

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20240 of 2018

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Syed Afsar Hashmi, aged 58 years, S/o Late Syed Abu Saeed Hashmi,
Resident of Bariyarpur Chakrahima, P.S.- Phulwaria, Dist- Begusarai.

... .. Petitioner/s

Versus

1. The State of Bihar through its Chief Secretary, Govt. of Bihar, Patna
2. The Principal Secretary, Home (Police), Department, Bihar, Patna.
3. The Joint Secretary, Home (Police), Dept. Bihar, Patna.
4. The Director General of Police, Bihar, Patna.
5. The D.I.G. (E.O.U.), Bihar, Patna.
6. The D.I.G. Central Range, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sanjiv Kumar Mishra, Advocate
		Mr. Sangiv Kumar, Advocate
For the Respondent/s	:	Mr. Manish Kumar, G.P.-4
		Mr. Ravi Verma, AC to GP-4

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 08-01-2019

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

In the present case, the petitioner is challenging the
order of suspension vide Memo No. 5070 dated 08.06.2018 by
which he has been put under suspension under Rule 9 (1) (a) (c) of
Bihar Government Servant (Classification, Control and Appeal)
Rules 2005 (hereinafter referred to as ‘the Rules’).

The petitioner was appointed as Sub Inspector of Police
on 15.06.1984. At present he is holding the post of of Deputy
Superintendent of Police, Town, Patna since August, 2017. An
audio clip has been made viral showing that he was talking to



some unknown lady with un-parliamentary words and whereafter he has gone to the office of News for Nation requesting that the video clip should not be made viral. After the clip went viral, the police came in action and he has been put under suspension by the order impugned.

The State has filed its counter affidavit and it has not been denied that no any criminal case i.e. in the shape of FIR has been lodged against the petitioner nor the departmental enquiry is under contemplation nor any charge sheet has been served. The order of suspension has been passed on 08.06.2018 and more than 6 months have already been passed. As per the provision of Section 9 (1) (a) of the Rules which prescribes that a government servant can be put under suspension when a disciplinary proceeding against the government servant is under contemplation or is pending and Section 9 (1) (a) (c) of the Rules prescribes that when 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 in public interest to suspend the government servant and Section 9 (7) of the Rules stipulates that the charge in the matter of disciplinary proceeding 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 alongwith reasons to be recorded in writing for the delay in framing of the chargesheet for a further period of four months.

From the record, it does not appear that the competent authority has extended the period of suspension as provided under Section 9 (7) of the Rules and more than three months have already elapsed, in such circumstances, it will be treated that the respondent has failed to satisfy the condition of Section 9 (1) (a) of the Rules. With regard to Section 9 (1) (c) of the Rules, the condition is that the FIR must be lodged and followed by investigation, inquiry or trial. Admittedly, in the present case, no FIR till date has been lodged. The plea has been taken by the State that the petitioner is not cooperating for forensic test of his voice in the laboratory, whereas the counsel for the petitioner submits that his voice was tested by the Forensic Science Laboratory but it does not tally with voice in the audio clip. So far merit is concerned, this Court is not going in that subject as to whether a person having talked with a lady not being his wife would constitute misconduct and can be put under departmental proceeding, which will be addressed on the subsequent stage but,



for the present, admittedly, the State has failed to make out a case to putting a person under suspension after three months as well as the conditions mentioned in Section 9 (1) (a) (c) are not satisfied.

In such view of the matter, the order of suspension dated 08.06.2018 is quashed. It is for the State to act in accordance with law.

Accordingly, this writ application is allowed with the aforesaid observations.

(Shivaji Pandey, J)

V.K.Pandey/
S. Katyayan

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17.01.2019
Transmission Date	NA

