



IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1281 of 2016

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Rabi Kant Tiwary, Son of Late Govind Tiwary, resident of Mohalla-
Behind Punam Gas Godown, Ambedkar Path, Bailey Road, District-
Patna.

.... Appellant

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, General Administration Department, Government of Bihar, Patna.
3. The Dy. Secretary (Additional Secretary), General Administration Department, Government of Bihar, Patna.
4. The Vigilance Department, Government of Bihar, Patna.

.... Respondents

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Appearance :

For the Appellant	: Mr. Jitendra Singh, Sr. Adv. Mr. Umesh Kumar Mishra, Adv.
For the State	: Mr. Anjani Kumar, AAG-IV Mr. Amit Kr. Jha, A.C. to AAG-IV
For the Vigilance	: Mr. Rama Kant Sharma, Sr. Adv. Mr. Rakesh Kumar Sharma, Adv.

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

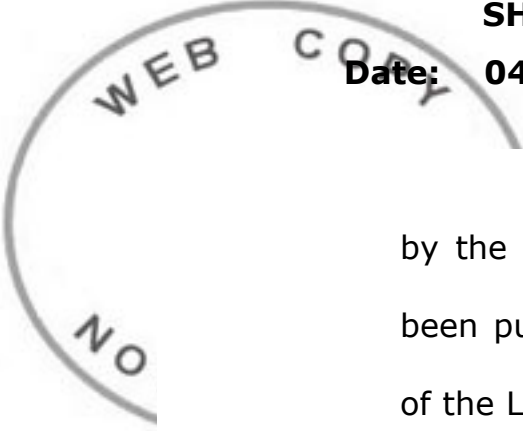
**HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

JUDGMENT & ORDER

(C.A.V.)

**(Per: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH**

Date: 04-10-2016



A judgment and order, dated 12.05.2016, passed by the learned single Judge, in CWJC No. 3276 of 2016, has been put to challenge in the present appeal, under Clause 10 of the Letters Patent of this Court, whereby the writ application filed by the appellant, under Article 226 of the Constitution of India, seeking quashing of an order, whereby he had been put under suspension, came to be dismissed.

2. Before we approach the question of law, which the present appeal involves, and the controversy, which requires determination in the present appeal, considering the nature of dispute, facts need to be taken into account first.

3. The uncontroverted facts are that the appellant, a Member of Bihar Administrative Service, was, at the relevant point of time, posted as District Development Commissioner (DDC) at Chapra. An FIR, being Vigilance Case No. 2 of 2015, was registered, on 20.12.2015, with the allegation against him of commission of offence under Section 13(2) read with Section 13(1) (e) of the Prevention of Corruption Act (*hereinafter referred to as the P.C. Act*), inasmuch as he, while functioning as a public servant in different capacities, had, allegedly, by corrupt and illegal means and/or otherwise



abusing his position, amassed wealth, substantially disproportionate to his all known sources of income and thereby committed criminal misconduct. The said Vigilance Case No. 2 of 2015 gave rise to Vigilance Special Case No. 64 of 2015, which is pending in the Court of learned Special Judge, Vigilance, Patna, and the said case is said to be presently under investigation. On 06.01.2016, the General Administration Department, Government of Bihar, came out with a resolution, putting the appellant under suspension in exercise of power under Rule 9(1)(c) of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (*hereinafter referred to as the Rules*) on the ground that a case, in respect of criminal offence, under Section 13(2) read with Section 13(e) of the P.C. Act, was pending against him.

4. The appellant made a representation, dated 25.01.2016, before the Principal Secretary, General Administration Department, Government of Bihar, seeking revocation of the said order of suspension on the ground that the said order of suspension did not disclose satisfaction of the competent authority that it was in the public interest to put him under suspension, which, according to the appellant, is a condition precedent for exercise of power of suspension under Rule 9(1) (c) of the Rules.

5. Less than a month thereafter, the appellant filed



a writ application, under Article 226 of the Constitution of India, which was sworn on 04.02.2016, a copy of which was served on the office of the Advocate General on 08.02.2016 and was finally registered on 16.02.2016.

6. From the judgment and order, under appeal, it transpires that the said order of suspension was assailed on the ground that it was bad having been issued without issuing a show-cause notice to the appellant and, in support of the said submission, the appellant relied on a judgment and order, dated 08.10.2014, passed by a learned single Judge, in CWJC No. 8229 of 2014. Relying on Supreme Court's decision, in case of **Ajay Kumar Choudhary Vs. Union of India and Anr.**, reported in **(2015) 7 SCC 291**, it was contended before learned single Judge that the order of suspension ought not to be allowed to continue beyond three months without filing of the *charge-sheet*. It seems that an oral submission to this effect was made, in the light of sub-Rule (7) of Rule 9 of the Rules, since during the pendency of the writ application and, on the date of the judgment and order, under appeal, dated 12.05.2016, three months had elapsed from the date of issuance of the order of suspension passed on 06.01.2016.

