

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17643 of 2017

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Shri Narayan Das, Son of Late Ras Bihari Das, Resident of Village & P.O.- Maheshpur, P.S.- Bhagwanpur, District- Begusarai, at present posted as Block Supply Officer of Gaighat Block in the District of Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Government of Bihar in the Department of Food & Consumer Protection, Old Secretariat, Bihar, Patna.
2. The Special Secretary to the Government, Food & Consumer Protection Department, Government of Bihar, Patna.
3. Dy. Director Food, Saran Division, Chapra.
4. District Magistrate, Muzaffarpur.
5. District Supply Officer, Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Krishna Murari, Sr. Adv. Mr. Sudhir Kr. Upadhyay, Adv.
For the Respondent/s	:	Mr. S. Raza Ahmad -AAG5 Mr. Vishwambhar Pd., AC

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 26-07-2018

Heard learned counsel for the parties.

In the present case, the petitioner is challenging the order of suspension passed by Special Secretary to the Government of Bihar in the Department of Food and Consumer Protection vide Memo No. 22/2017-2696 dated 1.6.2017 by which the petitioner has been put under suspension and he is still under suspension as the proceeding has not been completed till date.

This case can be disposed of on the short fact that the petitioner was holding the post of Block Supply Officer, Gaighat. A complaint was made by the dealer that the petitioner was



harassing and demanding money for the favourable act and they have also approached to the Vigilance Department, the Vigilance Department constituted a team and the team went there, prepared a pre-memorandum, informed that the allegation made by the dealer was correct and, in pursuance, after confirmation of the complaint of the dealer, a team was constituted and he was caught red handed for taking a bribe of 10,000/-, and in pursuance thereof, the Government of Bihar in exercise of power under Section 9(1)(a) and 9(1)(c) of the Bihar C.C.A. Rules, 2005, the petitioner has been put under suspension.

The grievance has been raised that the order of suspension is required to be quashed on the plea that the authorities were required to serve the charge-sheet before expiry of three months and the charge-sheet has neither been served upon him nor the authority before expiry of three months has extended the period of four months maximum and, as such, the suspension is not sustainable in law as has been submitted that the Prapatra Ka has been served upon him on 23.2.2018 after the expiry of the maximum period of extension and, as such, it requires interference.

Learned counsel for the State has filed counter affidavit taking a plea that the petitioner has been put under suspension



under the contemplation of departmental proceeding as well as on account of pendency of the criminal case but, primarily it was confined to put under suspension on contemplation of departmental enquiry but, from the order of suspension, it does not reflect the satisfaction of the authority to suspend the government servant in the public interest as in the case pendency of criminal case, the satisfaction of the government about the public interest is sine qua non for passing the order under that clause which is missing in the order of suspension as nowhere the satisfaction of the public interest has been recorded in the order of suspension and, as such, it will be confined to the suspension under Rule 9(1) (a) of the Bihar C.C.A. Rules, 2005.

Learned counsel for the State has submitted that the charge-sheet was prepared within three months but, has accepted that the same was served upon him much after expiry of due date and further submitted that Rule 9(1) of the Bihar C.C.A. Rules, 2005 postulates only framing of the charge-sheet not the service of the same. So it has to be considered that if the charge-sheet though it has been kept in the file but, was served much after the expiry of due date, will be treated that the authority has complied the condition in terms of Rule 9(7). When we are talking of the memo of charge, then, necessary concomitant is service of the same. If



the charge-sheet remains in the file for quite long time, then, in that circumstances, it does not satisfy the intention of the legislature of Rule 9(7), otherwise, it will defeat its purpose. In such circumstances, the authority prepares the charge-sheet and kept it in a file and did not serve the same, they cannot claim that they have satisfied the condition mentioned under Rule 9(7) of aforesaid Rule, 2005.

In that view of the matter, the contention of the State that though they have framed the charge-sheet but, was not served upon him will not cut much ice as they have served it much after the due date. So, in that circumstances, it will not be treated that they have satisfied the condition mentioned in Rule 9(7) of Rule, 2005.

This question arose for consideration by the Full Bench of this Court in the case of State of Bihar & Ors. Vs. Gyan Kumar Ram & Ors. reported in 2009(4) PLJR 272, there the question arose as to whether on expiry of a period of three months, will be treated that the order of suspension has been revoked. The Court has answered that it will not be automatic revocation but, if an application is filed then in that circumstances, the authority will have no other alternative but to withdraw the order of suspension but, further said that if the charge-sheet is served before filing of



the application, whatever illegality be there, that will be treated to have been cured and the order of suspension will not in any manner be vitiated and it will be treated to be a valid piece of order of suspension but, in the present case, before service of order of suspension, the petitioner has approached this Court and sought relief of revocation of the order of suspension, it will be treated that the petitioner has approached to the authority for revocation of the suspension order.

In such view of the matter, as the State failed to serve the copy of the charge-sheet within three months and also failed to extend further period for four months by passing a reasoned order, in such circumstances, the order of suspension is quashed. However, the State will be at liberty to proceed further with the disciplinary enquiry in accordance with law.

In the result, this writ application stands allowed to the extent indicated above.

(Shivaji Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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