

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1137 of 2023

In

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.

... .. Appellant/s

Versus

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

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Arun Kumar, Advocate
For the Respondent/s : Mr.P.K. Verma, Sr. Advocate
Dr.Anand Kumar, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 05-10-2024

The appellant's contention is only with respect to his
reinstatement after expiry of three months of suspension; since
there was no charge-sheet issued within that period. Admittedly,



a charge-sheet has now been issued and the enquiry is proceeded with; which has not culminated, as of now.

2. Learned Counsel for the appellant specifically pointed out Annexure-3 application dated 12.08.2022. Further, Annexure-4 application dated 18.10.2022 and the forwarding of the application by Annexure-5, were after the three month period expired. The learned Single Judge according to the learned Counsel for the appellant erred insofar not noticing these essential facts.

3. The learned Government Advocate, on the other hand, submits that the learned Single Judge had correctly followed the decision of the Full Bench of this Court in ***State of Bihar vs. Gyan Kumar Ram*** with analogous cases reported in ***2009 (4) PLJR 272***. It is pointed out that the application at Annexure-3 was on 12.08.2022 within the three month period and there was no obligation on the State to consider the same. It is also pointed out that the counter affidavit clearly indicates that there was no application given to the State after the three month period, which stood expired on 30.08.2022.

4. The learned Single Judge found, based on ***Gyan Kumar Ram (supra)*** that the Full Bench had clearly held on an application being given after the expiry of the three month



period; if no charge-sheet has been framed and served, then necessarily as per the Rule 9(7) of Bihar Government Servant (Classification, Control & Appeal) Rules, 2005, there should be a reinstatement in service.

5. In the present case, it was found that the application for revocation of suspension was given within the three month period and by the time the challenge was made in the writ petition, there was a charge-sheet issued in February, 2023. The Full Bench was relied on, again, to find that if an application has not been given before the charge-sheet was issued, even if there is delay in issuance of charge-sheet, there is no question of cancellation of suspension; since the petitioner has waved his right to be reinstated after the three months.

6. On facts, we notice that Annexure-3 is admitted by the respondents, but it is stated that the same is within the three month period. In paragraph 8 of the counter affidavit dated 27.08.2014 in the L.P.A., it has been stated that the appellant has not made any application after the lapse of three months i.e., after 30.08.2022. However, in Paragraph 14, it is also stated that the alleged representation dated 18.10.2022 which is Annexure-4, was forwarded to the A.D.G. (Budget, Appeal and Welfare), Bihar, Patna vide a letter no. 3281/Raka dated 19.10.2022;



which is Annexure-5.

7. On facts, it is also to be noticed that the appellant was dismissed from service on 12.01.2021 under Article 311(2) of the Constitution of India. In appeal the dismissal order was set aside and the appellant was directed to be reinstated, but however, leaving liberty to the respondent authorities to proceed with a disciplinary enquiry. The appellant admittedly was reinstated by communication dated 05.05.2022 and he was suspended on 31.05.2022. He filed an application at Annexure-3 on 12.08.2022; which date is definitely within the three month period. It is very pertinent that there was no rejection of the said application made by the respondent authorities; which they could have done on the ground that it was within the three month period. In any event, there was no charge-sheet issued after the expiry of the three month period also and Annexure-3 application dated 12.08.2022 remained pending before the authorities.

8. We are of the opinion that though the application was dated 12.08.2022, the same having not been rejected within the three month period, it ought to have been considered after the three months expired, within which time there was no charge-sheet issued.



9. Yet again, we notice the specific contention of the appellant that Annexure-4 application dated 18.10.2022 was also made before the authorities, which was after the expiry of the three month period. The counter affidavit filed in the L.P.A. does not have a definite stance, as to the receipt of Annexure-4. Though, it is stated that there was no application filed after 31.08.2022, it has also been admitted that the application dated 18.10.2022 at Annexure-4 was produced along with Annexure-5 on 19.10.2022, in which circumstance the State ought to have considered the application.

10. The learned Government Advocate, however, alertly points out that though Annexure-5 is dated 19.10.2022, it is signed on 15.10.2022 and it could not have enclosed Annexure-4 application, which was on 18.10.2022. This submission is in conflict with the specific statement made in the counter affidavit. Be that as it may, we have already held that Annexure-3 which is admitted to have been filed within the three month period, having not been rejected by the authorities, within the said period, for that reason. It ought to have been considered when the three months period expired.

11. We also notice that Annexure-5 which was dated 19.10.2022 and signed on 15.10.2022, admittedly forwarding a



representation to the Disciplinary Authority for revoking the suspension. Though the specific date of the application is not mentioned, it could either be Annexure-3 or Annexure-4; which reached the Disciplinary Authority only after the expiry of the three month period.

12. In the above circumstances, we find that there was an application for revocation of suspension and admittedly the charge-sheet was issued only in February, 2023. The Disciplinary Authority ought to have considered the request for revocation of suspension and in the context of the charge-sheet having not been issued within three months, definitely the appellant is deemed to have been reinstated in service as on 01.09.2022 after the expiry of the three month period, from the date of suspension.

13. The appellant shall be granted the entire pay and allowances from 01.09.2022 till date, minus the subsistence allowance paid. The appellant shall also be reinstated in service immediately with retrospective effect from 01.09.2022 as per our direction. The appellant's future salary shall also be paid, but however, the proceedings continuing shall be taken to its logical conclusion. The appellant shall cooperate with the disciplinary enquiry.



14. The appeal stands allowed with the above observations and directions.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

Anushka/-

AFR/NAFR	
CAV DATE	
Uploading Date	07.10.2024
Transmission Date	

