

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8919 of 2019

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Sujeet Kumar, Son of Late Kameshwar Prasad, Resident of A.B. Enclave, Flat No. 202, Urjagram, Khajpura, P.O.- Bihar Veterinary College, P.S.- Rajivnagar, District- Patna PIN- 800014.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Public Health Engineering Department, Government of Bihar, Patna.
3. The Joint Secretary, Public Health Engineering Department, Government of Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Mrigank Mauli
For the Respondent/s : Mr. S.Raza Ahmad (AAG-5)

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date : 16.09.2020

The present petition has been taken up for consideration through the mode of Video conferencing in view of the prevailing situation on account of COVID 19 Pandemic, requiring social distancing.

2. Heard the learned counsel for the petitioner Shri Mrigank Mauli and Shri Alok, AC to AAG-5, appearing for the respondent State.

3. The present writ petition has been filed for issuance of a direction to the respondents to revoke the order of suspension of the petitioner, who has been placed under suspension vide Memo dated 02.05.2017 issued by the Special Secretary, Public Health Engineering Department. The petitioner has further prayed for enhancement of the amount of subsistence allowance.

4. The brief facts of the case are that the petitioner was



suspended from his services by an order dated 02.05.2017, whereupon a departmental proceeding was initiated vide resolution dated 02.05.2017 and the charge sheet was served upon the petitioner as also an Enquiry Officer was appointed for conducting the departmental enquiry. The Enquiry Officer is stated to have submitted the enquiry report dated 21.01.2019, exonerating the petitioner from all the charges levelled against him. Thereafter, the disciplinary authority had issued a second show cause notice dated 23.10.2019, which was replied to by the petitioner herein vide his reply dated 08.11.2019.

5. The learned counsel for the petitioner has submitted that though the departmental proceeding was initiated on 02.05.2017 and the petitioner was suspended on 02.05.2017, nonetheless, the said departmental proceeding still remains inconclusive even after a lapse of three years and when this matter was listed on 10.06.2020 before this Court, the respondents had sought six week's time for passing the final orders in the on going departmental proceedings, hence the present case was directed to be listed on 10.07.2020. Thereafter, the present case was listed before this Court on 13.07.2020, when again the respondents had sought time for passing the final order in the ongoing departmental proceeding, and



accordingly, six weeks' further time was granted and the present case was directed to be listed on 24.08.2020. It is further submitted that till date the final order in the ongoing departmental proceeding has not been passed by the disciplinary authority, hence the order of suspension is fit to be quashed/revoked.

6. Per contra, the learned counsel appearing for the respondents has submitted that some more time be granted for passing the final order in the ongoing departmental proceeding though it has not been denied that there has been inordinate delay in concluding the ongoing departmental proceeding, as against the petitioner herein.

7. At this juncture, it would be relevant to refer to the judgments referred to by the learned counsel for the petitioner. The citation/reference along with the extracts thereof are being reproduced herein below:-

(i) Judgment rendered by the Hon'ble Apex Court in the case of ***Ajay Kumar Choudhary vs. Union of India***, reported in ***(2015) 7 SCC 291***, 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.”

(ii) Judgment dated 01.09.2017 passed by a coordinate Bench of this Court in ***CWJC No. 18951 of 2016 (Javed Ashraf vs. The State of Bihar & Ors.)***, relevant paragraphs whereof are reproduced herein below:-

“The petitioner while questioning the order of suspension bearing Memo No.1845 dated 27.5.2015 passed by the Joint Secretary, Rural Works Department, Government of Bihar, Patna has relied upon a judgment of the Supreme Court reported in (2015)7 SCC 291 (Ajay Kumar Choudhary vs. Union



of India) as well as the orders enclosed at Annexure 21 series to submit that undue delay is one of the grounds for revocation of suspension but the said principle has not been applied in so far as the case of the petitioner is concerned. Mr. Giri submits that not even the enquiry report has been submitted in the case.

Having heard learned counsel for the parties and considering that though the disciplinary proceeding was initiated against the petitioner in the year 2015 and although a period of 2 years has lapsed but the matter remains at enquiry stage, this Court would direct the Principal Secretary, Rural Works Department, Government of Bihar, Patna to ensure that the disciplinary proceeding so initiated against the petitioner is concluded within a maximum period of six months from today failing which he should consider the prayer of the petitioner for revocation of his suspension in the light of the position explained by the Supreme Court in the case of Ajay Kumar Choudhary (Supra) as well as the orders of the State Government present at Annexure 21 series which, according to Mr. Giri, was passed in similar circumstances and pass appropriate orders in accordance with law within four weeks of such expiry."

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 02.05.2017 and a departmental proceeding had been initiated on the very same day, however, despite lapse of more than three 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 02.05.2017, as contained in resolution no. 319, 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/-

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CAV DATE	
Uploading Date	26.09.2020
Transmission Date	

