

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11513 of 2022

Vinod Kumar Singh son of Late Babu Lal Singh, resident of Thana Road
Obra, P.O. and P.S.-Obra, District-Aurangabad, Bihar-824124.

... .. Petitioner

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.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr.Y.V. Giri, Sr. Advocate Ms.Shrishti Singh, Advocate
For the Respondent/s	:	Smt. Anuradha Singh, SC-21 Mr.Rakesh Prabhat, AC to SC-21

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

3 11-05-2023 Heard Mr. Y.V. Giri, learned senior counsel for the
petitioner and learned counsel for the State.

2. Petitioner, in the present case, is seeking the
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 November 2018 till the period such suspension is continued.



- (ii) To issue an appropriate writ, order, direction in the nature of certiorari for quashing the letter bearing No. 2994 dated 06.06.2017 issued under the signature of State Transport Commissioner, to the extent that the petitioner has been put under suspension again in terms of Rules 9(2) of CCA Rules, 2005, as it has become protracted and outlived its object and purpose after the lapse of a prolonged period of time (Annexure 3, pg.24).
- (iii) To issue an appropriate writ, order, direction in the nature of certiorari for quashing the disciplinary proceedings initiated vide memo no. 2995 dated 06.06.2017 for it has been vitiated for non-payment of subsistence allowance (Annexure-5, pg.26).
- (iv) To issue an appropriate writ, order, direction in the nature of mandamus commanding the respondents to revoke the suspension of the petitioner and to treat the period of suspension as a period spent on duty, with grant of consequential benefits.
- (v) 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 30.12.2016 to till date in terms of Rule 13(2)(i) of the CCA Rules, 2005.
- (vi) To issue an appropriate writ, order, direction in the nature of mandamus commanding the respondents to stay the disciplinary proceedings initiated against the petitioner vide memo no. 2995 dated 06.06.2017 till the conclusion of the criminal trial in connection with Vigilance P.S. Case No. 158/2016 dated 30.12.2016.
- (vii) To any other relief for which the petitioner appears to be found entitled by the Hon'ble Court."



Submission on behalf of the Petitioner

3. Mr. Y.V. Giri, learned senior counsel for the petitioner has assailed the impugned order by which his request for revocation of suspension has been rejected vide memo no. 9552 dated 12.12.2022 as contained in Annexure '1/1' to the I.A. No. 01/2023.

4. Learned senior counsel submits that in this case the disciplinary proceeding is pending for last about 4½ years. During the period of suspension, while facing the departmental proceeding, the petitioner has not been paid his subsistence allowance. It is, therefore his submission that the whole disciplinary proceeding would stand vitiated for carrying the same without paying the subsistence allowance to the petitioner.

5. At this stage, this Court has been informed that the petitioner is being paid subsistence allowance w.e.f. 30.09.2022. It is stated that though the current subsistence allowance is being paid but the arrears of subsistence allowance have not been made available to the petitioner.

6. Learned senior counsel further submits that from the order as contained in Annexure '1/1', it would appear that the enquiry officer had submitted a report but not being satisfied with the same the disciplinary authority has returned the same to



the enquiry officer with a direction to submit a fresh report.

7. It is submitted on the strength of the judgment of the Hon'ble Supreme Court in the case of **Ajay Kumar Chaudhary Vs. Union of India through it's Secretary & Anr.** reported in **(2015) 7 SCC 291** that protracted period of suspension and pendency of the disciplinary proceeding should not be the norm.

Submission on behalf of the State

8. On the other hand, learned counsel for the State has opposed the writ application. It is stated that the petitioner while posted as Motor Vehicle Inspector at Nalanda was arrested by the Vigilance Team while accepting a bribe. He went in judicial custody and was released later on. Prapatra 'ka' (Annexure '4' to the writ application) was served upon the petitioner on 31.05.2017 and a disciplinary proceeding was initiated against him. It is further stated that as regards non-payment of subsistence allowance, the Deputy Secretary, Transport Department, has vide Annexure '9' to the writ application directed the District Transport Officer, Patna to take appropriate action with regard to payment of remaining subsistence allowance, if it has not been paid to the petitioner after seeking his attendance list from the headquarter where he



has been deputed during the suspension period.

9. It is the stand of the respondents that because of the seriousness of the charges against the petitioner, the competent authority has decided to keep him under continued suspension.

Consideration

10. Having heard learned senior counsel for the petitioner as well as learned counsel for the State, this Court is of the considered opinion that no fault may be found at this stage with the impugned order contained in memo no. 9552 dated 12.12.2012 as contained in Annexure '1/1' to the Interlocutory Application. The competent authority seems to have considered the representation of the petitioner for revocation of his suspension and has taken a decision to reject the same. Although Mr. Y.V. Giri, learned senior counsel strenuously argued that this Court should direct the concerned authority to consider revocation of his suspension after holding that the continuous suspension of the petitioner is not good. However, this Court is of the considered opinion that the power to revoke suspension has been specifically vested with the competent authority under Rule 9 of the Bihar CCA Rules, 2005. One of the conditions under which a government servant



may be kept under suspension is the pendency of the disciplinary proceeding or a judicial proceeding against him. In this case, the petitioner is facing a criminal charge as well as a disciplinary proceeding, in such circumstance, if the competent authority under Rule 9 has taken a view not to revoke the suspension of the petitioner, this Court finds no reason to declare the impugned order bad in law. This Court would not step into the domain of the disciplinary authority to interfere with the order of suspension or the order rejecting the prayer of the petitioner to revoke the suspension.

11. This Court, however, having noticed the contention of learned senior counsel that the petitioner has not been paid his subsistence allowance during the continuance of the disciplinary proceeding would direct the respondent authorities to look into the same and take an appropriate view keeping in mind their stand disclosed in the counter affidavit. Such decision be taken within a period of two months from the date of receipt/production of a copy of this order.

12. It is always open for the petitioner to raise his contentions as regards non-payment of subsistence allowance, if legally tenable in case he gets occasion to challenge the final order passed in the disciplinary proceeding.



13. This Court further directs the disciplinary authority to conclude the disciplinary proceeding as early as possible preferably within a period of six months from the date of receipt/production of a copy of this order.

14. This Writ Application stands disposed of accordingly.

(Rajeev Ranjan Prasad, J.)

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