

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15593 of 2016

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Awadhesh Singh Son of Ramawtar Singh resident of Fali Kwara, P.O. + P.S.-
Deshari, District-Vaishali

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Department of Health, Government of Bihar, Patna
2. The Secretary, Department of Health, Government of Bihar, Patna
3. The Civil Surgeon-cum-Chief Medical Officer, Vaishali
4. In-Charge Medical Officer, Primary Health Centre, Sahdei Bujurg, Vaishali

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Tej Bahadur Singh, Sr. Adv.

Mr. Brisketu Sharan Pandey, Adv.

For the Respondent/s : Mr. BIRJU PRASAD-GP-13

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 18-08-2017

Heard learned counsel for the parties.

The petitioner is aggrieved by the order of suspension bearing Memo No. 126 dated 14.01.2016 passed by the Civil Surgeon-cum-Chief Medical Officer, Hajipur District-Vaishali, a copy of which is impugned at Annexure-1.

Mr. Tej Bahadur Singh, learned Senior counsel appearing on behalf of the petitioner along with Mr. Brisketu Sharan Pandey, Advocate on record, with reference to Rule 9 (7) of the Bihar



Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as 'the Rules') has submitted that on failure of the disciplinary authority to serve the charge memo on the petitioner within the stipulated period of 90 days, the petitioner filed an application before the Civil Surgeon-cum-Chief Medical Officer for revocation of suspension, drawing his attention towards the fact, but since no order was being passed that he moved this Court by filing the present writ petition.

With reference to Annexure-B to the counter affidavit he submits that although the Civil Surgeon-cum-Chief Medical Officer decided to serve the memo charge on the petitioner on 14.01.2016 vide Annexure-B but since it was found that the said proceeding was suffering from infirmity that vide order bearing Memo No. 282 dated 21.04.2017 present at Annexure-G series the Director in Chief initiated fresh proceeding. He submits that a plain reading of initiation of the disciplinary proceeding vide Annexure-G series would show that the earlier memo charge was recalled by the respondent Director in Chief on finding certain irregularities in the inquiry report. He submits that in so far as the validity of the initiation of 2nd round proceeding is concerned, the petitioner would take recourse to an independent remedy but in so far as the present case is concerned, learned counsel has submitted that in view of Rule 9 (7) of 'the Rules'



and the interpretation given in the full Bench Judgment of this Court since reported in **2009 (4) PLJR 272 (The State of Bihar Vs. Gyan Kumar Ram)** the suspension order has become invalid.

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

Although a charge memo was indeed served on the petitioner on the date of suspension itself i.e. 14.01.2016 as manifest from Annexure-1 read alongside Annexure-B but this proceeding was dropped on grounds that it was suffering from infirmity. Had the respondents proceeded on the charge memo at Annexure-B, matter may have been different but since a fresh charge memo was issued on 21.04.2017 vide Annexure-G, the issue reins into the stipulation present at Rule 9 (7) of 'the rules' because admittedly the charge memo is after expiry of 90 days.

In view of the law laid down by the Full Bench in the case of **The State of Bihar Vs. Gyan Kumar Ram** (supra), the petitioner having moved this Court after drawing the attention of the Civil Surgeon towards the lapse in handing over the charge memo within the stipulated period of 90 days which was served on 21.04.2017 vide Annexure-G series i.e. after filing of the writ petition, the order of suspension is rendered invalid and accordingly the suspension order bearing memo no. 126 dated 14.01.2016 impugned at Annexure-1 is



quashed and set aside. The petitioner is reinstated in his post.

The writ petition is allowed.

(Jyoti Saran, J)

Devendra/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	08.09.2017
Transmission Date	

