (Bihar) Pin Code - 80002.

.... Respondent

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Appearance :

For the Appellants : Mr. Lalit Kishore, PAAG

For the Respondent : Mr. Binod Kumar, Advocate

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

AND

HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date: 03-09-2015

By notification, dated 12.03.2013, the sole respondent herein was, while functioning as Executive Engineer, Rural Works Department, Works Division, Gopalganj, placed under suspension with immediate effect by referring to the provisions embodied in Rule 9 (1) (c) of the Bihar

Government Servant (Classification, Control and Appeal) Rules, 2005, on the accusation of acquiring disproportionate assets, leading to registration of Economic Offence Police Case No. 6 of 2013, dated 19.02.2013, under Sections 13 (2) and 13 (1)(E) of the Prevention of Corruption Act, 1988.

With a writ petition made under Article 226 of the Constitution of India, the sole respondent herein put to challenge the notification, dated 12.03.2013, whereby he had been placed under suspension.

A learned single Judge of this Court has, on 10.11.2014, allowed the writ petition and quashed the impugned order of suspension, dated 12.03.2013, with liberty to the present appellants, as respondents in the writ petition, to pass order of suspension afresh against the writ petition in accordance with law.

The reason for interference with the impugned order of suspension is that under Rule 9 (1) (c) of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005, a Government servant need not necessarily or automatically be placed under suspension if a criminal offence is under investigation, inquiry or trial against him unless the competent authority is satisfied that *it is expedient to suspend the government servant in public interest*; whereas, the order of suspension, impugned in the writ petition, did not record

any satisfaction of the competent authority that it was expedient to suspend the writ petitioner in public interest.

Aggrieved by the order, dated 10.11.2014, passed in the writ petition, the State of Bihar is in appeal before us.

We have heard Mr. Lalit Kishore, learned Principle Additional Advocate General, appearing on behalf of the appellants, and Mr. Binod Kumar, learned Counsel, appearing on behalf of the sole respondent.

For the purpose of correctly appreciating the issue, which is involved in the present appeal, the notification, dated 12.03.2013, whereby the writ petition was placed under suspension, is reproduced below:

"Sri Mithilesh Kumar, Executive Engineer, Rural Works Department, Works Division, Gopalganj, is put under suspension with immediate effect under Rule 9 (1) (c) of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005, for the charges of acquiring disproportionate assets in Economic Offence Police Case No. 6 of 2013, dated 19.02.2013 (under Section 13 (2) and 13 (1)(E) of the Prevention of Corruption Act, 1988).

During the period of suspension, subsistence allowance shall be payable to him under Rule 10 (1) of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005.

Office of the Engineer-in-Chief, Rural Works Department, Bihar, Patna, is determined as his Headquarter during the period of his suspension.

The order of departmental proceedings against Sri Kumar is being issued separately.

Approval of the Hon'ble Chief

Minister has already been obtained on the proposal."

(Emphasis is supplied)

From a bare reading of the notification, dated 12.03.2013, it clearly transpires that at the time, when the order, dated 12.03.2013, was made, the competent authority had already decided that a disciplinary proceeding shall be started against the writ petitioner and the necessary order, in this regard, was to be issued separately.

In effect, thus, notwithstanding that the order of suspension, dated 12.03.2013, referred to Rule 9 (1) (c) of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005, for the purpose of placing the writ petitioner under suspension, the order, dated 12.03.2013, clearly reflected that a departmental proceeding was not only contemplated against the writ petitioner at the time, when he was placed under suspension by the order, dated 12.03.2013, but as a matter of fact, it had been decided by the competent authority to hold disciplinary proceeding against the writ petitioner on the accusation of having acquired assets disproportionate to his known sources of income.

In the circumstances indicated above, whether the order, dated 12.03.2013, ought to have been treated as an order passed under Rule 9 (1) (c) of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005, or



notwithstanding the fact that the order of suspension had referred to Rule 9 (1) (c) of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005, it (i.e., the suspension order) ought to have been treated as an order having been made by taking recourse to Rule 9 (1) (a) of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005.

While considering the above aspect of the case, it may be noted that the relevant provisions, embodied in Rule 9 of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005, read 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."

From a careful reading of Rule 9 of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005, it becomes abundantly clear that the competent authority may, under Rule 9 (1) (a) of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005, place a government servant under suspension if a disciplinary proceeding is either contemplated against him or is pending. Clause (b) of Rule 9 of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005, provides a situation where, in the opinion of the competent authority, the government servant is engaged in activities prejudicial to the interest of the security of the State and Clause (c) of Rule 9 of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005, will come into effect, when 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.

Situated thus, it becomes clear that in order to invoke the provisions of Clause (c) of Rule 9 of the Bihar Government Servant (Classification, Control and Appeal)



Rules, 2005, the condition precedent is that satisfaction of the competent authority that it is expedient to suspend the government servant in public interest. In short, the satisfaction of the competent authority as regards the *necessity* of such a government servant being placed, in public interest, under suspension, is a condition precedent.

In the case at hand, though Rule 9 (1) (c) of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005, had been referred to as the source of power while making the order, dated 12.03.2013, placing thereby the writ petitioner under suspension, the said order, when read carefully and dispassionately, clearly shows that the drawing of a disciplinary proceeding against the writ petitioner had not only been contemplated, but, it had, in fact, been decided that a disciplinary proceeding needed to be drawn against the writ petitioner.

Hence, the facts of the case at hand, makes the order of suspension, dated 12.03.2013, fall within the ambit of Rule 9 (1) (a) of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005, and in such a case, the necessity to record satisfaction of the competent authority that it was expedient to suspend the writ petitioner in public interest, as warranted in a case of suspension of a government servant, while taking resort to Rule 9 (1) (c) of

the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005, did not exist.

It is not in dispute before us that mere quoting an incorrect provision of law in an order of suspension does not render an order of suspension invalid in law as long as the undisputed facts, otherwise, attract a particular provision as a source of power. When this principle is applied to the facts of the present case, it becomes abundantly clear that the order of suspension ought to have been treated, and must be treated, as the one having been made under Rule 9 (1) (a) of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005, and not under Rule 9 (1) (c) of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005. Consequently, notwithstanding the fact that the impugned order, dated 12.03.2013, referred to Rule 9 (1) (c) of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005, as the source of power of the authority, which placed the writ petitioner under suspension, the order, dated 12.03.2013, had, in fact, in law, been made in exercise of power under Rule 9 (1) (a) of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005.

Considered thus, we are unable to uphold the order under appeal, more so, when we find that the charge memo has been served on the petitioner on 16.04.2013.

Thus, the order, under appeal, dated 10.11.2014, passed in CWJC No. 14057 of 2013, by the learned single Judge cannot be sustained and has to be necessarily interfered with.

In the result and for the foregoing reasons, this appeal succeeds and the order, under appeal, dated 10.11.2014, passed in CWJC No. 14057 of 2013, stands hereby set aside. The writ petition, in question, shall also accordingly stand dismissed and the order of suspension, dated 12.03.2013, stands restored.

Considering, however, the matter in its entirety and in the interest of justice, the appellants are hereby directed to expeditiously conclude the departmental proceeding and conclude the same preferably within a period of six months from today.

There shall be, however, no order as to costs.

(I. A. Ansari, ACJ.)

Prabhakar
Anand/-

(Chakradhari Sharan Singh, J.)

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