

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17646 of 2017

=====

Raj Kumar Kamat son of Ram Ratan Kamat, resident of village-Kataya, P.S.-
Basopatti, Distt. Madhubani.

... .. Petitioner/s

Versus

1. The State Of Bihar represented through the Principal Secretary
General Administration Department, Govt. of Bihar, Patna.
2. The Principal Secretary, Home (Police), Government of Bihar.
3. The District Magistrate, Madhubani
4. The Superintendent of Police, Madhubani
5. The Sub Divisional Officer, Jainagar, Madhubani
6. The Circle Officer, Basopatti, Madhubani

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Nilesh Kumar, Advocate
For the Respondent/s : Mr. PARTHA SARTHI -GA4

=====

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL ORDER

2 30-11-2017 Heard the parties.

This petition has been filed for revocation of suspension order, as contained in Annexure-3 to this petition, issued by the District Magistrate, Madhubani, vide Memo No. 1073 dated 12.06.2017.

It has been submitted by learned counsel for the petitioner that the order of suspension has been passed against petitioner as contemplated under Rule-9 (1) (a) of Bihar Government Servant (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as 'the Rules') by the District Magistrate, Madhubani, who is the Disciplinary/Appointing Authority of the



petitioner. Rule 9 (1) (a) reads as follows :-

“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,”

It has further been submitted that after passage of three months no chargesheet has been framed against him and in view of the provisions under Rule-9 (7) of the Rules the suspension order shall be revoked. Under Rule 9 (7) of the Rules there is provision for renewal of suspension order for further four months by the authority which issued the suspension order, if he passes the order renewing of suspension order with reasons to be recorded for delay in framing of chargesheet and if even thereafter chargesheet is not framed order of suspension stands revoked. Rule 9 (7) reads as follows :-

“ (7) 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 the order renewing the suspension along with reasons to be recorded in writing for the delay in framing of charge-sheet for a further period of four months :

Provided that after the expiry of extended period of four months the suspension order shall stand revoked



if the charge-sheet is not framed.”

The issue raised in this petition is no more res integra as same has been considered and decided by Full Bench of this Court since then reported in **2009 (4) PLJR 273** in the case of ***The State of Bihar & Ors. vs. Gyan Kumar Ram.*** The conclusion drawn by Full Bench has been summarized in paragraf-20 and same is extracted below :-

“ 20. In view of the above analysis, our conclusions are as follows :-

(a) The time frame contemplated in Rule 9(7) is applicable only when an order of suspension is passed in contemplation of a disciplinary proceeding. On the other hand, if order of suspension is passed by taking into account the other eventualities contemplated in Rule 9, the time frame is not applicable and the order of suspension continues until it is revoked or deemed to be revoked under any of the provisions.

(b) Where an order of suspension is passed in contemplation of a disciplinary proceeding, the charge-sheet is required to be filed within a period of three months from the date of issuance of such order. On failure to frame charge-sheet within the stipulated period, the concerned employee gets a right to claim that he should be reinstated in service and if any such application is filed, the order of suspension is bound to be revoked.

(c) Where the employee fails to exercise such right of being reinstated by making necessary application, there is no embargo for the competent authority to pass any order extending the suspension for reasons to be recorded in writing and there is no requirement that such an order is bound to be passed before the expiry of three months and in a given case, such an order is passed even after the expiry of three months, provided the employee in the meantime has not exercised his right of being



reinstated.

(d) Similarly, the right of the employee to get reinstated is defeated if before he makes an appropriate application the charge-sheet is framed.

(e) Where the competent authority passes an order renewing the suspension, chargesheet is required to be framed within such further extended period which cannot be more than four months from the date of expiry of the original three months and if no charge-sheet is framed, the order of suspension stands revoked even without passing of any formal order. At that stage, of course, the authority is required to pass appropriate order of re-posting and at any rate, the concerned employee would be entitled to get full salary.”

It has been submitted by the counsel for the petitioner that even after lapse of three months from the date of order of suspension no charge-sheet has been framed against him nor his order of suspension has been renewed and he had filed a representation before the Disciplinary/Appointing Authority , i.e., District Magistrate, Madhubani, but no order revoking his suspension has been passed.

After hearing the counsel for the petitioner and counsel for the State, the writ petition is disposed of with a direction to the District Magistrate, Madhubani, to pass appropriate order on representation filed by petitioner for revoking order of suspension in light of Full Bench decision as referred and quoted above within one month from the date of production/receipt of a copy of this order.



It has been contended by counsel for petitioner that no subsistence allowance is being paid to petitioner as such District Magistrate, Madhubani, will take necessary steps for payment of subsistence allowance to petitioner within said period.

With said observation and direction writ petition is disposed of.

(S. Kumar, J)

sudip/-

U			
---	--	--	--

