

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18862 of 2016

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Kumari Sandhya, Wife of Shri Shirish Chandra Srivastava, resident of Village +
Post- Mahuari, P.S. - Sonhan, District- Kaimur (Bhabhua).

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Education Department,
Bihar, Patna.
2. Director (Administration) -cum- Additional Secretary, Education Department,
Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Abhinav Shrivastava, Adv.

For the Respondent/s : Mr. Arvind Kumar, AC to GP-23

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 01-09-2017

Heard Mr. Abhinav Shrivastava, learned counsel appearing
for the petitioner and Mr. Arvind Kumar, learned Assisting Counsel
to Government Pleader No.23 for the State.

The petitioner is aggrieved by the order bearing Memo
No.739 dated 22.7.2016, whereby she has been put under suspension
in exercise of power under rule 9 of the Bihar Government Servants
(Classification, Control and Appeal) Rules, 2005 (hereinafter
referred to as 'the Disciplinary Rules'). A copy of the order is
impugned at Annexure-7 to the writ petition.

Two issues have been raised by Mr. Shrivastava, learned
counsel appearing for the petitioner to question the order of
suspension, namely:



- (a) It is passed by an authority not competent to do so inasmuch as while the petitioner is a member of the Education Service Class II with her appointing authority being the State Government the order of suspension has been passed by the Director (Administration) –cum- Additional Secretary, Department of Education, Bihar, Patna and not the State Government; and
- (b) The suspension order is hit by the provisions underlying rule 9(7) of ‘the Disciplinary Rules’ inasmuch as no charge memo has been framed within the stipulated period of 90 days or even in the extended period as mandated under rule 9(7) of the ‘Disciplinary Rules’.

In support of his contention that the Director (Administration) has no jurisdiction to pass suspension order, learned counsel has relied upon a decision of this Court passed in **CWJC No.7999 of 2016 (Chandra Kishore Prasad Yadav Vs. The State of Bihar)** to submit that identical issues fell for consideration.

Having heard learned counsel for the parties and considering the position discussed in the case of **Chandra Kishore Prasad Yadav** (supra) as also in view of the uncontested position



where neither the charge memo has been placed on record nor there is any order extending the order of suspension as mandated under rule 9(7) of the ‘Disciplinary Rules’ the order of suspension bearing Memo No.739 dated 22.7.2016 impugned at Annexure-7 is held illegal and is accordingly quashed and set aside.

The writ petition is allowed with consequential reliefs.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	AFR
CAV DATE	NA
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