

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16820 of 2015

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Anjay Kumar, S/o Late Dular Chand Bhagat, Resident of village - Hathidah,
Mahendrapur, P.S. Hathidah, District – Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, PHED, Vishweswaraiya, Bhawan, Patna.
2. The Superintendent Engineer, PHED, Patna Circle, Patna.
3. The Executive Engineer, PHED, Division Biharsharif, Nalanda.
4. Sri Yogendra Prasad Singh, Assistant Engineer, PHED cum Enquiry Officer Nalanda at Hilsa.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Dhananjay Kumar Tiwary, Adv. Mr. Shanti Kumar, Adv. Mr. Anuj Kumar, Adv.
For the Respondent/s	:	Mr. Sunil Kumar Mandal, SC-3 Ms. Neelam Kumari, AC to SC-3

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 17-09-2016

Heard Mr. Dhananjay Kumar Tiwary, learned counsel
appearing for the petitioner and Mr. Sunil Kumar Mandal, learned
Standing Counsel No.3 for the State.

The petitioner has prayed for quashing of the order
bearing Memo No. 632 dated 26.7.2014 impugned at Annexure-3,
whereby the petitioner has been put under suspension consequent
upon institution of a criminal case with regard to theft of pipe in
the Public Health Division in the district of Nalanda. The
petitioner at the relevant time was posted as Store Keeper in the
Public Health Division at Hilsa.

A counter affidavit has been filed on behalf of the State



enclosing two orders. The order placed at Annexure-A to the counter affidavit bearing Memo No.0679 dated 5.8.2014 is a corrigendum to the suspension order impugned at Annexure-3 which had earlier been passed under Rule 96(1)(a) of the Bihar Service Code and which stands modified by the corrigendum at Annexure 'A' whereby the suspension order is now passed under the provisions of rule-9(2) of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as 'the Rules') with effect from the date the petitioner was taken into custody. The order at Annexure- 'B' continues the suspension period even after the release of the petitioner from custody which bears Memo No.1451 dated 31.12.2014. The cumulative effect of the orders placed at Annexure-3 to the writ petition and Annexures 'A' and 'B' to the counter affidavit is, that the petitioner continues to be in state of suspension with effect from the date he was taken into custody.

The counter affidavit at paragraph 11 mentions that the allegation in question has resulted in initiation of a departmental proceeding and a memorandum of charges bearing Memo No.2173 dated 28.11.2015 has been served on the petitioner.

Mr. Tiwary, learned counsel appearing for the petitioner submits that even though the charge-sheet was served on 28.11.2015 but the proceedings has not progressed any further. He

submits that for the laches on the part of the respondents in concluding the departmental proceedings, the petitioner continues to be under suspension since 21.7.2014.

Mr. Tiwary further submits that although the petitioner remains under suspension but no subsistence allowance has been paid to him and even though the respondents in paragraph 21 of the counter affidavit have stated that the subsistence allowance shall be paid but no steps have been taken.

I have heard learned counsel for the parties and I have perused the records.

A copy of the FIR in Hilsa P.S. Case No.271 of 2014 registered for the offences punishable under sections 379, 411 and 120B of the Indian Penal Code is on record at Annexure-2 and the petitioner has been arraigned as an accused in the criminal case instituted for the alleged theft taking place at the Public Health Division, Hilsa of which the petitioner happens to be the Store Incharge. The criminal proceedings as well as the departmental proceedings are presently pending. A charge-sheet was served in November, 2015 but according to Mr. Tiwary, the proceeding has not progressed. The effect is that for the last two years or more the petitioner remains under suspension.

Having heard leaned counsel for the parties and considering the circumstances existing for the present, this Court



instead of interfering with the order of suspension would direct the Superintending Engineer, Public Health Engineering Department, Patna Circle, Patna under whose signature the charge-sheet has been served on the petitioner, to ensure that the departmental proceeding so initiated against the petitioner is concluded within a period of six months from the date of receipt/production of a copy of this order, considering that the charge-sheet was served almost a year back i.e. 28.11.2015. In case for any reason not attributable to the petitioner the proceedings are not concluded within the period so stipulated above, the Superintending Engineer shall consider the prayer of the petitioner for revocation of the order of suspension and dispose of the same within a fortnight of expiry of six months granted for conclusion of the proceedings.

In so far as the payment of subsistence allowance is concerned, it is rather arbitrary that the same has not been paid to the petitioner and which should be paid within two weeks from the date of receipt/production of a copy of this order.

The writ petition is accordingly disposed of.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25-09-2016
Transmission Date	NA

