

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No.262 of 2015

IN

LPA 1263 of 2015

=====

1. Ayodhya Nath Shukla son of Late Chandrama Shukla, R/o Village- Shuklapura, P.S. Ara Mufassil, P.O. Daripur, District-Bhojpur, Bihar.

.... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. Principal Secretary, Department of Revenue and Land Reforms, Government of Bihar, Patna.
3. Under Secretary, Department of Revenue and Land Reforms, Government of Bihar, Patna.
4. District Magistrate, Gopalganj.
5. Sub Divisional Magistrate, Gopalganj.

.... Respondents

=====

Appearance :

For the Petitioner : MR. KUMAR KAUSHIK

For the Respondents : MS. KUMARI AMRITA

=====

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

AND

HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date: 12-04-2016

The petitioner seeks review of the judgment and order, dated 05.10.2015, passed in LPA No. 1263 of 2015 (Ayodhya Nath Shukla v. The State of Bihar and Others), whereby the appeal preferred by the review petitioner, under Clause 10 of the Letters Patent of this Court, came to be dismissed, following a Full Bench decision of this Court, in the case of **The State of Bihar and Others v. Gyan Kumar**

Ram and Others, reported in **2009 (4) PLJR 272**.

2. Following the said decision, this Court held in the judgment and order under review that when an order of suspension is made, in contemplation of a departmental proceeding, in exercise of power under Section 9 (i) of Bihar Civil Service (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as 'the Rules'), a *charge sheet* is required to be framed within a period of three months from the date of issuance of such order and, on the failure to do so, the employee concerned acquires a right to claim his reinstatement in service under Rule 9 (7) of the Rules and if such application is filed, the order of suspension is bound to be revoked. This Court also held that on the contrary, if the employee fails to exercise his right of seeking reinstatement by making necessary application, there is no bar for the competent authority to pass an order extending the period of suspension for reasons to be recorded in writing and such order of extension of period of suspension can be passed even after expiry of three months period provided that the employee has not, in the mean while, exercised his right of being reinstated by filing an application. We also held conclusively that the right of the employee to get reinstated stands defeated if he makes appropriate application before the *charge sheet* is "framed".



3. There is no dispute that the review petitioner was placed under suspension by an order, dated 11.09.2014. Within three months from the said date, i.e., by 10.12.2014, *charge sheet* ought to have been framed. However, after expiry of the said period of three months, the review petitioner did not make any application for his reinstatement. Before he could make any application to any authority or this Court, the *charge sheet* was, admittedly, issued on 15.12.2014.

4. The present application, seeking review, rests on a plea that before the *charge sheet* was served on the review petitioner on 26.12.2014, he had filed I. A. No. 9704 of 2014, in CWJC No. 18850 of 2014, on 24.12.2014, making out a case for his reinstatement, invoking Rule 9 (7) of the Rules.

5. Mr. Kumar Kaushik, learned Counsel, appearing on behalf of the review petitioner, has submitted, referring to the Full Bench decision of this Court in the case of **Gyan Kumar Ram** (supra), that filing of application before this Court, through I. A. No. 9704 of 2014, before the *charge sheet* could be served upon the review petitioner, should also be treated as invocation of right under Rule 9 (7) of the Rules.

6. We do not find any substance in the contention so made as the date of framing of charge is the crucial date for determination as to whether the concerned employee

would be entitled to invoke his right under Rule 9 (7) of the Rules and not the date of service of *charge sheet* on the said employee. This is an admitted fact that the *charge sheet* was framed on 15.12.2014. Before framing of *charge sheet*, the review petitioner, at no point of time, either before the competent authority or before this Court, invoked his right under Rule 9 (7) of the Rules.

7. Situated thus, we are of the view that the review petitioner has not been able to make out a case for the review of the judgment and order, dated 05.10.2015, passed in LPA No. 1263 of 2015.

8. This petition is accordingly dismissed.

9. However, there shall be no order as to costs.

(I. A. Ansari, ACJ.)

(Chakradhari Sharan Singh, J.)

Prabhakar Anand/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	22.04.2016
Transmission Date	