

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.585 of 2015

In

Civil Writ Jurisdiction Case No. 2813 of 2015

- =====
1. Sunil Kumar Son of Late Balbhadra Sah , Resident of village+P.O.-
Parari, P.S. - Bangaon, District - Saharsa. Presently residing in PHED,
Colony No. 2 , P.S. + District - Araria.
 2. Jitendra Kumar Son of Late Sidhnath Prasad , Village + P.O. -
Gopalpur, P.S. - Belchhi , District- Patna. Presently residing at village-
Sisauna, P.O. + P.S. - Jokihat, District- Araria.

.... Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Public Health
Engineering Department , Govt. of Bihar, Patna
2. The Principal Secretary , Public Health Engineering Department , Govt.
of Bihar, Patna.
3. The Engineer -in- Chief-cum-Special Secretary, Public Health
Engineering Department Bihar, Patna.
4. The Chief Engineer , Mechanical , Public Health Engineering
Department, Bihar, Patna.
5. The Superintending Engineer, Public Health Engineering Department,
Purnea Circle, Purnea.
6. The Executive Engineer, Public Health Division, Araria.
7. The Divisional Accounts Officer, Public Health Division, Araria.
8. The Commissioner , Purnea Zone, Purnea.
9. The District Magistrate, Araria.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Siyaram Pandey & Mr. Arun Kumar
Arun

For the Respondent/s : Mr. Gp12-Madhuresh Prasad & Mr. Prabhat
Ranjan

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

2 15-05-2015 Unsuccessful petitioners in C.W.J.C.No. 2813 of 2015 filed this appeal. The appellants were appointed on compassionate ground on the posts of Orderly and Office-Peon in the office of Executive Engineer, Public Health Division, Araria on 12-2-2011.

2. Show cause notice was issued to the appellants on 27-1-2015 stating that knowing fully well about the flag-hoisting ceremony on 26-1-2015, they did not come on 24th and 25th January, 2015, and it was only at 8 A.M. i.e., when the flag was due to be hoisted, that they turned up and that they did not clean the table of the officer on that date.

3. The appellants submitted their explanation denying the allegations. Thereafter, the 6th respondents passed the orders dated 5-2-2015 placing the appellants under suspension. Challenging the same, the appellants filed the writ petition. The learned single Judge dismissed the writ petition holding that the writ petition is premature and the chargesheet is yet to be issued, and there is ample time for issuing chargesheet. Hence this appeal.

4. Heard Mr. Arun Kumar Arun, learned counsel for the appellants and Mr. Madhuresh Prasad, learned counsel for the respondents.

5. The first contention advanced by the appellants is that Rule 9(2) of the Bihar Government Servants(Classification,



Control & Appeal) Rules, 2005, that was mentioned in the order of suspension, does not apply to the facts of the case, and the order deserves to be set aside on that ground alone. It is true that the 6th respondent mentioned Rule 9(2), which is applicable only to cases where the employee is arrested or convicted. However, mere mention of wrong provision does not vitiate the order. The 6th respondent is conferred with the power to place an employee under suspension under Rule 9(1)(a) of the aforesaid Rules, 2005, if any disciplinary proceeding is contemplated.

6. Arguments are also advanced on merits. It is pleaded that the allegation itself is trivial, and the same does not warrant suspension of the appellants. As long as the jurisdiction of the authority to place an employee under suspension is not an issue, this Court cannot examine justification or otherwise of the suspension. The reason is that the suspension, pending enquiry, is not a punishment, and it is resorted to ensure that the concerned employee co-operates in the enquiry. Taken in isolation, the allegation may be trivial. However, the appointing authority took a serious view of the matter. This Court cannot sit in appeal in matters of this nature. The minimum that can be done is to direct the 6th respondent to pay the subsistence allowance regularly and conclude the departmental proceeding at the earliest.

7. This appeal is, therefore, disposed of, directing that the disciplinary authority shall conclude the proceedings pursuant to the orders of suspension, within a period of three months from the date of receipt of a copy of this order, and the subsistence allowance shall be paid to the appellants regularly.

(L. Narasimha Reddy,CJ)

B.KRoy/-

(Sudhir Singh, J)

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