

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6345 of 2016

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1. Ravish Kumar S/o Late Dr. Shiv Shankar Prasad, R/o Mohalla- Nalanda Colony
Khazpur, P.S.- Rajiv Nagar, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Health Department, New
Secretariat, Patna.
2. The Chief Medical Officer, Patna, Dist- Patna.
3. In-charge Medical Officer, Primary Health Centre Naubatpur, District- Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pratap Sharma, Adv.

For the Respondent/s : Mr. Sadanand Paswan, G.P.29

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 25-11-2016

Heard Mr. Pratap Sharma, learned counsel for the petitioner and
Mr. Dev Kumar Pandey learned A.C. to G.P.2 for the State.

The petitioner is aggrieved by the suspension order bearing
Memo No.218 dated 7.1.2016 impugned at Annexure-2 to the writ
petition and the grounds is that it is not in tune with the statutory
provisions underlying Rule 9 of the Bihar Government Servant
(Classification, Control and Appeal) Rules, 2006 (hereinafter referred
to as 'the Rules').

The grounds raised to question the suspension order impugned
at Annexure-2 stands confirmed and neither the order refers to any
criminal proceeding nor does it refer to any proceeding contemplated
or proceedings pending against the petitioner.

A counter affidavit was initially filed but it does not proceed to answer the issue and in an attempt to plug the loopholes that an exhaustive counter affidavit is again being filed by the Civil Surgeon.

Mr. Pandey learned State counsel in reference to the direction of a District Magistrate which finds reference in the order of suspension bearing letter no. 14110 dated 31.12.2015 submits that it is in the light of the advisory issued by the District Magistrate present at Annexure-B that the order of suspension has been passed. He further refers to an order of the Civil Surgeon- cum- Chief Medical Officer, Patna to submit that the Incharge- cum- Medical Officer, Naubatpur, Patna was asked to institute a police case in the matter vide letter bearing letter No. 296 dated 7.1.2010 present at Annexure-D. It is thus submitted that in view of the situations reflecting from Annexure-B and D whatsoever may be the lacunae, stands answered.

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

Although an attempt has been made by the Civil Surgeon to save the suspension order but in my opinion the attempt is futile. Even when the District Magistrate, Patna vide his letter referred to in the suspension order bearing No. 14110 dated 31.12.2015 directs the Civil Surgeon- cum- Chief Medical Officer, Patna to take necessary steps against the petitioner for instituting a criminal case as well as

for proceeding departmentally and he proceeds to issue directions to the Incharge Medical Officer for lodging an F.I.R. vide letter bearing Memo No. 296 dated 22.1.2016 and when an F.I.R. was instituted i.e after the passing of the suspension order.

The statutory provisions underlying Rule 9 of ‘the Rules’ clearly stipulates the circumstances in which the order of suspension can be passed and unfortunately none of the situations stands satisfied. Even the police case as per the own statement of the respondents, was instituted only subsequently. Meaning thereby, on the date of suspension order neither a police case was instituted nor any disciplinary proceeding was contemplated, nor any proceeding was pending.

In the undisputed circumstances discussed, the order of suspension passed against the petitioner bearing Memo No. 218 dated 7.1.2016 cannot be upheld and is accordingly quashed and set aside. The writ petition is allowed.

(Jyoti Saran, J)

Bibhash/-

AFR	
CAV DATE	
Uploading Date	01.12.16
Transmission Date	