

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.130 of 2019

In

Civil Writ Jurisdiction Case No.2542 of 2017

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Prem Kumar, male, 58 years, son of Late Babu Bhagwan Prasad Resident of
Village- Paiga, Police Station- Saran (Chapra).

... .. Appellant/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna
2. The Principal Secretary, Home Department, Govt. of Bihar, Patna
3. The Inspector General, Prison Reform Services, Bihar, Patna
4. The Deputy Secretary, Home (Special) Department, Govt. of Bihar, Patna
5. The Principal Secretary, General Administration Department, Govt. of Bihar, Patna
6. The Joint Secretary-cum-Director (Administration), Govt. of Bihar, Patna

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Shashi Bhushan Kumar, Advocate

For the Respondent/s : Mr. Saroj Kumar Sharma, A.C. to AAG-3

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 01-04-2019

Re: I.A. No. 01 of 2019

Heard Shri Shashi Bhushan Kumar, learned counsel



for the appellant and Shri Saroj Kumar Sharma, Assistant Counsel to Additional Advocate General No. 3 for the State.

2. The appeal is reported to be delayed by 84 days.

3. We have considered the affidavit filed in support of the delay condonation application and we find that sufficient cause has been shown to condone the delay in filing the appeal. The delay is condoned and the appeal shall be treated to be within time.

4. I.A. No. 01 of 2019 stands allowed accordingly.

Re: L.P.A. No. 130 of 2019

Heard learned counsel for the appellant.

2. This appeal is confined to the extent that the learned Single Judge while proceeding to deliver the judgment has omitted to consider I.A. No. 1808 of 2018 relating to the status of suspension of the appellant.

3. The facts which are not in dispute are that a vigilance case was instituted against the appellant on 7th of November, 2006 on the ground of an allegation of having been trapped while accepting a bribe. It appears that the criminal case did not proceed at all and remained pending and during the pendency of the proceedings the appellant had been suspended. The same came to be challenged in C.W.J.C. No. 17803 of 2008



and the said writ petition was allowed on 4th of March, 2009 holding that in the absence of any charges having been framed within three months or the period of the same being extended during subsistence thereof the order of suspension stands revoked by operation of law.

4. Ultimately, when the disciplinary proceedings commenced, the appellant came to be again suspended on 5th of February, 2014.

5. The appellant filed C.W.J.C. No. 10664 of 2016 against the final order of dismissal upon conclusion of the disciplinary proceedings. The said writ petition was allowed with consequential benefits pointing out the infirmities in the proceedings.

6. In pursuance of the said judgment dated 19th April, 2017, fresh orders were passed for reinstatement of the appellant on 11th of December, 2017 with a further rider that his period of suspension till the order of dismissal shall be treated to be a period during service.

7. A fresh round of disciplinary proceedings was again initiated on the same charges keeping in view the aforesaid circumstances and a resolution to that effect was passed on 27th February, 2018, whereby fresh proceedings were



commenced and it was resolved to suspend him as well.

8. It is this third round of proceedings that were initiated came to be challenged in the writ petition giving rise to the present appeal.

9. The learned Single Judge noted that 12 years have passed and only one witness had been examined in the criminal case. In the said background, after observing that neither of the parties appear to be interested in the conclusion of the trial one way or the other, it was directed that the departmental proceedings shall be kept in abeyance, and it shall automatically revive as and when the criminal proceedings culminate into an order to be passed by the trial court for which a period of nine months was given.

10. Learned counsel for the appellant submits that the trial is going on on a day-to-day basis, but has not been concluded as yet.

11. It is in this background that it is urged that there is no occasion for the appellant to be kept under suspension, that too, even for such a long time and moreso, the learned Single Judge himself has placed the disciplinary proceedings in abeyance. The learned Single Judge while finally disposing of the matter has overlooked this aspect.



12. Suspension can be resorted to as per Rule 9 of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005, which is extracted hereinunder:-

“9. Order of Suspension- (1)

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 when-

(a) a disciplinary proceeding against the Government Servant is contemplated or is pending, or

(b) in the opinion of the authority aforesaid, the government servant has engaged himself or herself in activities prejudicial to the interest of the security of the State, or

(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.

(2) A Government Servant shall be deemed to have been placed under suspension by an order of appointing authority with effect from the following date:-

(a) from the date of his or her



detention, if he or she is detained in custody, whether on a criminal charge or otherwise for a period exceeding forty-eight hours;

(b) from the date of his or her conviction, if, in the event of a conviction for an offence he or she is sentenced to a term of imprisonment exceeding forty-eight hours and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction.

