

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10626 of 2021

Manoj Kumar Son of Mithlesh Chaudhary Resident of Village- Danu Bigha,
Police Station- Makhdumpur in the district of Jehanabad.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Principal Secretary, Department of Education, Government of Bihar, Patna.
2. The Principal Secretary Department of Education, Government of Bihar, Patna.
3. The Director Primary Education, Government of Bihar, Patna.
4. The District Education Officer Jehanabad.
5. The District Programme Officer (Estb.) Jehanabad.
6. The Block Development Officer Jehanabad.
7. The Block Education Officer Jehanabad.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Sunil Kumar, Adv.
For the Respondent/s : Mr.Subhash Chandra Mishra (Sc16)

**CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH
SHARMA**

ORAL ORDER

4 17-01-2023 Heard the parties.

The petitioner has prayed in this writ petition for quashing the order, dated 07.12.2017, whereby the petitioner was put under suspension on the basis of a first information report registered by the Vigilance alleging that the total merit marks as mentioned in the select list is shown as 77.22% whereas on calculation the percentage comes only to 42.55%.

Learned counsel for the petitioner submits that, in the criminal case, even the charge sheet has not been filed till date while the first information report was registered on 03.11.2017. It is further pointed out that no case of fraud or forgery can be said to have been committed by the petitioner as the merit is not



prepared by the petitioner and is prepared by the concerned appropriate authority against whom no case has been registered. Learned counsel submits that no departmental enquiry has been initiated against the petitioner and the petitioner till date is continuing under suspension for more than five years.

Per contra, learned counsel appearing for the State submits that the suspension order was passed rightly as a case under Sections 420, 467, 468, 470, 472, 409 and 120B of the Indian Penal Code was registered against the petitioner and since the same related to having committed forgery in preparation of merit for appointment, the petitioner was put under suspension.

Respondents' counter affidavit, however, does not reflect whether any departmental proceedings have been initiated against the petitioner.

A person can be placed under suspension on account of initiation of a criminal case for committing serious offences; also, he can be suspended where there is departmental enquiry likely to be conducted; he would be suspended also if he has been in custody for more than 24 hours. But, this Court finds that a person can not be continued for suspension for five years without further proceeding in criminal case or in the departmental proceedings.

While suspended employee continues to be Government servant and remains in service and also draws



subsistence allowance, taking no work from him for years together amounts to gross national wastage. The State exchequer is put to loss as he is being paid subsistence allowance while no work is being performed by him.

In O.P. Gupta Vrs. Union of India & Ors. reported in 1987) 4 SCC 328, the Apex Court held as under :

“15 : We have set out the facts in sufficient detail to show that there is no presumption that the Government always acts in a manner which is just and fair. There was no occasion whatever to protract the departmental inquiry for a period of 20 years and keeping the appellant under suspension for a period of nearly 11 years unless it was actuated with the mala fide intention of subjecting him to harassment. The charge framed against the appellant was serious enough to merit his dismissal from service. Apparently, the departmental authorities were not in a position to substantiate the charge. But that was no reason for keeping the departmental proceedings alive for a period of 20 years and not to have revoked the order of suspension for over 11 years. An order of suspension of a government servant does not put an end to his service under the Government. He continues to be a member of the service in spite of the order of suspension. The real effect of the order of suspension as explained by this Court in [Khem Chand v. Union of India](#), [1958] SCR 1080 is that he continues to be a member of the government service but is not permitted to work and further during the period of suspension he is paid only some allowance- generally called subsistence allowance-which is



normally less than the salary instead of the pay and allowances he would have been entitled to if he had not been suspended. There is no doubt that an order of suspension unless the departmental inquiry is concluded within a reasonable time, affects a government servant injuriously. The very expression 'subsistence allowance' has an undeniable penal significance. The dictionary meaning of the word 'Subsist' as given in Shorter Oxford English Dictionary, Vol. II at p. 2171 is "to remain alive as on food; to continue to exist". "Subsistence" means- means of supporting life, especially a minimum livelihood. Although suspension is not one of the punishments specified in r. 11 of the rules, an order of suspension is not to be lightly passed against the government servant. In the case of [Board of Trustees of the Port of Bombay v. Dilip Kumar Raghavendranath Nadkarni & Ors.](#), [1983] 1 SCR 828 the Court held that the expression 'life' does not merely connote animal existence or a continued drudgery through life. The expression 'life' has a much wider meaning. Suspension in a case like the present where there was no question of inflicting any departmental punishment prima facie tantamounts to imposition of penalty which is manifestly repugnant to the principles of natural justice and fairplay in action. The conditions of service are within the executive power of the State or its legislative power under the proviso to [Art. 309](#) of the Constitution, but even so such rules have to be reasonable and fair and not grossly unjust. It is a clear principle of natural justice that the delinquent officer when placed under suspension is entitled to represent that the departmental proceedings should be concluded with



reasonable diligence and within a reasonable period of time. If such a principle were not to be recognised, it would imply that the Executive is being vested with a totally arbitrary and unfettered power of placing its officers under disability and distress for an indefinite duration.

In the circumstances therefore the prolonged suspension of the petitioner is directed to be revoked and the respondents are directed to reinstate the petitioner and take work from him. The period during which he remained under suspension shall be decided subject to the final outcome of the criminal case. The petitioner's salary would however be fixed as per the present pay scale and he will be paid henceforth. The exercise shall be completed within a period of one month.

With the aforesaid observations, the writ petition stands allowed.

(Sanjeev Prakash Sharma, J)

Shamshad/-
Item No. 1

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