

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1263 of 2015

IN

Civil Writ Jurisdiction Case No. 18850 of 2014

- =====
1. Ayodhya Nath Shukla son of Late Chandrama Shukla, R/o Village- Shuklapur, P.S. Ara Mufassil, P.O. Daripur, District- Bhojpur, Bihar.

.... Appellant

VERSUS

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Department of Revenue and Land Reforms, Government of Bihar, Patna.
3. The Under Secretary, Department of Revenue and Land Reforms, Government of Bihar, Patna.
4. The District Magistrate, Gopalganj.
5. The Sub Divisional Magistrate, Gopalganj.

.... Respondents

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Appearance :

For the Appellant : Mr. Ajay Kumar Thakur, Advocate
Mr. Kumar Kaushik, Advocate

For the Respondents : Mr. Mithilesh Kumar Upadhyay, AC to GP X

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CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI

AND

**HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE I. A. ANSARI)

Date: 05-10-2015

Whether an order of suspension automatically comes to end on the expiry of a period of three months if *charge-sheet* is not framed within the said period of three months and no order of extension of suspension is passed with reasons recorded therefor? This is the principal question, which has arisen in the present appeal.

BACKGROUND FACTS

2. Pursuant to a letter, dated 05.09.2014, of the



District Magistrate, Gopalganj, addressed to the Principal Secretary, Revenue and Land Reforms Department, Government of Bihar, whereby the District Magistrate, Gopalganj, had recommended that the appellant be placed under suspension and that a departmental proceeding be initiated against him an order was made, on 11.09.2014, by the Principal Secretary, Revenue and Land Reforms Department, Government of Bihar, placing the appellant under suspension in exercise of power under Rule 9 (i) of Bihar Civil Services (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as '2005 Rules').

3. By letter, dated 15.12.2014, a *charge sheet* was served on the appellant directing the appellant to file his reply to the charges contained therein. The appellant filed his reply to the said show cause notice on 09.01.2015 and, thereafter, by a letter, dated 16.04.2015, the *charge sheet* was amended and served on the appellant on 22.04.2015 and the appellant replied thereto on 08.05.2015.

4. With the help of a writ application, under Article 226 of the Constitution of India, which gave rise to CWJC No. 18850 of 2014, the appellant put to challenge his suspension order.

5. By order, dated 02.07.2015, a learned single Judge of this Court disposed of the writ application without

interfering with the suspension of the appellant and directing the Department concerned to complete the enquiry against the appellant within four months from the date of production of a copy of the order with further direction to the appellant to co-operate in the departmental proceeding.

6. Aggrieved by the order, dated 02.07.2015, this appeal has been preferred.

7. We have heard Mr. Ajay Kumar Thakur, learned Counsel, appearing on behalf of the appellant, and Mr. Mithilesh Kumar Upadhyay, learned Assistant Counsel to Government Pleader No. X, appearing on behalf of the respondents.

8. Considering the fact that it is contended, on behalf of the appellant, that the learned single Judge ought to have set aside the order of suspension, dated 11.09.2014, when it had been brought to his notice that no *charge sheet* has been framed within the period of three months from the making of the order of suspension in terms of Rule 9 (7) of the 2005 Rules, the question, which naturally, arises, is : whether the learned single Judge ought to have set aside the order of suspension, dated 11.09.2014, in the face of the fact that within three months from the date of order of suspension, i.e., on 10.09.2014, no *charge sheet* had been framed contrary to the requirements of Rule 9 (7) of the 2005 Rules?

9. Our quest for an answer to the question, posed above, brings us to that Rule 9 (7) of the 2005 Rules, which lays down as under:

"Charge-sheet must be framed within three months from the date of issue of suspension order failing which on expiry of three months, the suspension order shall be revoked unless the authority, which issues the suspension order, passes the order renewing the suspension along with reasons to be recorded in writing for the delay in framing of charge-sheet for a further period of four months.

Provided that after the expiry of extended period of four months, the suspension order shall stand revoked, if the charge sheet is not framed."

10. On a careful perusal of Rule 9 (7) of the 2005 Rules, it becomes clear that a *charge sheet* must be framed within a period of three months from the day of issuance of order of suspension and if *charge sheet* is not framed within the stipulated period of three months and the period of suspension is not extended, for the reasons recorded in writing, the order of suspension shall be revoked. It is also apparent from the provisions embodied in Rule 9 (7) of the 2005 Rules that the period of suspension can be extended for a further period of four months provided that the reason for

extension of suspension is recorded in writing, but if *charge sheet* is not framed within the extended period of four month, then, also, the order of suspension shall be revoked.

11. We may, now, point out that on the question of consequences, which may follow, if *charge sheet* is not framed within a period of three months from the date of suspension of Government servant, a Full Bench of this Court, in **The State of Bihar and Others v. Gyan Kumar Ram and Others**, reported in **2009 (4) PLJR 272**, has, at paragraphs 19, 20 and 22, observed and held as follows:

19. Taking a leaf out of the above decisions of the Supreme Court and keeping in view the subtle distinction in the language in Rule 9(7) on the one hand and in proviso to Rule 9(7) and Rule 9(6) on the other, it would be reasonable to construe that on failure on the part of the competent authority to frame charge-sheet within three months, the concerned employee gets a right 'to seek for reinstatement'. If he exercises the right by filing appropriate application either before the competent authority or even in a court of law, the order of suspension is bound to be revoked and the competent authority cannot have any other option. However, if the employee fails to exercise such right of being reinstated and either the charge sheet is framed or the order of suspension is renewed for reasons to be recorded in writing as envisaged in Rule 9(7),



'the imperfect right' of the suspended employee gets defeated. In other words, the employer has the authority to pass an order renewing the suspension for reasons to be recorded in writing not only within the period of three months, but also after the expiry of such period of three months, provided the employee has failed in the meantime to exercise his right of being reinstated by making appropriate applications."

