

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7610 of 2019

Binod Kumar Singh Son of Sri Yamuna Prasad Singh, resident of Ward No. 43, Arrah, P.S.- Nawada Ara, District - Bhojpur.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The District Magistrate , Bhojpur, Arrah,
3. The District Panchayat Raj Officer, Bhojpur, Arrah,
4. The Block Development Officer, Garhani Block, District - Bhojpur.
5. The Block Development Officer, Barhara, District- Bhojpur,
6. The Block Development Officer, Udwant Nagar, Bhojpur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Parmatma Singh
For the Respondent/s	:	Mrs. Archana Meenakshee (GP-6)

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date : 18-09-2020

The present case was heard yesterday and today it has been listed 'For Orders'.

2. The present writ petition has been filed for quashing the order contained in Memo No. 340 dated 15.05.2016 passed by the District Magistrate, Bhojpur at Ara, whereby and whereunder the petitioner, who is the Panchayat Secretary, Garhani Block, District-Bhojpur, has been put under suspension on the ground of non-producing the records of Employment of Harpur Panchayat Teachers.

3. The brief facts of the case, according to the petitioner, are that a show cause notice dated 04.05.2016 was issued to the petitioner by the Block Development Officer, Garhani, pertaining to the period of posting as Panchayat Secretary,



Harpur, Garhani Block, alleging therein that the petitioner had not handed over the charge of the documents concerning the Panchayat Teacher Employment Process on account of which the same could not be produced at the time of hearing of a writ petition before the Hon'ble High Court.

4. It is the contention of the learned counsel for the petitioner that the petitioner had handed over the charge on 11.04.2012 as is apparent from the handing over / taking over document annexed as Annexure-3 to the writ petition, which would show that the petitioner had handed over all the records on 11.04.2012 itself. Thereafter, the District Magistrate, Bhojpur at Ara vide Memo dated 340 dated 15.05.2016 had put the petitioner under suspension on the ground that he had not handed over documents regarding the Panchayat Teaches Employment Process in question.

5. The learned counsel for the petitioner has submitted that the petitioner is under suspension since more than four years and has not only become a paralytic patient, but has also become financially crippled and is facing great hardship. It is thus submitted that the petitioner cannot be put under suspension for an indefinite period, hence the same is in violation of the rules and regulations, thus the order of



suspension dated 15.05.2010 is required to be quashed.

6. Per contra, the learned counsel for the respondent State has submitted that since the petitioner has failed to hand over the documents pertaining to the Teacher Employment Process in question, he has been suspended. It is further submitted that on account of the serious charges against the petitioner, a departmental proceeding has also been initiated against the petitioner herein, however, on account of non-cooperation of the petitioner, the same has not been concluded.

7. I have heard the learned counsel for the parties and perused the materials on record. It is apparent from the records that the petitioner was suspended on 15.05.2016 and thereafter, a departmental proceeding has been initiated against him, however, till date neither the departmental proceeding in question has been concluded nor there is any material on record to suggest that the order of suspension dated 15.05.2016 has been extended. It is a trite law that a delinquent/employee cannot be kept in perpetual suspension since the same would result in it being punitive in nature. In this connection, it would be relevant to refer to a judgment rendered by the Hon'ble Apex Court, reported in **(2015) 7 SCC 291 (Ajay Kumar Choudhary vs. Union of India)**; paragraphs no. 11, 12, 13, 14



and 21 whereof are reproduced herein below:-

"11. Suspension, specially preceding the formulation of charges, is essentially transitory or temporary in nature, and must perforce be of short duration. If it is for an indeterminate period or if its renewal is not based on sound reasoning contemporaneously available on the record, this would render it punitive in nature. Departmental/disciplinary proceedings invariably commence with delay, are plagued with procrastination prior and post the drawing up of the Memorandum of Charges, and eventually culminate after even longer delay.

"12. Protracted periods of suspension, repeated renewal thereof, have regrettably become the norm and not the exception that they ought to be. The suspended person suffering the ignominy of insinuations, the scorn of society and the derision of his department, has to endure this excruciation even before he is formally charged with some misdemeanour, indiscretion or offence. His torment is his knowledge that if and when charged, it will inexorably take an inordinate time for the inquisition or inquiry to come to its culmination, that is, to determine his innocence or iniquity. Much too often this has now become an accompaniment to retirement. Indubitably, the sophist will nimbly counter that our Constitution does not explicitly guarantee either the right to a speedy trial even to the incarcerated, or assume the presumption of innocence to the accused. But we must remember that both these factors are legal ground norms, are inextricable tenets of Common Law Jurisprudence, antedating even the Magna Carta of 1215, which assures that



— *“We will sell to no man, we will not deny or defer to any man either justice or right.” In similar vein the Sixth Amendment to the Constitution of the United States of America guarantees that in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial.*

13. *Article 12 of the Universal Declaration of Human Rights, 1948 assures that:*

“12. No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.”

14. *More recently, the European Convention on Human Rights in Article 6(1) promises that:*

“6. (1) in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time....”

and in its second sub-article that:

“6. (2) Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.”

21. *We, therefore, direct that the currency of a suspension order should not extend beyond three months if within this period the memorandum of charges/charge-sheet is not served on the delinquent officer/employee; if the memorandum of charges/charge-sheet is served, a reasoned order must be passed for the extension of the suspension. As*



in the case in hand, the Government is free to transfer the person concerned to any department in any of its offices within or outside the State so as to sever any local or personal contact that he may have and which he may misuse for obstructing the investigation against him. The Government may also prohibit him from contacting any person, or handling records and documents till the stage of his having to prepare his defence. We think this will adequately safeguard the universally recognised principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. We recognise that the previous Constitution Benches have been reluctant to quash proceedings on the grounds of delay, and to set time-limits to their duration. However, the imposition of a limit on the period of suspension has not been discussed in prior case law, and would not be contrary to the interests of justice. Furthermore, the direction of the Central Vigilance Commission that pending a criminal investigation, departmental proceedings are to be held in abeyance stands superseded in view of the stand adopted by us."

8. I have heard the learned counsel for the parties and perused the materials on record. This Court finds that though the petitioner was suspended on 15.05.2016 and a departmental proceeding had been initiated on the very same day, however, despite lapse of more than four years, neither the said departmental proceeding has been concluded nor any order has been passed, extending the order of suspension of the petitioner



herein, thus considering the law laid down by the Hon'ble Apex Court in the case of Ajay Kumar Choudhary (supra), this Court is of the view that the suspension, being essentially transitory or temporary in nature, must perforce be of short duration and cannot be for an indefinite period inasmuch as if the order of suspension is in perpetuity, the same would be rendered punitive in nature, hence this Court deems it fit and proper to direct for revoking the order of suspension dated 15.05.2016, as contained in memo no. 340, especially in view of the fact that the learned counsel for the respondents is not in a position to conclusively inform this Court regarding the date by which the final order, in the ongoing departmental proceeding, shall be passed.

9. Consequently, the respondents are directed to ensure the joining of the petitioner within 24 hours of uploading of the present order.

10. The writ petition stands allowed.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	26.09.2020
Transmission Date	

