

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4834 of 2017

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Santosh Kumar S/o Late Suresh Singh, Resident of Shiv Nagar, Nawada, P.S.
Nawada, District Nawada.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Rural Works Department, Govt. of Bihar, Patna.
3. The Chief Engineer No. 3, Rural Works Department, Bihar, Patna.
4. The Executive Engineer, Rural Works Department, Work Division Teghera,
District- Begusarai.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shally Kumari
For the Respondent/s : Mr. KAMESHWAR PRASAD GUPTA-GP10

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 10-10-2017

Filing of the counter affidavit even without welfare Stamp is accepted since it is being submitted that the welfare Stamp is not available.

2. Heard learned counsel for the parties.

3. The petitioner, at the relevant point of time, was working as Lower Division Clerk in the office of Executive Engineer, Rural Works Department, Works Division, Teghera. On certain allegation of misconduct and his conduct amounting to offence punishable under the Penal laws, a decision was taken by the respondents to get registered an F.I.R against him and initiate a departmental proceeding against him after putting him under suspension.



4. The petitioner has been put under suspension with the issuance of memo No. 4400, dated 23.06.2016, issued under the signature of Chief Engineer-3, Rural Works Department, Bihar, Patna in exercise of power under Rule 9 (1) (a) of the Bihar Government Servant (Classification Control and Appeal) Rules, 2005 (hereinafter referred to as the Rules). An order of suspension under Rule 9(1) can be passed in three circumstances, which are as follows:-

(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.

5. From the reading of the impugned order, it is noticeable that the said order has been passed under Rule 9 (1)



(a) of the Rules, viz, in contemplation of a departmental proceeding. Rule 9 (7) of the Rules contemplates that the charge-sheet must be framed within three months from the date of issue of suspension order, failing which on expiry of three months, the suspension order shall be revoked unless the authority, which issued the suspension order passes an order renewing the suspension along with the reasons recorded in writing for the delay of framing of charge-sheet for a further period of four months, whereafter the suspension order shall stand revoked, if the charge-sheet is not framed.

6. This writ application came to be filed on 30.03.2017 with a plea that since no charge could be framed, the order of suspension should be treated to have been revoked by operation of Sub Rule (7) of Rule 9 of the Rules.

7. A counter affidavit has been filed on behalf of the respondent Nos. 2,3 and 4. The order of suspension has been passed by Respondent No.3, who appears to be the disciplinary authority. In the counter affidavit there is no mention that after expiry of the period of three months from the issue of suspension order, any order under Sub Rule (7) of Rule 9 of the Rules was passed by the competent authority renewing the suspension along with the reasons to be recorded in writing for



the delay in framing of the charge. Language of Sub Rule (7) is unambiguous and it clearly states that if no charge is framed within the period of three months from the date of issue of suspension order, the suspension order shall be revoked unless an order renewing the suspension along with the reasons to be recorded in writing is passed by the competent authority. Since no order appears to have been passed by the competent authority, the order of suspension beyond three months from the date of its passing cannot be said to be operative.

8. From the counter affidavit I find that there is absolutely no explanation why it took nearly ten months for the disciplinary authority to frame the charge. The charge has been framed on 20.04.2017. Further, there is nothing mentioned in the counter affidavit as to what prevented the competent authority from issuing appropriate order in compliance with the Sub Rule (7) of Rule 9 of the Rules. I, accordingly, hold the impugned order, dated 23.06.2016, whereby the petitioner has been put under suspension to be inoperative after completion of three months of its issuance with effect from 23.06.2016. The consequences shall follow.

9. The petitioner shall be entitled for all consequential benefits accordingly.



10. Before I part with the order, I take serious note of the apparent breach of Sub Rule (7) of Rule 9 of the Rules. The duty of the disciplinary authority does not end with putting an employee under suspension exercising power under Sub Rule (1) of Rule 9 of the Rules, rather it begins from the said stage. Putting an employee under suspension is a serious step, which is to be taken by the disciplinary authority against an employee on the allegation of serious misconduct. The duty of the disciplinary authority begins from that stage. It is the duty of the disciplinary authority to frame charge-sheet immediately after putting an employee under suspension and at least within the period as prescribed under Sub Rule (7) of Rule 9 of the Rules. If for the any reason, the charge could not be framed within the said period of three months, the disciplinary authority ought to have been vigilant and passed an order renewing the suspension as contemplated under Sub Rule (7) of Rule 9 of the Rules, for the reasons recorded in writing.

11. The Court deprecates the way in which the disciplinary authority has acted in the present case. The Court, accordingly, directs the Principal Secretary, Rural Works Department, Government of Bihar to examine the conduct of Respondent No.3, the disciplinary authority, who appears to



have failed to discharge his statutory obligation as contemplated under Sub Rule (7) of Rule 9 of the Rules.

This application stands disposed of accordingly.

(Chakradhari Sharan Singh, J)

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AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	12.12.2017
Transmission Date	12.12.2017

