

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11113 of 2016

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1. Sudhakar Pandey Son of Late Himmat Pandey resident of Village - Jitwarpur,
P.S. - Govindganj, District - East Champaran, Bihar and presently resident of Flat
No. C - 104, Anand Vihar Complex, Road No. 1, New Patliputra Colony, Patna.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Department of General Administration, Government of Bihar, Patna.
3. The Principal Secretary, Department of Sugarcane Industry, Govt. of Bihar, Patna.
4. The Joint Secretary, Department of Sugarcane Industry, Govt. of Bihar, Patna.
5. The Under Secretary, Department of Sugarcane Industry, Govt. of Bihar, Patna.
6. The Cane Commissioner, Bihar Department of Sugarcane Industry of Govt. of Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shekhar Singh, Adv.

For the Respondent/s : Mr. Chandra Shekhar Singh, A.C. to G.A.10

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 13-02-2017

Heard Mr. Shekhar Singh learned counsel for the petitioner and
Mr. Chandra Shekhar Singh A.C. to G.A.10 for the State.

The petitioner prays for issuance of writ in the nature of certiorari for quashing the notification bearing Memo No.1258 dated 10.6.2016 whereby the petitioner has been put under suspension in exercise of powers vested under Rule 9(1)(c) of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as 'the Rules'). The petitioner has also questioned the show cause notice bearing No.1385 dated 26.6.2016 of the Joint Secretary, Sugarcane Industries Department impugned at Annexure-



11 whereby the Joint Secretary purportedly while issuing a disagreement note, has put the petitioner on notice requiring his reply within 15 days of the date of issuance thereof.

Mr. Shekhar Singh learned counsel for the petitioner has made reference to an enquiry report which was submitted following the initiation of enquiry against the petitioner on alleged charge of demand of bribe. While the resolution at Annexure-2 initiates a proceedings against the petitioner, Annexure-3 is the enquiry report so submitted by the Enquiry Officer- cum- Joint Director, Sugarcane Department whereby the petitioner has been exonerated of the charges. A decision was taken at the level of the department, to await the deposal of the criminal case instituted against the petitioner, in view of the enquiry report submitted, as manifest from Annexure-4 which is stated to be the noting of the Principal Secretary on 5.8.2010. Nothing happened thereafter for four years until vide notification bearing No.322 dated 7.2.2014, the complete copy of which is enclosed at Annexure-12, the petitioner was put under suspension under Rule 9(1)(c) of 'the Rules'. The suspension order also followed a resolution dated 25.3.2014 whereby proceedings were initiated against the petitioner, a copy of which is enclosed at Annexure-6. The petitioner questioned the order of suspension as well as the resolution dated 25.3.2014 in C.W.J.C.No.9369 of 2014 and vide order passed



on 29.5.2014 a bench of this Court stayed the departmental proceedings. The matter was finally heard on 7.1.2015 and the order of suspension dated 7.2.2014 together with the resolution dated 25.3.2014, a copy of which are enclosed at Annexure-12 and Annexure-6 to the writ petition herein, were quashed and set aside by a coordinate bench of this Court, reserving liberty to the respondent to pass afresh order in accordance with law. A copy of the judgment and order of this court is enclosed at Annexure-8 to the writ petition.

Following the judgment and order of this Court present at Annexure-8, the petitioner was allowed to join his post vide notification bearing No.578 dated 9.3.2016 but his happiness was short lived inasmuch as by a subsequent notification bearing No.1258 dated 10.6.2015 impugned at Annexure-10, he was again put under suspension under Rule 9(1)(c) of 'the Rules'. The suspension order follows a purportedly disagreement note by the Joint Secretary dated 29.6.2016 which is impugned at Annexure-11.

The short submission made by Mr. Shekhar Singh learned counsel for the petitioner to question the two orders is that the lacuna pointed out by this Court while quashing the earlier order of suspension regarding absence of satisfaction of the authority concerned for putting a delinquent under suspension in exercise of powers under Rules 9(1)(c) has not been removed inasmuch as the



suspension order put to question herein again suffers from the same defect. In so far as the disagreement note is concerned, it relies upon with the resolution No.753 dated 25.3.2014 which has already been quashed by this Court in the previous round of litigation. It is submitted by Mr. Shekhar Singh that while this disagreement note refers to a quashed notification, in any view of the matter, no enquiry report was submitted following the said quashed notification. The thus submits that either of the two notifications are not sustainable in law.

The arguments have been contested by Mr. Chandra Shekhar Singh, A.C. to G.A.10 and although he submits that the order of suspension has been passed after taking note of the opinion of this Court, in so far as the disagreement note is concerned, he is not able to persuade this Court on its tenability.

