

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7349 of 2015

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Md. Salimuddin, Son of Late Md. Jamiruddin, resident of Village- Gargaon
Milik, Police Station- Bahadurganj in the district of Kishanganj.

.... Petitioner

Versus

1. The State of Bihar, through the Principal Secretary, Department of Panchayati Raj, Government of Bihar, Patna.
2. The Principal Secretary, Department of Panchayati Raj, Government of Bihar, Patna.
3. The District Magistrate-cum-Collector, Kishanganj.
4. The Block Development Officer, Pothia in the district of Kishanganj.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Sunil Kumar, Adv.

For the Respondent/s : Md. N. Hoda Khan, SC18

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL ORDER

4 30-11-2015

Heard learned counsel for the parties.

The prayer of the petitioner in this writ application reads
as follows:

“I. For quashing the order contained in Memo No. 228 dated 20.6.2014 issued under the signature of District Magistrate cum Collector, Kishanganj by which the petitioner was suspended under Rule 9(2)(K) of the Bihar Government Servant, C.C.A. Rule, 2005, w.e.f. 31.5.2014 i.e. the date of his detention in Pothia (Paharkatta) P.S.Case No. 162 of 2012 u/s 406, 420, 465, 467/34 of I.P.C.

II. Also to direct the respondents to make payment of arrears of salary due since December, 2013 to till date as during suspension period even subsistence allowance has not been paid to the petitioner.”



Learned counsel for the petitioner in support of the aforementioned prayer has straightway proceeded that once the order of suspension of the petitioner was passed on 20.6.2014 on the ground of pendency of criminal trial against him and their such trial has already been concluded on 21.8.2014, the petitioner cannot be kept under continued suspension. He has also submitted that the petitioner was/ is not being paid even subsistence allowance.

Learned counsel for the State submits that though a counter affidavit has been filed on behalf of Panchayati Raj Department but then such counter affidavit on behalf of the Collector of the District being the appointing authority has not been filed.

In the considered opinion of this Court if the learned counsel for the State has filed irrelevant counter affidavit the matter relating to suspension cannot be kept pending. Here in the present case the petitioner got suspended by the disciplinary authority, namely, the District Magistrate, Kishanganj in exercise of his power under Rule 9(2)(a) of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 under which the disciplinary authority is authorized to put a Government servant under suspension only during pendency of investigation, enquiry

or trial of a criminal case. Now when the trial of the petitioner has not been concluded the order of suspension of the petitioner cannot be kept continued for an indefinite period.

Thus, this Court could have straightway quashed the order of suspension on account of disposal of the criminal proceeding but having found that the petitioner cannot be said to have been honourably acquitted on account of the judgment of acquittal of the petitioner based on the basis of compounding of the offence, this Court would deem it expedient in the ends of justice to direct the District Magistrate, Kishanganj to ensure that a final decision with regard to continuation of suspension order of the petitioner by taking into consideration the judgment of the criminal case should be decided within a maximum period of two months from the date of receipt of this order by him.

It is made clear that if the District Magistrate decides to initiate the departmental proceeding in view of the petitioner being not honourably exonerated in the criminal trial, a fresh decision will be taken as to whether the order of suspension of the petitioner would be continued in exercise of power under Rule 9 of 2005 Rules.

At the same time it is made clear that if the petitioner has remained present in the Headquarters fixed during the period

of suspension as indicated in the order dated 20.6.2014, his subsistence allowance both arrear and current must be paid to him forthwith.

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

(Mihir Kumar Jha, J)

surendra/-

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