

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.21 of 2022

In

Civil Writ Jurisdiction Case No.13966 of 2021

=====

Dinkar Prasad, Son of Sri Kishore Sah, Resident of Village - Gorigama, P.S. -
Runi Saidpur, District - Sitamarhi, at present Tax Daroga Cum Head Clerk
(Under Suspension), Nagar Panchayat, Dumra, District - Sitamarhi.

... .. Appellant/s

Versus

1. The State of Bihar through the Secretary, Urban Development Department,
Bihar, Patna.
2. Officer on Special Duty, Urban Development and Housing Department,
Bihar, Patna.
3. District Magistrate, Sitamarhi.
4. Executive Officer, Nagar Panchayat, Dumra, District - Sitamarhi.
5. Additional Collector, Sitamarhi Cum Departmental Proceeding Officer,
Sitamarhi.
6. Mrityunjay Kumar Sanjay, Ex-Ward Commissioner, Son of Sri Surendra
Narayan Prasad, Resident of Mahavir Chowk, Ward No. 7, Dumra,
Sitamarhi.

... .. Respondent/s

=====

Appearance :

For the Appellant/s	:	Mr. Yogendra Mishra, Advocate Mr. Swati Mishra, Advocate
For the State	:	Mr. Rakesh Ambastha, AC to AAG-7
For Respondent No. 4	:	Mr. Surendra Kishore Thakur, Advocate

=====

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date : 27-02-2025

Heard Mr. Yogendra Mishra, the learned
Advocate for the appellant and Mr. Surendra Kishore
Thakur, the learned Advocate for respondent No. 4. The
State is represented by Mr. Rakesh Ambastha.



2. The appellant was suspended, which suspension remained even after the passage of three months. There was no fresh order extending the period of suspension; thus, forcing the appellant to prefer a writ petition before this Court vide CWJC No. 13966 of 2021, which was dismissed by the learned Single Judge vide his judgment dated 22.12.2021 on the sole ground that there was an erroneous statement in the petition that there is no other efficacious remedy available to the appellant than by way of filing a petition under Article 226 of the Constitution of India.

3. While saying so, the learned Single Judge took note of the provisions contained in Rule 23 of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as the "Rules of 2005") providing a forum of appeal to a Government Servant against an order of suspension or order of punishment.

4. It is the contention of the appellant that the



learned Single Judge missed out that the suspension order was passed under Rule 9 of the Rules of 2005; subsection (7) of which provides that charge-sheet must be framed within three months from the date of issue of the suspension order, failing which, on expiry of three months, the suspension order shall be revoked unless the authority, which issued the suspension order, passes the order renewing the suspension alongwith reasons to be recorded in writing for the delay in framing of charge-sheet for a further period of four months; provided that after the expiry of the extended period of four months, the suspension order shall stand revoked if the charge-sheet is not framed.

5. This had to be read along with Rule 25 of the Rules of 2005 which provides the period of limitation to appeal which is 45 days from the date on which a copy of the order appealed against is delivered to the Government Servant.

6. This, therefore, postulates that for non-



framing of the charge memo beyond the period of three months, the only option for the employee is to invoke the provisions contained under Article 226 of the Constitution of India and not an appeal under Rule 24 of the Rules of 2005 as by that time, the period of limitation would have expired.

7. We agree with the contentions raised on behalf of the appellant.

8. However, as on date, the suspension order of the appellant has been revoked and he is facing the departmental proceeding.

9. All that can be done presently is to set aside that part of the order of the learned Single Judge which obligates the appellant to make payment of Rs. 10,000/- as fine for having made an erroneous statement in the petition of there being no alternative efficacious remedy available against such order of suspension which continued beyond three months without any order of framing of charge.



10. We order accordingly.

11. The judgment passed by the learned Single Judge is modified to the extent indicated above and the appellant shall not be under an obligation to make any payment of fine as directed by the learned Single Judge.

12. The appeal stands disposed off.

(Ashutosh Kumar, ACJ)

(Partha Sarthy, J)

Rajesh/Saurabh

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	27.02.2025
Transmission Date	

