

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13518 of 2021

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Ranjan Kumar Chauhan Son of Late Jiyalal Singh Resident of Mohalla-
Professor Colony, Ward No. 6, Nirmali, P.S.- Nirmali, District- Supaul.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, General Administration Department, Government of Bihar, Patna.
2. The Joint Secretary, General Administration Department, Government of Bihar, Patna.
3. The Under Secretary, General Administration Department, Government of Bihar, Patna.
4. The District Magistrate, Purnea.
5. The Civil Surgeon, Purnea, District- Purnea.

... .. Respondents

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Appearance :

For the Petitioner/s : Mr.

For the Respondent/s : Mr.Dhurendra Kumar, AC to GP-5

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 11-05-2023 No one appears for the petitioner.

2. Learned counsel for the State is present.

3. Petitioner in the present case has challenged the Memo
No. 2498 dated 04.06.2021 as contained in Annexure '7' to the writ
application whereby and whereunder the representation of the
petitioner in the light of the order dated 01.03.2021 passed by this
Court in CWJC No. 618 of 2020 has been rejected. The respondents
have denied to revoke the order of suspension issued vide Memo No.
16946 dated 12.12.2019 under the signature of Respondent No. 3.

4. It is the case of the petitioner that in connection with the
alleged occurrence, he was sent to judicial custody on 14.10.2019
whereafter he was released on bail on 21.10.2019. The petitioner



was, however, not allowed to join his duty. His contention is that he has been placed under suspension vide impugned order (Annexure '3') with a retrospective effect which is not permissible in law. It is submitted that the order of suspension has been issued under Rule 9(1) (a) and (c) and Rule 9 (2) of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as the "Rules of 2005") whereas the petitioner would have been placed under suspension by virtue of Rule 9(2) of the Rules of 2005 during his detention period.

5. It is the contention of the petitioner that the respondents can not pass an order of suspension in view of Rule 9(2) of the Rules of 2005 after lapse of more than two months. In this case a composite order of suspension has been passed after two months which is unjustified, improper and violative of Rule 9(3)(i) of the Rules of 2005.

6. It is the further case of the petitioner that the departmental proceeding has been kept pending even as the petitioner is going to superannuate on 30.11.2021.

7. Learned counsel for the State submits that on a bare perusal of the impugned order as contained in Annexure '7' to the writ application, it would appear that the same has been issued in exercise of power under Rule 9 (1) (a) and (c) and 9(2) of the Rules of 2005. It is submitted that the order of suspension has been passed with retrospective effect for the reason that the petitioner was under



deemed suspension with effect from the date of suspension on 12.10.2019 till his release on bail on 22.10.2019.

8. Learned counsel relied upon a judgment of the Hon'ble Division Bench of this Court in the case of **Akhilesh Kumar Sharma vs. The State of Bihar and Others (LPA No. 262 of 2008)** to submit that in the said case, the respondents had passed the order of suspension under Rule 9(1)(c) and Rule 9(2) (a) of the Rules of 2005 whereby the appellant was placed under suspension. The said order was passed on 4th April, 2007. Later on the appellant was released on bail in the month of July, 2007, therefore, this Court held that his suspension under Rule 9(2)(a) may not continue any longer but his suspension under Rule 9(1)(c) does not get affected.

9. On perusal of the writ application and after hearing learned counsel for the State as also on going through the Rule 9 of the Rules of 2005, this Court is of the considered opinion that the respondents have not rightly appreciated the ratio of the judgment of the Hon'ble Division Bench of this Court in the case of **Akhilesh Kumar Sharma** (supra). In the said case, the appellant had gone in judicial custody and while he was in custody, a composite order under Rule 9(1) (c) and Rule 9(2)(a) of the Rules of 2005 was issued. The appellant was released from jail only in July, 2007 whereafter he took a plea that no fresh order of suspension has been passed against him but the Hon'ble Division Bench refused to accept the said contention saying that the order of suspension was a



composite order and after his release on bail, the order of suspension will be operative under Rule 9(1)(c) of the Rules of 2005.

10. So far as the facts of the present case are concerned, it is conversed. In this case, the petitioner had been sent to judicial custody on 12/14.10.2019 and he was released on bail on 21.10.2019. No order of suspension was passed by the respondents during this period. By virtue of the operation of Rule 9(2)(a) of the Rules of 2005, the petitioner shall be deemed to have been placed under suspension with effect from the date of his detention but under Rule 9(3)(i), the period deemed suspension shall be deemed to end after the custody period under sub-Rule (2). Clause (i) of Sub-Rule (3) of Rule 9 of the Rules of 2005 mandates that “After the custody period under sub-rule (2), the period of deemed suspension shall be deemed to end when the government servant gives his joining and the joining shall be accepted.”

11. In this case, joining of the petitioner was not accepted. After about two months from the date of his release, the respondents passed the impugned order placing the petitioner under suspension with retrospective effect. Rule 9 (3) (ii) of the Rules of 2005 reads as under:-

“9. (3) (ii) If a decision is taken to suspend the Government Servant again under sub-rule (1) (a), or (b) or (c), then such action may be taken only after acceptance of joining and by issuing a separate order.”

12. On the face of the aforesaid provision the composite order of suspension would be bad in law. It is well settled in law that



there cannot be a suspension with retrospective effect.

13. This Court, therefore, finds that the impugned order as contained in Annexure '7' as also the order of suspension as contained in Annexure '3' are liable to be set aside and those are accordingly set aside. As a result of setting aside of the impugned orders, the petitioner shall be entitled for consequential benefits.

14. This writ application is allowed.

(Rajeev Ranjan Prasad, J)

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