7. Learned single Judge rejected the plea by the judgment and order, under appeal, on the ground that the Supreme Court's decision, in case of **Ajay Kumar Choudhary**

(supra), had no applicability to the facts and circumstances of the present case inasmuch as the appellant had been put under suspension, pending continuance of a criminal case, in exercise of power vested under Rule 9(1) (c) of the Rules.

8. It would appear from the materials on record that during the pendency of the present appeal, a departmental proceeding has also been initiated against the appellant.

9. We have heard Mr. Jitendra Singh, learned Senior Counsel, appearing on behalf of the appellant, Mr. Anjani Kumar, learned Additional Advocate General No.-IV, appearing on behalf of the State of Bihar, and Mr. Rama Kant Sharma, learned Senior Counsel, appearing on behalf of the Vigilance.

10. Mr. Jitendra Singh, learned Senior Counsel, appearing on behalf of the appellant, with his usual tenacity has contended that the order of suspension could not be sustained as it did not disclose as to whether the competent authority was satisfied that in the light of registration of a criminal case against him, it would have been in the public interest to put the appellant under suspension.

11. This is to be noted that no such submission appears to have been advanced before the learned single as is evident from the judgment and order, under appeal, and there



is no submission made before us that such submission was made, but has not been dealt with by the learned single Judge. Despite that, we had directed the respondents-State of Bihar to produce the original records, leading to issuance of the impugned order of suspension, for our perusal. Pursuant to our order, the original records have been placed before us for our perusal.

12. We have perused the relevant notings in the file, the gist of whereof reads thus:-

"Kindly peruse the letter of the Inspector General of Police, Special Vigilance Unit and the documents relating to lodging of F.I.R. at page-1-7/p.

2. The Information report of Inspector General of Police (S.V.U.) is at page-4/pa. and copy of F.I.R. lodged against Sri Ravi Kant Tiwary, BAS Cadre serial No.-410/2011, Deputy Development Commissioner, is at page-6/pa. In course of inquiry against Sri Ravi Kant Tiwary, Deputy Development Commissioner, Saran the fact of acquiring disproportionate property from the known sources, has come into light after which F.I.R. No.-2/2015 (S.V.U.) has been lodged. The F.I.R. has been registered under Section-13(2) of Prevention of Corruption Act, 1988 read with Section-13(A) (1) (e).



In the circumstances mentioned above, decision is taken to put Sri Ravi Kant Tiwary, BAS Cadre serial No.410/2011, Deputy Development Commissioner, Saran, Chapra, under suspension under Rule-9(1) (ga) of Bihar Government Servant (Classification, Control and Appeal) Rules, - 2005 for acquiring property more than the known and valid sources. The subsistence allowance under Rule-10 shall be payable to Sri Tiwary during his suspension period. During the period of suspension, the office of Divisional Commissioner, Tirhut Division, Muzaffarpur can be fixed as the headquarter of Sri Tiwary. Direction may be given to submit chargesheet and to give proposal for initiating departmental proceedings against Sri Tiwary.

The proposal may be agreed upon and in case of consent, the approval of the Hon'ble Chief Minister-Cum-Disciplinary Authority may be obtained.

*Sd/- (Illegible)
29.12.2015
(Keshav Kumar Singh)
Principal Secretary."*

13. Evidently, a proposal, for putting the appellant under suspension was made in exercise of power, under Rule 13(1) (c) of the Rules, in the light of registration of an FIR with



the allegation of acquisition of property disproportionate to known sources of his income by misuse and abuse of his official position. The very fact that there was a proposal for placing the appellant under suspension under Rule 13(1) (c) of the Rules indicates that such power was proposed to be exercised in public interest, if the competent authority was satisfied in this regard. We find that the proposal initiated at the level of Principal Secretary, General Administration Department, Government of Bihar, travelled up to the Chief Secretary and finally to the Chief Minister, who approved it.

14. Further, on the ground that the impugned order of suspension does not contain a recital that the competent authority was satisfied that it was desirable in the public interest to place the appellant under suspension would not *per se* render the order of suspension in valid.

15. Mr. Anjani Kumar, learned Additional Advocate General No.-IV, appearing on behalf of the State of Bihar, has rightly placed reliance on Supreme Court's decision, in case of ***Swadeshi Cotton Mills Co. Ltd. Vs. State of U.P.***, reported in **(1962) 1 SCR 422**, wherein the Supreme Court observed as follows:-

"The validity of the order therefore does not depend upon the recital of the formation of the opinion in the order but upon the actual formation of the opinion



and the making of the order in consequence. It would therefore follow that if by inadvertence or otherwise the recital of the formation of the opinion is not mentioned in the preamble to the order the defect can be remedied by showing by other evidence in proceedings where challenge is made to the validity of the order, that in fact the order was made after such opinion had been formed and was thus a valid exercise of the power conferred by the law. The only exception to this course would be where the statute requires that there should be a recital in the order itself before it can be validly made."