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

It is appropriately argued by Mr. Shekhar Singh that Annexure - 10 is nothing but a reiteration of the position present at Annexure-12 and which has been quashed by this Court while observing that it does not dissatisfy the statutory requirements. Paragraph 8 to 11 of the judgment passed by this Court in the previous round of litigation enclosed at Annexure-8 would be relevant for the purpose and is reproduced hereinbelow for ready reference:



“8. On plain scrutiny of the scheme of Rule 9 of Rules, 2005, this Court is of the opinion that while exercising the powers under Rule 9 (1) (c) of Rules, 2005 for placing a government servant under suspension two conditions must be fulfilled; firstly, there must be a criminal case pending against the government servant either under investigation, inquiry or trial; and secondly, the competent authority must record his satisfaction that it is expedient to suspend such government servant in public interest. So far as the present case is concerned, this Court finds that it is true that a criminal case namely, Vigilance P.S. Case No. 13 of 2009 is still pending trial against the petitioner fulfilling the first condition, but so far as the second condition is concerned, that appears to be completely missing from the impugned notification as contained in Annexure-6 placing the petitioner under suspension in terms of Rule 9 (1) (c) of the Rules, 2005. This Bench had occasion to consider and decide the identical issue by its judgment and order dated 08.10.2014 passed in CWJC No.8229 of 2014 (Arvind Kumar Singh Vs.The State of Bihar), wherein in paragraph 6 it was held as follows:

“ From plain reading of the Rule 9 (1) (c) of the Rules, 2005, it is evident that in all the cases where a criminal case is pending the government servants are not required to put under suspension. Rule 9 (1) (c) of the Rules, 2005 does not mandate that a government servant be necessarily put under suspension on the ground of pendency of criminal case against him. It only contemplates that in case of pendency of criminal case either under investigation or inquiry or trial, a government servant can be put under suspension, by the competent authority, if he/she is satisfied that suspension of such government servant is expedient in the public interest.”

9. It would be relevant to mention here that a Full Bench of our own High Court in the case of **State of Bihar Vs. Gyan Kumar Ram [2009 (4) PLJR 272]** while considering the scheme, scope and mandate of Rule 9 (1) (a) and 9 (7) of the Rules, 2005 has observed in paragraph 12 of the judgment that “it is a well



entrenched concept that when the manner of exercising power is laid down, such power is to be exercised in the manner prescribed or not at all.”

10. The submission of the learned Additional Advocate General 10 that public interest involved and expediency for putting the petitioner under suspension though are not reflected in the impugned notification, but these aspects of the matter have been squarely explained in the counter affidavit filed on behalf of the respondent nos. 1 to 4 and therefore, same may be treated as a part of the impugned notification dated 7th February, 2014 (Annexure-6) cannot be countenanced in view of judicial pronouncement made by the Hon’ble Apex Court in the case of **Mohinder Singh Gill Vs. The Chief Election Commissioner [(1978) 1 SCC 405 : AIR 1978 SC 851]**. Paragraph 8 of the aforesaid judgment is relevant and is reproduced hereinbelow:

“The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out.”

11. For the above reasons, this Court is of the opinion that impugned notification dated 07.02.2014 (Annexure-6) putting the petitioner under suspension in terms of Rule 9 (1) (c) of the Rules, 2005 cannot be sustained, particularly, in view of the fact that the competent authority has not recorded his satisfaction showing the expediency for putting the petitioner under suspension in public interest on the ground of pendency of the aforesaid criminal case.”

A bare perusal of paragraph 5 of the suspension order dated 7.2.2014 read alongside paragraph 2 of the present notification would leave no room for confusion that the foundation for the impugned



suspension order rests on the pendency of the criminal case which was instituted in 2009 and was a consideration when the Enquiry Officer opined for dropping of the proceedings in 2010 which view was also endorsed by the Principal Secretary vide Annexure-4 and held the field until the notification dated 7.2.2014 was issued four years later. There is no change in situation even in the fresh order of suspension. Coming to the disagreement note impugned at Annexure-11, the said show cause is unsustainable not only on grounds that it proceeds on a quashed notification dated 25.3.2014 as well as on grounds that no enquiry report was submitted under the said notification but also on grounds that it has not been issued by the State Government who alone would be the competent authority to issue a disagreement note.

For the reasons so discussed, the suspension order bearing notification No.1258 dated 10.6.2016 together with purportedly issued disagreement note by the Joint Secretary dated 29.6.2016 cannot be upheld and are accordingly quashed and set aside.

The writ petition is allowed.

(Jyoti Saran, J)

Bibhash/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	3.3.2017
Transmission Date	NA