Explanation.- The period of forty-eight hours specified in clause (b) of this sub-rule shall be computed from the date of commencement of the imprisonment after the conviction and for this purpose intermittent periods of imprisonment, if any, shall be taken into account.

3 (i) After the custody period under sub-rule (2), the period of deemed suspension shall be deemed to end when the Government Servant give his joining and the joining shall be accepted.

(ii) If a decision is taken to suspend the Government Servant again under sub-rule (1)(a), or (b) or (c), then such action may be taken only after acceptance of joining and by issuing a separate order.

(4). Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government Servant



under suspension is set aside in appeal or on revision under these Rules and the case is remitted for further inquiry or action or with any other directions, the order of his suspension shall be deemed to have continued in force on and from the date of the original order of dismissal removal or compulsory retirement and shall remain in force until further orders.

(5) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government Servant is set aside or declared or rendered void in consequence of or by a decision of a court of law and the disciplinary authority, on a consideration of the circumstances of the case, decides to hold further inquiry against the government servant to meet a situation where the court has passed an order purely on technical grounds without going into the merits of the case, on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the government servant shall be deemed to have been placed under suspension by the Appointing Authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders.

(6) (a) An order of suspension



made or deemed to have been made under this Rule shall continue to remain in force until it is modified or revoked by the authority competent.

(b) Where a Government Servant is suspended or is deemed to have been suspended (whether in connection with any disciplinary proceeding or otherwise), and any other disciplinary proceeding is commenced against him or her during the continuance of that suspension, the authority, competent to place him or her under suspension, may, for reasons to be recorded by it in writing, direct that the Government Servant shall continue to be under suspension till the termination of all or any of such proceedings.

(c) An order of suspension made or deemed to have been made under this Rule may, at any time, be modified or revoked by the same authority who or whose subordinate authority has passed such order.

(7). Charge-sheet must be framed within three months from the date of issue of suspension order failing which on expiry of three months, the suspension order **shall be revoked** unless the authority, which issued the suspension order, passes the order renewing the suspension along with reasons to be recorded in writing for the delay in framing of charge-sheet for a further period of four



months:

Provided that after the expiry of extended period of four months the suspension order shall stand revoked if the charge-sheet is not framed.”

13. Suspension on account of a criminal prosecution can be resorted to in view of Rule 9(1)(c). However, the same is controlled by the other provisions which also includes Clause (7) thereof which requires that a charge-sheet must be framed within three months from the date of issue of suspension order failing which the suspension shall be revoked unless the authority which has issued the suspension order passes an order renewing the suspension along with reasons to be recorded in writing for the delay in framing of the charge-sheet for a further period of four months, provided that after the expiry of the extended period of four months the suspension order shall stand revoked if the charge-sheet is not framed.

14. The aforesaid power to suspend had already been invoked by the authorities which was ultimately set aside vide judgment dated 4th of March, 2009 of the High Court as the authorities had failed to comply with the aforesaid provisions of Rule 9. Thereafter, the proceedings itself were quashed by a final judgment as a consequence whereof the appellant came to



be reinstated.

15. We, therefore, find that there was a total non-compliance of the procedure as prescribed in Rule 9 which led to the passing of the judgment dated 4th of March, 2009.

16. In the instant case, the learned Single Judge himself has placed the disciplinary proceedings in abeyance presumably on the ground that if the outcome of the criminal case is otherwise, the disciplinary proceeding should not continue. In this background, we find no justification for the suspension to be continued, moreso, when suspension is resorted to facilitate the inquiry proceeding. In the instant case, the inquiry proceedings have been stayed by the High Court itself and, therefore, if the direction is to put in abeyance the inquiry proceedings then the order of suspension should not have been allowed to continue without there being any default on the part of the appellant or otherwise in the absence of any fresh reasons having been recorded which may indicate that the continuance of the appellant in service would be detrimental to the authority. The learned Single Judge therefore appear to have omitted to consider this aspect that was raised through appropriate pleadings.

17. We, therefore, dispose of this appeal and



modify the impugned judgment of the learned Single Judge keeping in view the final judgment dated 4th March, 2009 and the reinstatement of the appellant in the past that the suspension order dated 27th February, 2018 shall remain in abeyance till any fresh orders are passed in this regard allowing the disciplinary authority to continue with the disciplinary proceedings after the conclusion of the criminal case.

18. The appeal stands disposed of accordingly. It shall be open to the authorities to allocate such work to the appellant as it may find necessary.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

P.K.P./-Jagdish

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