

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5873 of 2016

Binda Kumar @ Binda Kumar Singh, Son of Ram Swaroop Singh, Resident of
Village- Karasara, P.S.- Rafiganj, District- Aurangabad,

.... Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Panchayat Raj Department, New Secretariat, Bihar, Patna.
2. The Principal Secretary, Personnel and Administrative Reforms Department, Bihar, Patna.
3. The Commissioner, Magadh Division Gaya.
4. The Deputy Development Commissioner -cum- the Chief Executive Officer, Zila Parishad, Gaya.
5. The Chairman, Zila Parishad, Gaya.

.... Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Sudama Singh, Advocate Mr. Rajani Kant Singh, Advocate
For the Respondent/s	:	Mr. RAM BALAK MAHTO

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 18-11-2016

Heard the parties.

The suspension order bearing Memo No.451 dated 27.1.2016 passed by the Deputy Development Commissioner –cum- Chief Executive Officer, Zila Parishad, Gaya is put to challenge, a copy of which is impugned at in Annexure-5 to the writ petition.

Mr. Sudama Singh, learned counsel appearing for the petitioner has made a very short submission to question the suspension order and submits that it does not satisfy the requirement of rule 9 of the Bihar Government Servants (Classification, Control and Appeal) Rule, 2005 (hereinafter referred to as ‘the Rules’) which, inter alia, prescribes the circumstances under which a Government servant can be suspended.

A counter affidavit has been filed on behalf of the Zila Parishad, Gaya and reference is made to the allegation levelled against the petitioner which forms the basis of the suspension order.

It is the argument of Mr. Sudama Singh with reference to the counter affidavit that a plain reading of the counter affidavit itself would show that it is the Constitutional right exercised by the petitioner to raise his grievance before this Court for promotion which has acted prejudice to his case and has invited the suspension order.

Learned counsel for the Zila Parishad has contested the arguments to submit that it is on account of unauthorized absence from duty from 6.1.2016 to 25.1.2016 that the petitioner has been suspended.

Rule 9 of 'the Rules' sets out the circumstances in which an order of suspension can be passed against a Government servant and it is only in circumstances where a disciplinary proceeding is contemplated or is pending against a delinquent or the delinquent has engaged himself in activities prejudicial to the interest of the security of the State, or a criminal case has been instituted against a delinquent, that he can be put under suspension. The scope of exercise of power to suspend a delinquent stands clearly demarcated and such power cannot be exercised by the Disciplinary Authority as a measure of punishment as having been done in the present case. Even if the allegation against the petitioner regarding unauthorized absence is taken on its face value it is yet to be tested against the explanation given by a delinquent against such charge. Surprisingly even when an allegation of

unauthorized absence is set up against the petitioner for the order of suspension, but it does not refer to any proceeding initiated against the petitioner or contemplated.

In the circumstances discussed, the order of suspension is held clearly without jurisdiction and contrary to the stipulations present in rule 9 of ‘the Rules’.

For the reasons aforementioned the order of suspension bearing Memo No.451 dated 27.1.2016 impugned at Annexure-5 passed by the Deputy Development Commissioner –cum- Chief Executive Officer, Zila Parishad, Gaya cannot be upheld and is accordingly quashed and set aside.

The writ petition is allowed.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	30-11-2016
Transmission Date	NA