"We cannot accept the extreme argument of Shri Aggarwala that the mere fact that the order has been passed is sufficient to raise the presumption that conditions precedent have been satisfied, even though there is no recital in the order to that effect. Such a presumption in our opinion can only be raised when there is a recital in the order to that effect. In the absence of such recital if the order is challenged on the ground that in fact there was no satisfaction, the authority passing the order will have to satisfy the Court by other means that the conditions precedent were satisfied before the order was passed. We are

equally not impressed by Shri Pathak's argument that if the recital is not there, the public or Courts and Tribunals will not know that the order was validly passed and therefore it is necessary that there must be a recital on the face of the order in such a case before it can be held to be legal. The presumption as to the regularity of public acts would apply in such a case; but as soon as the order is challenged and it is said that it was passed without the conditions precedent being satisfied the burden would be on the authority to satisfy by other means (in the absence of recital in the order itself) that the conditions precedent had been complied with."

(Emphasis is supplied)

16. The Supreme Court, in one of its subsequent decisions, in case of **State of Haryana Vs. Hari Ram Yadav & Ors. (AIR 1994 S.C. 1262)**, has applied the aforesaid decision rendered in the case of **Swadeshi Cotton Mills Co. Ltd.** (supra) and set-aside the order of the Central Administrative Tribunal, Chandigarh Bench, whereby an order of suspension was invalidated on the ground that it did not contain a recital to the effect that the Governor of Haryana was satisfied that it was either necessary or desirable to place respondent No. 1 of the said case under suspension.

17. We would, now, briefly refer to Rule 9(1) of the Rules, which reads thus:-

"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.*

18. Rule 9(1) of the Rules contemplates three situations, whereunder the appointing authority/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, namely: -

(i) when a departmental proceeding against the government servant is contemplated or pending;

(ii) when in the opinion of the competent authority, the said government servant has engaged himself or herself in activities prejudicial to the interest of the security of the State; and

(iii) if a case in relation of criminal offence against the said government servant is pending investigation, inquiry or trial, and the competent authority is satisfied that it is expedient to suspend the government servant in public interest.

19. Rule 9(2) of the Rules deals with the situation, when a government servant shall be deemed to have been placed under suspension.

20. Rule 9(7) of the Rules mandates that 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 issued the suspension order, passes an order renewing the suspension, alongwith reasons to be recorded in writing for the delay in framing of the charge-sheet for a

further period of four months. The said sub-Rule also contemplates that if, after the extended period of four months, the charge-sheet is not framed, the order of suspension shall stand revoked.

21. Mr. Jitendra Singh, learned Senior Counsel, appearing on behalf of the appellant, has attempted to persuade us, on the basis of certain pleadings, brought on record through I.A. No. 5419 of 2016, seeking amendment, that by subsequent resolution, issued by the General Administration Department, Government of Bihar, through memo No. 6769, dated 12.05.2016, the appellant's suspension has been renewed for a further period of four months by applying Rule 9(7) of the Rules and, therefore, the order by which he was placed under suspension initially, on 16.01.2016, has been treated by the State Government to have been issued under Rule 9(1) (a) of the Rules and not under Rule 9(1) (c) of the Rules. There is no gainsaying that Rule 9(7) of the Rules refers to renewal of suspension for a period of four months if within three months of issuance of the order of suspension, no charge-sheet is framed.

This cannot be overruled that I.A. No. 5419 of 2016 has been permitted to be withdrawn by an order, dated 31.08.2016, on a submission made on behalf of the appellant, with a liberty to impugn and raise the issues, which have been



impugned and raised in the said interlocutory application, by way of substantive writ application. We, therefore, do not intend to go into the materials brought on record through I.A. No. 5419 of 2016.

22. We have, however, no hesitation in coming to a definite conclusion that the order, impugned in the writ petition, dated 06.01.2016, whereby the appellant was put under suspension, was issued explicitly in exercise of power vested under Rule 9(1) (c) of the Rules and not under Rule 9(1) (a) of the Rules, which is evident from the language of the said order.

23. Having discussed thus, we are of the considered view that an order, passed under Rule 9(1) (c) of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005, cannot be invalidated on the ground of absence of recital of formation of opinion to the effect that the competent authority was satisfied that it was desirable in public interest to place a government servant under suspension because of a criminal case against such government servant is under investigation, inquiry or trial. There would be a presumption as to regularity of public acts and, in the absence of recitals in the order itself regarding satisfaction, burden would be on the authority to satisfy that the conditions precedent, laid down in the statutory Rules, had

been complied with. In the present case, the respondents have been able to discharge their burden by producing the original records, which show application of mind and satisfaction too. Considering the gravity of the offence allegedly committed by the appellant, the decision of the State of Bihar to put the appellant under suspension cannot be said to be unjustifiable on the plea of absence of recital of "*public interest*" in the order itself.

24. We, therefore, do not find any legal or factual infirmity in the judgment and order, dated 12.05.2016, passed by the learned single Judge, in CWJC No. 3276 of 2016.

25. In our considered view, this appeal is wholly without merit and is, therefore, dismissed.

26. Let the original records, produced by Mr. Anjani Kumar, learned Additional Advocate General No.-IV, be returned to him forthwith.

(Chakradhari Sharan Singh, J.)

(I. A. Ansari, CJ.)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	09/09/2016
Uploading Date	06/10/2016
Transmission Date	N/A