

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3465 of 2018

Prabhash Kumar, S/o Late Mahesh Chandra Das, Resident of Village-
Nawabganj, P.S.- Manihari, District- Katihar.

... .. Petitioner

Versus

1. The State of Bihar through Principal Secretary, General Administration Department, Government of Bihar, Patna.
2. The Additional Secretary, General Administration Department, Government of Bihar, Patna.
3. The Divisional Commissioner, Patna Division, Patna.
4. The District Magistrate, Bhojpur, Ara.

... .. Respondents

Appearance :

For the Petitioner/s : Mr. Mithilesh Kumar Rai, Advocate
For the Respondent/s : Mr. Utsav Kumar, A.C. to G.A.-4

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT
Date : 13-09-2018

Heard learned counsel for the petitioner and
learned counsel for the State.

2. In this case, the petitioner has raised grievance that the order of suspension has been passed on 07.07.2017, but the charge-sheet was served upon him after expiry of statutory period as provided under Rule-9 of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 (for short “the Bihar C.C.A. Rules, 2005) as the respondents failed to frame the charge within three months or extended period



giving reason of failure to frame the charge, and as such, the order or suspension requires interference by this Court. It has further been submitted that the composite order passed under Rule 9(1)(c) as well as rule 9(2) of the Bihar C.C.A. Rules, 2005, is illegal as they should have passed the separate order under each head invoking provision of Rule 9(2) of the Bihar C.C.A. Rules, 2005 on account of pendency of the criminal case.

3. It has been submitted by learned counsel for the petitioner that the petitioner, at the relevant time, was holding the post of D.C.L.R., Piro, Bhojpur, he was caught in a trap, led to his imprisonment. After expiry of 48 hours, the petitioner was deemed to have been put under suspension, but after release he should have been allowed to join the post. However, instead of following the law of the land, the authority has refused to allow him to join the post rather issued the composite order, which has been impugned, thereby treated the petitioner under suspension on account of pendency of criminal case. It has further been submitted that the authorities ought to have passed a separate order and should not be composite one and on that account it suffers from illegality.

4. Whereas, learned counsel for the State submits that



suspension will come to effect at the moment the petitioner remained in jail custody beyond 48 hours and will be allowed to join after his release from the jail custody. At the same time, power has been conferred upon the competent authority even to keep a person under the suspension on three situations viz. (i) during the pendency of the inquiry (ii) if the authority has opinion that the Government servant has engaged himself or herself in activities prejudicial to the interest of the security of the State and (iii) when the Government servant in respect of any criminal offence is under investigation, inquiry or trial and the competent authority is satisfied that it is expedient to suspend the Government Servant in public interest. He further submits that the petitioner is under suspension on account of pendency of criminal case.

5. Having considered the rival contentions of the parties, it will be relevant to examine the provisions of Rule-9(1) dealing with the suspension of an employee, which prescribes that 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. Rule 9(1)(a) provides



that the disciplinary proceeding against the Government Servant is contemplated or is pending then he can be put under suspension. Rule-9(1)(b) prescribes, if the Government servant acting prejudicial to the interest of the security of the State, he can be put under suspension and Rule 9(1)(c) prescribes during the pendency of the investigation, inquiry or trial if the competent authority is satisfied that it is expedient to suspend the Government Servant in public interest, the Government Servant can be put under suspension.

6. So far the impugned order has not been passed in contemplation of the departmental proceeding. Basically, it has been confined to the pendency of criminal case against the petitioner.

7. For proper consideration, it will be relevant to quote Rule-9(1)(c) of the Bihar CCA Rules, 2005, which is as follows:-

“9(1)(c) a case against the government servant in respect of any criminal offence is under investigation, inquiry or trial and the competent authority is satisfied that it is expedient to suspend the Government Servant in public interest.”

8. On reading of the aforesaid provision, it is very



much clear that in the event the person is facing criminal trial, the competent authority has to form an opinion which should reflect from the order, showing that it is expedient to keep the petitioner under suspension in the public interest. So emphasis has been given that there should be element of public interest for keeping the Government Servant under suspension which should reflect from the order that the competent authority has formed an opinion that in the public interest it is desirable to keep Government servant under suspension. However, on perusal of the impugned order, there is no such averment showing the satisfaction of the competent authority that in the public interest the petitioner has been put under suspension.

9. In such view of the matter, this writ petition is allowed. Accordingly, the order of suspension containing memo no.8300 dated 07.07.2017 is quashed.

(Shivaji Pandey, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
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