

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2271 of 2023

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Shankar Rajak, Son of Lakhan Rajak, Resident of Khutia, Post Office-
Kenasarai, Police Station- Mufasil, District- Nawadah, Presently suspended
constable, Police Centre, Motihari, District- East Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Home,
Government of India, Patna.
2. The Director General of Police, Bihar, Patna.
3. The Additional Director General of Police (Appeal and Welfare), Bihar,
Patna.
4. The Director General, Magadh Range, Gaya.
5. The Superintendent of Police, East Champaran (Motihari).

... .. Respondent/s

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Appearance :

For the Petitioner : Mr.Arun Kumar, Advocate

For the State : Mr.Saroj Kr. Sharma, AC to AAG-3

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 31-07-2023

1. Heard learned counsel for the petitioner and
learned counsel for the State.

2. The petitioner, a constable, has approached this
court seeking a direction to the authorities to revoke his
suspension under Motihari District Order No. 886/22 dated
31.05.2022 whereby and whereunder he was suspended.



3. Brief background of the order of suspension is that petitioner was earlier dismissed from the force on 12.01.2021 under Motihari District Order No. 93 of 2021. Upon decision in the appeal arising out of the dismissal order, he was reinstated by a letter dated 05.05.2022. He was directed to be taken back in service with effect from the date of dismissal i.e. 12.01.2021 and having regard to the gravity of the charges for which he was proceeded against, it was decided to keep him under suspension.

4. Learned counsel for the petitioner submits that the suspension continued for eight months, then the instant writ petition was filed. Since it is with effect from the date of his earlier dismissal i.e. 12.01.2021 by now, nearly 22 months have lapsed since he was placed under suspension. It is submitted that Rule 9(7) of the Bihar Government Servant (Classification, Control & Appeal) Rules, 2005 (hereinafter referred as “Rules”) provides that charge-sheet is to be framed within 3 months from the date of suspension order, failing which the suspension order shall stand revoked. The revocation by effect of the provision is unless the authorities which issued the suspension order passes an order renewing the suspension with reasons to be recorded in writing justifying the delay in framing of charges, but only for a



further period of four months. After this extended period of four months, the suspension shall stand revoked if the charges are not framed. He submits that the revocation is automatic by effect of Rule 9 of the Rules.

5. In this connection, he refers to and relies upon decision of the full bench of this Court in the case of ***State of Bihar versus Gyan Kumar Ram*** with analogous case reported in ***2009 (4) PLJR 272***. He submits that since the charge-memo even as per counter-affidavit has been submitted on the petitioner in February, 2023, i.e. more than 8 months after the suspension order, the suspension order stands revoked and this court should thus issue a direction holding the suspension to have been revoked. It is also submitted that within three months from issuance of the order of suspension, the petitioner on 12.08.2022 had given an application to the Superintendent of Police, East Champaran, requesting revocation of his suspension order.

6. Learned counsel for the State on the other hand submits that the charge-memo has now been served on the petitioner. Petitioner, therefore, can no longer place reliance on Rule 9(7) of the Rules. The Gaya District Disciplinary Proceeding No. 4 of 2023 has already been instituted and is



being conducted against the petitioner based on the charge memo as communicated on 18.02.2023. Petitioner has been regularly paid subsistence allowance since January, 2021 i.e. the date with effect from which he has been reinstated in service under Motihari District Order No. 886 of 2022.

7. The submissions advanced on behalf of the parties and the relevant provisions of the Rules relied upon by the learned counsel for the petitioner are thus required to be seen by this court having regard to the facts and submissions made in this case with decision of the full bench in the case of **Gyan Kumar Ram** (supra). Paragraphs 16 onwards of the said decision has succinctly summarized the effect of lapse of three months after issuance of the order of suspension. It has been held in unambiguous terms that the revocation of suspension is not automatic even after lapse of the three months period specified in Rule 9(7) of the Rules. If the employee approaches the authority by making an application after lapse of three months relying upon Rule 9 (7) of the Rules expressing his intention of joining to discharge his duties, the authority would be obliged to allow the same in view of the lapse of the period specified in Rule 9 (7) of the Rules.

8. In the instant case, the petitioner has not made any



application after lapse of three months, which period lapsed on 30th August, 2022. His only application (Annexure-3) was made within the three month period specified in Rule 9 (7) of the Rules and, therefore, was an exercise in futility as there is no rule under which the petitioner could have sought revocation of suspension within 3 months from the date of suspension order.

9. Decision of the Full bench is also clear to the extent that the right of the employee gets defeated, if before he makes an appropriate application, the charge-sheet is framed. In the instant case, the charges framed against the petitioner was served on him on 18.02.2023. This fact is not in dispute. It is also not the petitioner's case that after lapse of three months from the date of suspension order, till service of charge memo upon him, he had made any application for availing the benefit of revocation of suspension order in terms of Rule 9(7) of the Rules.

10. Considering the settled legal position emanating from the decision of the full bench in the case of **Gyan Kumar Ram** (supra) and the facts noted above, this Court finds that relying upon Rule 9 (7) of the Rules, the petitioner is not in a position to claim revocation of suspension. There is no issue raised on behalf of the petitioner that subsistence allowance is



not being paid to him in accordance with the Rules.

11. The writ petition is dismissed.

(Madhuresh Prasad, J)

shashank/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	26.08.2023
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