

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17441 of 2015

=====

Amitabh Amit, Son of Sri Chandra Mohan Jha, Resident of village - Pali, P.S.
Ghanshyampur, District – Darbhanga.

.... Petitioner/s

Versus

1. The State of Bihar through Additional Secretary, Information and Public Relation Office Bihar, Patna.
2. The Additional Secretary, Information and Public Relation Office, Bihar, Patna.
3. The District Magistrate, Sheohar.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Alok Kumar Jha

For the Respondent/s : Mr. Sunil Kumar Mandal, SC-24

=====

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 28-10-2016

Heard Mr. Alok Kumar Jha, learned counsel appearing for the petitioner and Mr. Sunil Kumar Mandal, learned Standing Counsel No.24 for the State.

The petitioner is aggrieved by the notification bearing No.428 dated 31.8.2015 issued under the signature of the Under Secretary (Vigilance), Information and Public Relation Department, Government of Bihar, Patna, whereby the petitioner has been suspended on request made by the District Magistrate, Sheohar in his letter dated 30.6.2015. The suspension order simply refers to the letter received from the District Magistrate, Sheohar bearing No.452(C) dated 30.6.2015 to prima-facie uphold the allegations which finds no description.

Rule 9 of the Bihar Government Servants (Classification, Control & Appeal) Rule, 2005 (hereinafter referred to as ‘the Rules’)

inter alia, provides the circumstances under which a Government servant can be suspended and the relevant provisions present a Rule 9(1) and (2) which enables the Government to put the Government servant under suspension reads as under:

9. Order of Suspension. –

- (1) The appointing authority or any authority to which the appointing authority is subordinate or the disciplinary authority or any other authority empowered in that behalf by the Government by general or special order, may place a government servant under suspension when-
 - (a) a disciplinary proceeding against the Government Servant is contemplated or is pending, or
 - (b) in the opinion of the authority aforesaid, the government servant has engaged himself or herself in activities prejudicial to the interest of the security of the State, or
 - (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 detained in custody, whether on a criminal charge or otherwise for a period exceeding forty-eight 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.

.....
”

There are three circumstances in which the appointing authority or any authority to which the appointing authority is

subordinate or the disciplinary authority or any other authority empowered in this behalf by the Government, can put a Government servant under suspension and i.e.:

- (a) Where a disciplinary proceeding against a Government servant is contemplated or is pending;
- (b) The Government servant concerned engages himself in activities prejudicial to the interest of security of the State; and
- (c) The criminal case instituted against such Government servant is under investigation, inquiry or trial and the competent authority is satisfied that it is expedient to suspend the Government servant.

There are two other stipulations present in Sub-rule (2) under which the Government servant would be treated to be under deemed suspension and i.e.:

- (a) The Government Servant concerned is taken into custody on criminal charges or otherwise for a period exceeding forty-eight hours; and
- (b) Such Government servant is convicted of a criminal offence for a term exceeding 48 hours and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction.

The area of exercise of power to suspend is thus clearly

demarcated and cannot be exercised beyond thereto.

Reverting back to the case in hand, all that the suspension order reads at Annexure-7 is that on a receipt of a letter from the District Magistrate, Sheohar and finding prima-facie the allegations true, that the petitioner is put under suspension. The order does not refer to any allegations nor makes reference to any pending disciplinary proceeding or whether the Disciplinary Authority contemplates to draw any such proceeding.

Mr. Mandal, learned Standing Counsel No24 in order to salvage the situation has referred to paragraphs 8 and 9 of the counter affidavit to submit that the conduct of the petitioner warranted a suspension but even while making such submission Mr. Mandal does agree that despite lapse of a period of one year, no departmental proceeding has even been initiated.

I have heard learned counsel for the parties and perused the records and apparently the suspension order does not satisfy either of the requisites so present in rule 9(1) or rule 9(2) of 'the Rules'. A mere recommendation made by the District Magistrate, Sheohar not having been acted upon to draw any proceeding cannot vest the appropriate authority under 'the Rules' to put a delinquent under suspension. A recommendation for transfer by the District Magistrate, Sheohar vide the letter dated 30.6.2015 referred to in the suspension order and enclosed as Annexure 'A' to the counter affidavit, cannot be a foundation for an order of suspension unless it is acted upon, to draw

proceedings in the manner stipulated under rule 9 of ‘the Rules’. Certainly such recommendation cannot ipso facto vest jurisdiction in the authority concerned to order for suspension, as a measure of punishment as apparently done in the present case. The jurisdiction is clearly lacking and the order de hors the statutory prescriptions, is illegal and thus unsustainable.

In result, the writ petition is allowed. The order of suspension contained in the notification bearing Memo No.428 dated 31.08.2015 impugned at Annexure-7 is quashed and set aside.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	02-11-2016
Transmission Date	NA