

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8467 of 2020

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Manoj Kumar Singh, S/O Karu Singh, Resident Of Village-Birnaudha, P.S. Shambhuganj, District-Banka at present resident at Lalita Devi Lane, Choti Khanjarpur, Bhagalpur

... .. Petitioner/s

Versus

1. The State of Bihar, through the District Magistrate, Banka
2. The District Magistrate, Banka
3. The Senior Additional Collector, Banka
4. The Deputy Collector (Establishment), Banka

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Ray Saurabh Nath, Advocate
For the Respondent/s : Mr. Ravi Verma, A.C. to G.P.-4

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 09-02-2021

Heard learned counsel for the petitioner as well as the learned State Counsel.

2. The learned State Counsel, at the very outset, submits that the complete brief has not been served upon him as the Annexures are wanting in the copy of the writ petition served on the counsel for the respondent-State. The same is disputed by the petitioner's counsel. He submits that the entire brief along with all the Annexures was transmitted by electronic mode to the office of the learned Advocate General at the time of filing of the writ petition. If incomplete copy of the brief has been handed over to



the counsel to whom the brief has been assigned, the fault lies in the office of the learned Advocate General.

3. The said issue is not being pursued by this Court as the office of the learned Advocate General has not raised any objection with regard to any incomplete brief being transmitted through electronic mode prior to handing over the same to the learned State Counsel.

4. The petitioner seeks quashing of the order dated 21.05.2020, issued by the District Magistrate, Banka, by which the petitioner has been continued under suspension and has been communicated the decision that proceedings would be conducted against him under the provisions of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (hereinafter referred to as “the CCA Rules”) upon its remand under order dated 25.07.2019 passed on the petitioner’s earlier writ petition, bearing CWJC No.18401 of 2017.

5. Counsel for the petitioner submits that the order of the Collector, Banka purports to place the petitioner under suspension with retrospective effect. Such order is unsustainable in the eyes of law as there can be no suspension with retrospective effect and that also having effect since such a long time prior to its issuance i.e., since 03.02.2017. The submission is founded on



decision of a co-ordinate Bench of this Court in the case of *Ashwani Kumar Vs. State of Bihar*, decided in CWJC No.24500 of 2019.

6. The learned State Counsel has addressed the Court on legal issue and has submitted that the order is in accordance with Rule 9(5) of the CCA Rules, 2005. The same is based on the fact that this Court in CWJC No.18401 of 2017 has remanded the matter to the authority for conducting fair and proper enquiry. The District Magistrate thereafter has decided to hold further enquiry against the petitioner. Under such circumstances, Rule 9(5) of the CCA Rules contemplates that the Government servant shall be deemed to have been placed under suspension by the appointing authority from the date of the original order of dismissal.

7. This Court would consider it useful to quote Rule 9(5) of the CCA Rules, which reads as follows:

“9(5). Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government Servant is set aside or declared or rendered void in consequence of or by a decision of a court of law and the disciplinary authority, on a consideration of the circumstances of the case, decides to hold further inquiry against the government servant to meet a situation where the court has passed an order purely on technical grounds without going into the merits of the case, on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the government servant shall be deemed to have been placed under suspension by the Appointing Authority from the date of the original order of dismissal, removal or compulsory retirement



and shall continue to remain under suspension until further orders.”

8. The original order of dismissal in this case is dated 03.02.2017. The same has been set aside/quashed in the petitioner’s earlier writ proceedings arising out of CWJC No.18401 of 2017 and the matter remanded to the respondents for conducting enquiry after giving proper opportunity to the petitioner. The District Magistrate thereafter has decided to hold further enquiry against the petitioner. In view of the provisions of Rule 9(5) of the CCA Rules (supra), suspension of the petitioner from the date of the original order of dismissal (03.02.2017) does not suffer from any infirmity. It is, in fact, in accordance with the procedure prescribed under Rule 9(5) of the CCA Rules.

9. As regards judgment of this Court in the case of *Ashwani Kumar* (supra), this Court would observe that the same is distinguishable on facts, inasmuch as in that case, suspension order with retrospective effect was issued after this Court had already quashed the order of punishment and directed for reinstatement of the petitioner therein, with all consequential benefits.

10. That is not the case here. In the instant case, this Court in the earlier writ proceedings had remanded the matter and upon such remand, the provisions of Rule 9(5) of the CCA Rules



came into play; and have rightly been relied upon to proceed against the petitioner after placing him under suspension with effect from the date of his earlier termination. No grounds are made out for quashing the order of suspension dated 21.05.2020.

11. The petitioner's counsel at this juncture has submitted that the petitioner has not been paid even his subsistence allowance.

12. There is no averment in the writ petition that after the petitioner was placed under suspension on 21.05.2020, he has joined the headquarters assigned to him at the Block Office in Banka or he has requested the District Magistrate, Banka for payment of subsistence allowance. The petitioner cannot be deprived of his subsistence allowance having been placed under suspension. The petitioner would be entitled to payment of subsistence allowance, in accordance with law. For the same, he may approach the Collector. Upon his claim being raised before the Collector, the same is to be considered and payments due and admissible under the head "subsistence allowance" to be made, in accordance with law, expeditiously and preferably within two weeks from the date of such application having been submitted by the petitioner.

13. The writ application stands disposed of.



14. This Court would expect that the petitioner’s counsel would honour his undertaking in the instant proceedings regarding supply of the requisite court fee etc. within two weeks from the date he is called upon to do so by the office.

(Madhuresh Prasad, J)

PNM

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	
Transmission Date	N.A.

