

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.16907 of 2019**

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Shiv Kumar Son of Late Ramanand Prasad Resident of Balaji House,  
Dariyapur, Jahaji Kothi, P.S.- Kadamkuan, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Home Department,  
Government of Bihar, Sardar Patel Bhawan Patna.
2. The Director General of Police (DGP), Bihar, Patna.
3. The Director General (DG), Vigilance Investigation Bureau, Bihar, Patna.
4. The Inspector General (IG) of Police Darbhanga Zone at Darbhanga.
5. The Deputy Inspector General of Police, Darbhanga Division at Darbhanga.
6. The Superintendent of Police (SP), Madhubani.
7. The Superintendent of Police (SP), Samastipur.
8. The Superintendent of Police (SP), Vigilance Investigation Bureau, Patna.

... .. Respondent/s

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**Appearance :**

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| For the Petitioner/s | : | Ms. Nivedita Nirvikar, Advocate |
| For the Respondent/s | : | Mr. Md.Nadim Seraj (GP 5)       |
| For the Vigilance    | : | Mr. Sanjay Prasad, Advocate     |

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**CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR**  
**ORAL JUDGMENT**

**Date : 03-09-2019**

Heard Ms. Nivedita Nirvikar, learned advocate for the petitioner, Mr. Md. Nadim Seraj, learned GP-5 for the State and Mr. Sanjay Prasad, learned advocate for the Vigilance Department.

2. The petitioner has challenged the order dated 20.01.2019 passed under the signature of the Superintendent of Police, Madhubani whereby he has been suspended for having gone to jail and therefore the petitioner would be entitled for an order of resumption of duty/revocation of suspension after coming out from jail, as the order of suspension is deemed to have been passed under Section 9(3)



of the *Bihar Government Servants (Classification, Control & Appeal) Rules, 2005*.

3. From looking at the order impugned, it becomes very clear that it has been passed under Section 9(1)(a) and (c) of the *Bihar Government Servants (Classification, Control & Appeal) Rules, 2005* i.e. a contemplated departmental proceeding and pendency of a criminal case which is under investigation.

4. Be it noted that the petitioner was caught in a trap and was arrested with tainted money to the tune of Rs. 15000/- for which a criminal case has been lodged.

5. The second limb or argument of Ms. Nirvikar is that in the past, the suspension of some other officer who had been trapped and a criminal case had been initiated against him was revoked and he had been given a posting to work on the sole ground that the departmental proceeding as well as the criminal case would take much long time to be concluded and the manforce cannot thus be squandered in the meanwhile.

6. In support of the aforesaid contention, learned counsel for the petitioner has shown to this Court an order passed by a superior police authority whereby during the period of the pendency of a criminal case and a departmental proceeding against an employee, his suspension was revoked and he was posted on regular basis.

7. Mr. Nadim Seraj, learned GP-5 contends that such parity with an accused in a different case is not sustainable as



it could have been an order *in personam* and cannot be taken as a precedent. Apart from this, it has been submitted by Mr. Seraj that from the order of suspension it can very well be gleaned that it is in contemplation of a departmental proceeding as well as for the pendency of a criminal case which is under investigation. In that view of the matter, the prayer of the petitioner for revocation of suspension cannot be allowed.

8. There is force in the submission of the learned counsel for the State. The departmental proceeding, it may be noted has already begun and the criminal case is under investigation.

9. However, considering the other attendant circumstances, this Court directs the departmental proceeding against the petitioner to be concluded within a period of five months from the date of production of a copy of this order before the enquiry officer.

10. Needless to state that the petitioner would be granted subsistence allowance during the period of suspension and would also be made to avail the benefits of graded enhancement in subsistence allowance in terms of the provisions contained in *Bihar Government Servants (Classification, Control & Appeal) Rules, 2005*. In case the proceedings are not concluded within the aforesaid period, it would be open for the petitioner to approach the disciplinary authority for revocation of his suspension and in that event, the disciplinary authority shall consider the aspect of optimal



utilization of manforce and shall pass orders in accordance with law within a reasonable period of time.

11. Ms. Nirvikar, learned counsel for the petitioner further submits that a representation is pending before the DIG, Darbhanga.

12. The representation need be disposed of by the concerned respondent.

13. It is made clear that no opinion has been expressed with respect to the merits of the assertions made in the aforesaid representation and the concerned respondent shall look into the facts independently and shall pass orders in accordance with law.

14. With the aforesaid direction/observation, the writ petition is disposed of.

**(Ashutosh Kumar, J)**

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