IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9422 of 2016

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1. Vidyanand Pandey Son of Shri Kapildeo Pandey Resident of village - Kohariya, P.S. Paru, District - Muzaffarpur

.... Petitioner/s

Versus

1. The State of Bihar through the D.G.P., Bihar
2. The Superintendent of Police, Katihar
3. The Sub - Divisional Police, Katihar

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 9784 of 2016

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1. Balmiki Prasad Suman Son of late Botal Chaurasiya, resident of village - kharha, P.S. - Gogari , District-Khagariya.

.... Petitioner/s

Versus

1. The State of Bihar through the D.G.P., Bihar
2. The Superintendent of Police, Bhojpur, Ara

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 13620 of 2016

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1. Sanjeev Kumar Thakur Son of Late Shiv Nandan Thakur Resident of village - Gopalpur, P.S. Gopalpur, District - Bhagalpur

.... Petitioner/s

Versus

1. The State of Bihar through the D.G.P., Bihar
2. The Senior Superintendent of Police, Patna
3. The Superintendent of Police, Patna

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 13844 of 2016

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1. Santosh Kumar Choubey, Son of Late Mahendra Choubey, a resident of Village- Baghipakar, P.S.- Muffasil, District- Bhojpur.

.... Petitioner/s

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Versus

1. The State of Bihar through the D.G.P., Bihar.
2. The Senior Superintendent of Police, Patna.
3. The Sub-Divisional Police Officer, Katihar.

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 13899 of 2016

==========

1. Yogendra Yadav Son of late Harpati Yadav Resident of Village- Badi Bishahar, P.S.- Baraghat, District Banka.

.... Petitioner/s

Versus

1. The State of Bihar through the D.G.P. Bihar.
2. The Senior Superintendent of Police, Patna.
3. The Superintendent of Police, Patna.
4. The Sub-Divisional Police Officer, Barh.

.... Respondent/s

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Appearance :
(In CWJC No.9422 of 2016)
For the Petitioner/s : Mr. Harish Kumar, Adv.
For the Respondent/s : Mr. Prabhat Kumar Verma, AAG 3
(In CWJC No.9784 of 2016)
For the Petitioner/s : Mr. Harish Kumar, Adv.
For the Respondent/s : Mr. Prabhat Kumar Verma, AAG 3
(In CWJC No.13620 of 2016)
For the Petitioner/s : Mr. Harish Kumar, Adv.
For the Respondent/s : Mr. Prabhat Kumar Verma, AAG 3
(In CWJC No.13844 of 2016)
For the Petitioner/s : Mr. Harish Kumar, Adv.
For the Respondent/s : Mr. Prabhat Kumar Verma, AAG 3
(In CWJC No.13899 of 2016)
For the Petitioner/s : Mr. Harish Kumar, Adv.
For the Respondent/s : Mr. Prabhat Kumar Verma, AAG 3

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL JUDGMENT
Date: 29-08-2017

Heard Mr. Harish Kumar learned counsel for the petitioners in the batch of cases and Mr. Prabhat Kumar Verma learned AAG 3 who appears on behalf of the State duly assisted by respective State

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counsels appearing in the respective cases.

The petitioners in each of the case is accused in a vigilance case facing charge of alleged acceptance of illegal gratification during their normal discharge of duty. The vigilance cases so instituted are pending before the competent court of law.

The grievance of the petitioners herein is that on the self same charges a disciplinary proceedings has also been initiated against them by the Superintendent of Police concerned and which has been put to challenge in this batch of writ petitions on grounds that since the foundation for the two proceedings is the same, the department should await the outcome of the criminal case.

In my opinion while there is no impediment on the way of the Department to hold a departmental proceeding on the charges which are also the foundation for a vigilance case, this Court taking notice of the fact that the charge memo in each of the cases was drawn by the Superintendent of Police concerned, passed the following order on 13.7.2017 requiring an answer from the respondents:

> "Amongst the issue that has been raised in the present batch of writ petitions one of the issue would be whether the charge memo framed against the petitioners by the Superintendent of Police is capable to be upheld in view of the stipulations present under Rules 16 and 17 of the Bihar Government Servant (Classification, Control and Appeal) Rules read alongside Appendix 84 of the Bihar Police Manual Volume 3.
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> Learned State counsel would be well advised to address the Court whether the Superintendent of Police is

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> the appointing authority, the disciplinary authority or the authority authorized under any orders of the State Government to draw a charge against the Sub-Inspector or whether the Police Manual authorizes the Senior Superintendent of Police to draw such charge and whether the charge so drawn, has been approved by the competent authority for initiating a valid proceedings.
>
> As jointly requested, put up these cases on 18.7.2017 in the same list."

Affidavits have been filed in support of the initiated action and Mr. Verma learned AAG 3 appearing for the respondents has today filed a supplementary counter affidavit in each of the case except C.W.J.C.No.13620 of 2016 to submit that Rule 825 of the Bihar Police Manual read along side Appendix 84 Volume 3 of the Bihar Police Manual and Section 16 (2) of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as 'the disciplinary rules') amply empowers the Superintendent of Police of the concerned District to draw a disciplinary proceedings against the Sub Inspector or Assistant Sub Inspector in the capacity of the disciplinary authority. It is also the argument of Mr. Verma that even though Rule 825 of the Bihar Police Manual restricts the power exercised by a Superintendent of Police as a disciplinary authority to pass the punishment orders as mentioned in rule 824 except a punishment of the removal, dismissal and compulsory retirement but in view of the stipulation so present at Rule 16 (2) of 'the disciplinary

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rules', there is no jurisdictional error in a Superintendent of Police to draw a proceeding for imposing other punishments as well. Such is the stand taken by the Superintendent of Police in the counter affidavit so filed in each of the proceedings except C.W.J.C.No.13620 of 2016 which stand would equally apply in each of the cases.

In view of the submissions so advanced by Mr. Verma in reference to the stipulations underlying Rule 825 of the Bihar Police Manual read alongside Appendix 84 thereof and Rule 16(2) of 'the disciplinary rules' this Court at the present juncture would reserve its opinion on the issue whether the proceedings so initiated by the Superintendent of Police is valid for imposition of punishment, other than those prescribed in rule 825 for any opinion by this Court at this juncture would be prejudging the issue. Since the disciplinary proceedings so initiated is at the nascent stage of drawing up of the charges and whether or not the disciplinary proceedings results in a punishment, is a futuristic situation no opinion is expressed at this stage.

As I have already observed, the department is amply empowered to draw disciplinary proceedings even if the charges facing a delinquent in a departmental proceedings and in a criminal case are overlapping for the conclusion of the two authorities on the charges are on different considerations. This Court would thus

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without interfering with the proceedings so initiated against the petitioners under the charge memo so drawn against them, would dispose of this batch of writ petitions with an advice to the disciplinary authority to follow the provisions underlying 'the disciplinary rules' and dispose of the same in accordance with law with due opportunity to the petitioners to defend themselves expeditiously and preferably within 6 months of receipt/production of a copy of this order.

The writ petitions are accordingly disposed of.

(Jyoti Saran, J)

Bibhash/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.09.2017
Transmission Date	NA

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