

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20142 of 2019

Niraj Kumar Seth S/o Shri Madan Mohan Seth Permanent resident of Shiv Mandap Tola, P.O. and P.S.- Tamar, Ranchi, Jharkhand- 835225, presently residing at Lakhibag, Bullashaid, Manpur, Gaya.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Revenue and Land Reforms Department, Government of Bihar, Patna.
2. The Principal Secretary, Revenue and Land Reforms Department, Government of Bihar, Patna.
3. The Special Secretary, Revenue and Land Reforms Department, Government of Bihar, Patna.
4. The District Magistrate, Gaya.
5. The Sub-Divisional Officer, Sadar Gaya.

... .. Respondents

Appearance :

For the Petitioner	:	Mr.Nikhil Kumar Agrawal, Advocate Mrs. Aditi Hansaria, Advocate
For the Respondents	:	Mr.Sajid Salim Khan, SC-25

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

4 13-12-2019 The facts alleged in the writ application do not appear to be in dispute at all in view of the counter affidavit, which has been filed on behalf of the respondents.

2. While working as Circle Officer, Wazirganj, in the district of Gaya, the petitioner was placed under suspension by an order dated 30.08.2017, issued by the Special Secretary, Revenue and Land Reforms Department, Government of Bihar. The said decision to put the petitioner under suspension was evidently taken on a report of the District Magistrate, Gaya, dated 10.08.2017 for the alleged arbitrary manner in which he



had been discharging his duties as Circle Officer. The order putting the petitioner under suspension was passed in exercise of power under Rule 9(1) of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005. It was mentioned in the order under suspension that the petitioner would be entitled to receive subsistence allowance during the period of his suspension. After placing the petitioner under suspension, a charge-sheet was served on him on 28.12.2017, containing following charges : -

“i. Charge No.1 – It has been alleged that, vide order contained in Memo No.1934 dated 05.10.2016, the District Magistrate, Gaya had cancelled the Caste Certificate issued to Smt. Karuna Kumari, Member, District Council (Caste Certificate No. C/16/01068 dated 01.03.2016) by the Circle Officer, Gurua. Further, the Sub Divisional Officer, Sherghati, was directed to issue recommendation for initiation of departmental proceeding against such officers who had issued Caste Certificates without carrying out proper verification. However, despite the seriousness of the above matter, without carrying out proper investigation, wrong Caste Certificate (Caste Certificate No. C/17/02733 dated 22.07.2017) was issued in favour of Smt. Karuna Kumari, by the petitioner.

ii. Charge No.2 – It has been alleged that, the petitioner has issued wrong caste certificate in favour of Shri Ramdhin Prasad, Kiran Kumari and Shri Kundan Kumar (being Caste Certificate No. C/17/02247 dated 16.06.2017, C/17/02316 dated



22.06.2017 and C/17/02317 dated 22.06.2017 respectively).

iii. Charge No. 3- It has been alleged that, during the course of investigation at the PDS shop of Kaneta (Belaganj) PACS, ignoring the irregularities committed by the PACS director, the petitioner has reported that the distribution is being carried out in a proper manner and has issued a report in favour of the PACS director.

iv. Charge No.4 – It has been alleged that, the petitioner does not timely perform the work under the Right to Public Services Act. It has been alleged that on account of not taking interest in disposal of the complaint filed under Public Grievance Redressal Mechanism and not filing a show cause, penalty of Rs.5000/- was imposed upon the petitioner.

v. Charge No.5- It has been alleged that, the petitioner showing negligence towards his duties, did not submit the financial return-1 relating to the land revenue for the financial year 2016-17 to the District, due to which consolidated financial return-1 could not be submitted to the Department in time.

vi. Charge No.6 – It has been alleged that, on account of unauthorized absence of the petitioner in the meeting held on 14.07.2017, work of Vazirganj Circle could not be reviewed. It has been alleged that, as per the report submitted by the Sub Divisional Officer, Sadar, on 02.07.2017 when the petitioner was searched due to an incident of death of a person by electrical accident, the petitioner was found unauthorizedly absent. On other occasions also, the petitioner had been found unauthorizedly absent from the office.”



3. It is the petitioner's specific case that he is not being paid his subsistence allowance. No Enquiry Officer has been appointed, let alone appointment of a Presenting Officer. The petitioner is thus under suspension with effect from 30.08.2017, with framing of charge-sheet as the only step taken in the direction of departmental proceeding against him. It is in the background of above noted facts that the petitioner has filed the present writ application seeking, *inter alia*, quashing of the order dated 30.08.2017 and payment of arrears of subsistence allowance from the date he was placed under suspension.

4. A casual and vague statement has been made in paragraph 11 of the counter affidavit, which reads thus :-

“11. That the statement made in paragraph nos. 15 to 18 of the writ petition are not correct. The Departmental Proceeding drawn against him is under consideration of the Deptt. and in due course after adopting procedures required for its conclusion the said proceeding would be disposed of.”

5. There is no statement as to what the department is contemplating in respect of appointment of Enquiry Officer and the Presenting Officer and for conclusion of the department enquiry within a reasonable period. The expression, 'in due course after adopting procedure required for its conclusion', occurring in paragraph 11 of the counter affidavit, is disturbing



to the Court which exemplifies complete indifference on the part of the respondents.

6. Inaction on the part of the respondents, as is evident from the counter affidavit, is writ large and cannot be considered to be bonafide.

7. Though it is up to the disciplinary authority to take a decision to put an employee under suspension in appropriate facts and circumstances, the said power, however, cannot be used in a manner that such an order is allowed to continue for an indefinite period, without effective initiation of the departmental enquiry, with the appointment of enquiry officer.

8. I am of the considered view that it is against public interest to keep a government servant under suspension for long and indefinite period without effective initiation of departmental proceeding and its conclusion with a reasonable period of time. Non-payment of subsistence allowance, during the said period of suspension, does not only offend the provisions under the CCA Rules, it is violative of Article 21 of the Constitution of India for the reason that a Government servant under suspension, if not paid his subsistence allowance, he cannot have any other source of livelihood by engaging himself in any other avocation because of his relationship as an employee,



though under suspension, with the State Government.

9. Since there has been no progress at all in the direction of conclusion of departmental enquiry ever since the date of his suspension, i.e., 30.08.2017, and subsequent framing of charge on 28.12.2017, the impugned order of suspension dated 30.08.2017 is hereby quashed. The respondents shall be obliged to ensure that the petitioner is reinstated forthwith and his entire arrears of subsistence allowance is paid to him within four weeks from date of receipt/production of a copy of this order.

10. This writ application is accordingly allowed with a cost of Rs.10,000.00 (ten thousand) to be paid by respondent No.2 to the petitioner within the aforesaid period of four weeks.

(Chakradhari Sharan Singh, J)

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