

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18163 of 2021

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Amitabh Kumar Son of Late Sheo Kumar Singh Resident of Anandpuri,
Boring Canal Road, Patna, P.S.-Krishnapuri, District-Patna, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The State of Bihar through the Chief Secretary, Government of Bihar, Old Secretariat.
3. The Secretary, Transport Department, Vishveshwariya Bhawan, Bailey Road, Patna.
4. The Joint Commissioner-Cum-Secretary, Regional Transport Tribunal, Patna Division.
5. The State Transport Commission, Vishveshwariya Bhawan, Bailey Road, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Y.V. Giri, Sr. Advocate Mr. Pranav Kumar, Advocate
For the Respondent/s	:	Mr. Ravi Ranjan, AC to SC-22

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT

Date : 17-05-2022

Heard learned counsels for the parties.

In the instant petition, petitioner has prayed for
following reliefs:-

“(i) To issue an appropriate writ,
order, direction in the nature of *mandamus*
commanding the respondent authorities to pay
subsistence allowance to the petitioner in
accordance with the mandatory requirement
laid down in Rule 10(1) of the Bihar
Government Servants (Classification, Control
& Appeal) Rules, 2005 (hereinafter referred to
as “CCA Rules, 2005”) for the period
commencing from his suspension on



07.02.2018 till the period such suspension is continued.

(ii) To issue an appropriate writ, order, direction in the nature of *certiorari* for quashing the memo no. 975 dated 07.02.2018 issued under the signature of Deputy Secretary, Transport Department whereunder the petitioner has been put under suspension in terms of Rules 9(1)(c) of CCA Rules, 2005 as the suspension is based not only on non-existent grounds (Annexure-4 Pg, __) but it has become protracted outlived its object and purpose after the lapse of prolonged time, especially since when in the departmental enquiry, the petitioner has been exonerated.

(iii) To issue an appropriate writ, order, direction in the nature of *mandamus* commanding the respondent authorities, to accept the enquiry report submitted by the enquiry officer on 31.08.2020 and thereafter, discharge the petitioner from the charges framed against him or drop the departmental proceedings against the petitioner.

(iv) To issue an appropriate writ, order, direction in the nature of *mandamus* commanding the respondent no. 2 to revoke the suspension of the petitioner with immediate effect on basis of the enquiry report dated 31.08.2020 with all consequential benefits.

(v) To issue an appropriate writ, order, direction in the nature of *mandamus* commanding the respondents to revoke the suspension of the petitioner and treat the period of suspension as a period spent on duty.

(vi) To issue an appropriate writ, order, direction in the nature of *mandamus* commanding the respondents to pay the



remaining portion of the salary of the petitioner, and other consequential benefits, during the period of suspension from 07.02.2018 to till date in terms of Rule 13(2) (1) of the CCA Rules, 2005.

(vii) To issue an appropriate writ, order, direction in the nature of *mandamus* commanding the respondents to drop/quash the proceeding in view of the enquiry report dated 31.08.2020 and to take a final decision based on this enquiry report in terms of the General Administration Department letter no. 2763 dated 26.02.2014 issued by the General Administration Department.

(viii) To any other relief for which the petitioner appears to be found entitled by the Hon'ble Court.”

Petitioner was placed under suspension on 07.02.2018 vide Memo No. 975 by the State Government while invoking Rules 9(1)(c) of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (For short “Rules 2005”).

Grievance of the petitioner are in three fold, namely, payment of subsistence allowance, revocation of suspension and acceptance of enquiring officer's report by the disciplinary authority.

For payment of subsistence allowance, petitioner has not approached the suspending authority, namely, Government. Therefore, petitioner is hereby directed to approach the State Government/suspending authority in seeking payment of



subsistence allowance. If such representation/application is submitted, the competent authority is hereby directed to pass speaking order. If petitioner is otherwise eligible for subsistence allowance, the same shall be calculated and disbursed to the petitioner within a period of three months from the date of receipt of petitioner's application/representation.

Revocation of suspension dated 07.02.2018 is concerned, it is to be noted that enquiry proceedings has prolonged for these many years and it has not attained finality. Therefore, in all fairness, the suspending authority should have resorted to undertake review of suspension from time to time in the light of Apex Court's decision rendered in the case of ***Ajay Kumar Chaudhary V. Union of India*** reported in ***(2015) 7 SCC 291***. Therefore, the author of suspension/ suspending authority is hereby directed to undertake review of suspension within a period of two months from the date of receipt of this order. If suspension is to be continued in that event reasoned order shall be passed and communicated to the petitioner. If continuation of suspension is not warranted in that event concerned authority is hereby directed to revoke the suspension order, subject to result of the disciplinary proceedings.

In so far as acceptance of enquiring officer's report



issue is concerned, the disciplinary authority disagreeing with the enquiring officer's report and remanded the matter to the enquiring authority. In such circumstances, it is not appropriate to interfere with the disciplinary authority's power exercised under Rule 18 of Rules, 2005 in remanding the matter to the enquiring authority. Therefore, the third issue is not entertained as it is pre-mature to discuss or interfere with the disciplinary authority's action.

Accordingly, the present petition stands disposed of. Disciplinary authority is hereby directed to expedite the proceedings and complete within outer limit of three months from today.

(P. B. Bajanthri, J)

rakhi/-

AFR/NAFR	
CAV DATE	
Uploading Date	23.05.2022
Transmission Date	