20. In view of the above analysis, our conclusions are as follows:-

(a) The time frame contemplated in Rule 9(7) is applicable only when an order of suspension is passed in contemplation of a disciplinary proceeding. On the other hand, if order of suspension is passed by taking into account the other eventualities contemplated in Rule 9, the time frame is not applicable and the order of suspension continues until it is revoked or deemed to be revoked under any of the provisions.

(b) Where an order of suspension is passed in contemplation of a disciplinary proceeding, the charge-sheet is required to be filed within a period of three months from the date of issuance of such order. On failure to frame charge-sheet within the stipulated period, the concerned employee gets a right to claim that he should be reinstated in service and if any such application is filed, the order of suspension is bound to be revoked.



(c) ***Where the employee fails to exercise such right of being reinstated by making necessary application, there is no embargo for the competent authority to pass any order extending the suspension for reasons to be recorded in writing and there is no requirement that such an order is bound to be passed before the expiry of three months and in a given case, such an order is passed even after the expiry of three months, provided the employee in the meantime has not exercised his right of being reinstated.***

(d) ***Similarly, the right of the employee to get reinstated is defeated if before he makes an appropriate application the charge-sheet is framed.***

(e) *Where the competent authority passes an order renewing the suspension, charge-sheet is required to be framed within such further extended period which cannot be more than four months from the date of expiry of the original three months and if no chargesheet is framed, the order of suspension stands revoked even without passing of any formal order. At that stage, of course, the authority is required to pass appropriate order of re-posting and at any rate, the concerned employee would be entitled to get full salary.*

22. For the aforesaid reasons, we are of the opinion that on failure of the competent



authority to frame charge-sheet within the period of three months if an order of suspension is passed in contemplation of a disciplinary proceeding, in the absence of any order of extension of the suspension for reasons to be recorded in writing, the concerned employee has a right to claim that he should be reinstated and at this stage, the competent authority is bound to reinstate such person in service. However, thereafter, it will always be open to the competent authority to pass a fresh order of suspension once the chargesheet is framed.”

(Emphasis is supplied)

12. From what have been held and observed in **Gyan Kumar Ram and Others** (supra), it clearly transpires that in contemplation of a disciplinary proceeding, when an order of suspension is made, such an order of suspension will not stand *automatically* revoked if *charge sheet* is not framed against the suspended employee within a period of three months from the date of making of the order of suspension. What happens, when a *charge sheet* is not framed within a period of three months from the date of making of the order of suspension, is that the Government servant receives a right to seek his reinstatement and if he exercises this right by making appropriate application either before the competent authority or even in a Court of law, the order of suspension is bound to be revoked inasmuch as no other option is left with the



competent authority. If, however, the Government servant fails to exercise this right of being reinstated and either the *charge sheet* is framed or the order of suspension is renewed for a further period not exceeding four months, by recording, in writing, reasons for such extension, the *imperfect right* of the suspended employee gets defeated.

13. To put it a little differently, when an employee falls to exercise his right of getting the order of suspension revoked by making appropriate application on expiry of the period of three months from the date of making of the order of suspension, the employer can pass an order renewing the order of suspension by recording, in writing, the reasons for such extension not only within a period of three months, but also on expiry of such period of three months.

14. In short, when an order of suspension is made in contemplation of disciplinary proceeding, the *charge sheet* is required to be filed within a period of three months from the date of issuance of such order of suspension and, on failure to frame *charge sheet* within the said stipulated period, the employee concerned gets a right to claim that he be reinstated in service and if such an application is filed, the order of suspension is bound to be revoked. On the contrary, if the employee fails to exercise his right of seeking reinstatement by making necessary application, there is no bar for the



competent authority to pass an order extending the period of suspension for reasons to be recorded in writing and, in a given case, such an order of extension may be passed even after the expiry of three months provided that the employee has not, in the meanwhile, exercised his right of being reinstated. Similarly, the right of the employee to get reinstated is defeated if before he makes an appropriate application, the *charge sheet* is framed.

15. In the case at hand, since the order, placing the appellant under suspension, was, admittedly, passed on 11.09.2014, the *charge sheet* ought to have been framed within a period of three months from 11.09.2014, i.e., within 10.12.2014; whereas the *charge sheet* was framed, in the present case, on 15.02.2014, i.e., after expiry of the period of three months from the date of suspension order. However, since appellant had not applied for his reinstatement on expiry of the said period of three months and, in the meanwhile, the competent authority framed *charge sheet*, the suspension order could not have been revoked nor could the suspension order be said to have automatically expired by efflux of time.

16. What follows from the above discussion is that the order, dated 11.09.2014, whereby the appellant was placed under suspension, cannot be said to have lost its force automatically and become *non est* in law, when the appellant

had not applied seeking revocation of the suspension order on expiry of three months' period of his suspension and, in the meanwhile, the competent authority framed the *charge sheet* and, therefore, the order, placing the appellant under suspension, ought not to be interfered with.

17. In the result and for the reasons discussed above, this appeal fails. We, however, make it clear that in terms of the direction issued in the order, dated 02.07.2015, aforementioned, the Department shall complete the enquiry within a period of four months from the date of receipt of a copy of this order and that the appellant shall be obliged to co-operate in the departmental proceeding.

18. In terms of the above observations and directions, this appeal is dismissed accordingly. However, there shall be no order as to costs.

(I. A. Ansari, ACJ.)

(Chakradhari Sharan Singh, J.)

Prabhakar Anand/AFR

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