

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1551 of 2016
Arising out of
Civil Writ Jurisdiction Case No. 6965 of 2016**

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Lal Mohan Jha, Son of Late Khudo Jha, Panchayat Sachiv/ Secretary, Block-Simari Bakhtiyarpur, District- Saharsa (Suspended).

.... Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Panchayati Raj, Govt. of Bihar, Patna.
2. The Principal Secretary, Department of Panchayati Raj, Govt. of Bihar, Patna.
3. The Director, Department of Panchayati Raj, Govt. of Bihar, Patna.
4. The District Magistrate, Saharsa.
5. The District Panchayat Raj Officer, Saharsa.
6. The Sub-Divisional Officer, Simari Bakhtiyarpur, District- Saharsa.
7. The Block Development Officer, Simari Bakhtiyarpur, District- Saharsa.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Pramod Mishra, Advocate
Mr. Arun Kumar, Advocate

For the Respondent/s : Mr. Dharendra Kumar, AC to AAG-6

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date: 15-11-2016

Heard learned counsel for the parties.

2. The challenge in the present Letters Patent Appeal is to an order passed by the learned single Bench of this Court on 30th of June, 2016 in C.W.J.C. No.6965 of 2016 whereby, the Court has not interfered with the order for suspension on the ground that the appellant is suspended on account of pending criminal trial.

3. The argument of the learned counsel for the

appellant is that in terms of Rule-9(3) of Bihar Government Servants (Classification, Control and Appeal) Rules, 2005, the appellant could be suspended by passing separate order, but only after acceptance of joining. Such argument is based on the fact that it was on 21st of April, 2015 the appellant was arrested in a criminal case and was admitted to bail on 7th of May, 2015. The appellant is said to have submitted joining on 8th of May, 2015. But later, a separate order of suspension was passed on 26th May, 2015.

4. The relevant provisions of the Rules reads as under:

“9(I)(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.

(2) A government servant shall be deemed to have been placed under suspension by an order of appointing authority with effect from the following date:-

(a) from the date of his or her detention, if he or she is detaining in custody, whether on a criminal charge or otherwise for a period exceeding fortyeight hours;

(b) from the date of his or her conviction, if, in the event of a conviction for an offence he or she is sentenced to a term of imprisonment exceeding forty-eight hours and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction.

Explanation--- The period of forty-eight hours specified in clause (b) of this sub-rule shall be computed from the date of commencement of the imprisonment after the conviction and for this purpose intermittent periods of imprisonment, if any, shall be taken into account.

(3) (i) After the custody period under sub-rule (2), the period of deemed suspension shall be deemed to end when the government servant gives his joining and the joining shall be accepted.

(ii) If a decision is taken to suspend the government servant again under sub-rule (1)(a), or (b) or (c), then such action may be taken only after acceptance of joining and by issuing a separate order.”

5. A perusal of the said provisions will show that a government servant is in deemed suspension, if he is in detention for more than 48 hours. He was admitted to bail on 8th of May, 2015, thereafter he submitted his joining report and thus was available for service. It was thereafter on 26th May, 2015 a separate order of suspension has been passed.

6. A perusal of Rule-9(3)(ii) shows that if a decision is taken to suspend a government servant, that decision can only be taken only after acceptance of joining and by issuing a separate order.

7. The question is whether acceptance of joining is a mandatory or a directory provision before an order of suspension is passed. We find that such provision is only directory as no consequence is contemplated of not accepting the joining. Therefore, as a consequence thereof the appellant can at best claim salary from the date of joining till the date of suspension, but his

suspension cannot be vitiated for the reason that his joining was not accepted.

8. In view thereof, we do not find any merit in the present Letters Patent Appeal.

9. The Letters Patent Appeal is accordingly dismissed.

(Hemant Gupta, ACJ)

(Vikash Jain, J)

K.C.jha/-

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