

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10417 of 2016

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Arun Kumar Singh, Son of Late Ram Bihari Singh, Resident of Patliputra Colony,
P.S. Patliputra, District - Patna, Presently posted as Assistant Director, District
Social Security Cell, Patna (under suspension).

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Social Welfare Department, Government of Bihar,
Patna.
3. The Joint Secretary, Social Welfare Department, Government of Bihar, Patna.
4. The Divisional Commissioner, Patna Division, Patna.
5. The Commissioner, Tirhut Division, Muzaffarpur.
6. The Collector, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Jagannath Singh, Advocate

For the Respondent/s : Mr. Mrityunjay Kumar, AC to GP-12

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 31-01-2017

Heard Mr. Jagannath Singh, learned counsel appearing
for the petitioner and Mr. Mrityunjay Kumar, learned Assisting
Counsel to Government Pleader No.12 for the State.

The petitioner has questioned his suspension order
bearing Memo No.2713 dated 16.6.2016 issued by the State
Government in the Social Welfare Department impugned at
Annexure-7 to the writ petition.

Although there are various facets attached with the
suspension order for consideration of the issue at hand but I would
only be briefly enumerating the facts involved. Annexures 1 and 2
are the leave applications of the petitioner on suffering heat stroke



and are dated 29.4.2016 and 23.5.2016. The petitioner has prayed for leave with effect from 29.4.2016 until 7.5.2016 and thereafter. Medical prescriptions accompany the leave applications. The District Magistrate –cum- Collector, Patna vide Annexure-3 while questioning the petitioner on his leave, directs him to attend the Medical Board. Apparently he doubts the ground assigned by the petitioner for leave. This letter is also shrouded with cloud because the date 23.5.2016 has been over written to read as ‘13.5.2016’. It is not clear whether or not, it is a bonafide mistake. Nonetheless the petitioner in obedience reported before the Medical Board on 24.5.2016 vide Annexure-4 and was examined by the Medical Board so constituted, the report of which has been forwarded by the Civil Surgeon –cum- Chief Medical Officer, Patna vide his letter dated 17.6.2016 placed at Annexure-6. The Medical Board report accompanying the letter takes notice of the treatment and though records the petitioner fit for assuming duty but with a rider of restricted physical activity. The situation is that even before this report dated 17.6.2016 could reach the District Magistrate that he has already made recommendation for suspension of the petitioner vide letter No.5304 dated 25.5.2016, a copy of which is placed on record vide Annexure ‘C’ to the counter affidavit. This letter which is addressed to the Principal Secretary, Social Welfare Department



makes reference to a letter dated 13.4.2016, a copy of which is placed at Annexure 'B' at running page 43. The petitioner by the show cause was charged with non-distribution of the Divyang scholarship and not keeping the account books in proper form. He is also charged with not refunding the unspent amount allotted under different schemes and non-distribution of the pension. This show cause is dated 13.4.2016 and whereafter the petitioner suffering heat stroke applied for leave. While on one hand the District Magistrate vide letter dated 13.5.2016 directed the petitioner to report before the Medical Board, alongside he also recommended for his suspension vide letter dated 25.5.2016 and one fails to appreciate the hurriedness behind it.

Though the counter affidavit reports that the petitioner has failed to respond to the show cause but the rejoinder to the counter affidavit encloses documents supporting the claim of the petitioner of distributing the 'Divyang scholarships'. The petitioner has specifically stated that there was nothing remaining for distribution.

Mr. Jagannath Singh, learned counsel appearing for the petitioner has taken this Court through various communications issued under the signature of the petitioner, a copy of which is endorsed to the District Magistrate as well, to submit that every



distribution was brought to the notice of the District Magistrate but he has failed to take note of these aspects. He also submits that while on one hand, the District Magistrate, Patna doubting the ailment of the petitioner has directed him to report before the Medical Board on the other hand even before the Medical Board would submit its report, he has recommended for suspension.

As I have observed above, the foundation for the entire contest lies on various allegations which stands discussed in the charge-sheet, a copy of which is placed at Annexure 'E' to the counter affidavit. In fact the charge-sheet is repetition of the show cause placed at Annexure 'B'. According to the learned State Counsel, it is in consideration of the conduct of the petitioner who was avoiding to discharge his duty as Assistant Director, Social Security Cell, Patna that the District Magistrate was constrained to take such action.

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

Annexure 'B' which is a show-cause to the petitioner, is dated 13.4.2016 and Annexure 'C' which is a recommendation by the District Magistrate, Patna to the Principal Secretary, Social Welfare Department, is dated 25.5.2016 and primarily makes allegation of non-distribution of the Divyang scholarship. The other



allegations are general in nature and do not refer to any specific instances of violation. At this stage I need not enter into the intricacy of the matter. Whether the allegations are capable of being upheld or are baseless, are matters to be considered at the departmental level and since the proceedings are not put to challenge in this writ petition, I am not required to express any opinion thereon.

The only issue which requires consideration presently is, whether the order of suspension is sustainable. Rule 9(7) of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as 'the Rules'), inter alia, mandates that a charge-sheet is to be submitted within three months from the date of the suspension order failing which the suspension would be revoked. The import of rule 9(7) of 'the Rules' has been interpreted by the Full Bench of this Court in the case reported in **2009(4) PLJR 272 (The State of Bihar vs. Gyan Kumar Ram)** and paragraph 19 of the judgment deals with the situation as to when a suspension order could be questioned on these aspects. The Full Bench has held that there is no automatic revocation of the suspension order on the expiry of three months, unless the delinquent exercise his right to do so by filing an appropriate application before the authority concerned or by moving this Court.



Mr. Jagannath Singh learned counsel for the petitioner submits that apart from the fact that the petitioner has moved this Court he has also filed application before the Principal Secretary for revocation of suspension on 28.10.2016 placed at Annexure-11 to the rejoinder on expiry of three months.

This writ petition was filed on 29.6.2016 questioning the suspension and the situation is that even though the applicability of rule 9(7) of 'the Rules' is being contested by the State Counsel relying upon the charge-sheet dated 18.7.2016 enclosed at Annexure 'E' to the counter affidavit but the so-called charge-sheet is a mere recommendation by the District Magistrate before the Principal Secretary and is yet to be endorsed by the State Government by issuance of a notification. The charge-sheet thus, may be a recommendation but does not possess the essentials of an order of the State Government. The petitioner is a Class-II Government servant and thus any order in a disciplinary proceeding, has to be passed by the State Government in terms of Article 166 of the Constitution of India. While the order of suspension is passed by the State Government, the charge-sheet relied upon by the State, is no charge-sheet in the eye of law having not been issued by the State Government. Law is well settled and an order by a wrong authority is void. Reference is made to the



judgment of the Supreme Court rendered in the case of **Union of India vs. B.V. Gopinath** reported in **(2014)1 SCC 351**.

In other words the suspension order having been passed on 16.6.2016, a period of three months has lapsed and no valid charge-sheet has been issued. On this short ground, the order of suspension has to go for it is hit by rule 9(7) of ‘the Rules’.

Accordingly the order of suspension bearing Memo No. 2713 dated 16.6.2016 passed by the State Government in the department of Social Welfare is quashed and set aside.

The writ petition is allowed with consequential benefits.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	16-02-2017
Transmission Date	NA

