

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14668 of 2024

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Subhash Kumar Son of Late Sitaram Mandal, resident of New Pandasari,
P.S.- Bahadurpur, District- Darbhanga.

... .. Petitioners

Versus

1. The State of Bihar through the Additional Chief Secretary, Rural Works Department, Government of Bihar, Vishweshwariya Bhawan, Bailey Road, Patna.
2. The Engineer -in- Chief- Cum- Additional Commissioner cum Special Secretary, Rural Works Department, Government of Bihar, Vishweshwariya Bhawan, Bailey Road, Patna.
3. The Chief Engineer- III, Rural Works Department, Government of Bihar, Vishweshwariya Bhawan, Bailey Road, Patna.
4. The Superintendent Engineer, Quality Control, Rural Works Department, Government of Bihar, Vishweshwariya Bhawan, Bailey Road, Patna.

... .. Respondents

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Appearance :

For the Petitioner	:	Mr. Hans Raj, Advocate Mr. Hemant Kumar, Advocate
For the Respondents	:	Mr. G.P. Ojha, G.A.-7

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

4 15-09-2025 Heard learned counsel for the petitioner and

learned counsel for the State.

2. The present petition has been filed for the

following reliefs:-

- i. For a direction to the respondent to
release the petitioner from suspension in
terms with rule 9 (1)(a) of Bihar
Government Servants (Classification
Control and Appeal) Rules, 2005 taking*



into account that the respondent having placed the petitioner under suspension in February 2023 itself, initiated department proceeding against him in April 2023 in a which the enquiry officer submitted his enquiry report dated 24/3/2023, the respondent while taking a decision to conduct a fresh enquiry regarding the charge of amassed property disproportionate to his known source of income by appointing Chief Enquiry Commissioner to conduct such revised / fresh proceeding against the petitioner, have in complete contravention of the own decision of respondent State to not release the petitioner from suspension even after lapse of more than one year of his suspension.

ii. For a further direction to the respondents to make payment of subsistence allowance and arrears thereof to the petitioner, which also remained unpaid to him.

iii For a further direction to the respondent to make payment of 75% salary as suspension allowance to the petitioner in accordance with Rule 10 of Bihar Government Servants (Classification, Control and Appeal) Rules 2005 in view of the admitted position that the petitioner has been forced to continue under suspension even after lapse of



more than one year.”

3. The petitioner was working as Upper Divisional Clerk, and was posted at Rural Works Division, Madhubani of the Rural Works Department, Government of Bihar. During his tenure of posting in the said office, a Vigilance Case No. 04 of 2023 dated 19.01.2023 was registered against the petitioner under section 13(2) read with section 13(1)(b) of the Prevention of Corruption Act, alleging therein that the petitioner had amassed a property valued at Rs.1,15,46,212/-, being disproportionate to his known sources of income.

4. Consequently, a written explanation was sought from the petitioner vide letter dated 17.02.2023. The petitioner submitted his response on 31.03.2023 whereby he categorically denied the allegation of amassing wealth disproportionate to his known source of income. Thereafter, holding the response of the petitioner to be unsatisfactory, the petitioner was placed under suspension in contemplation of initiation of departmental proceedings. By another subsequent office order contained in memo No.1712 dated 01.04.2023, a departmental proceeding was initiated against the petitioner under Rule-17 of the Bihar Subordinate Service (Classification, Control and Appeal) Rules, 2005.



5. The Memo of Charge dated 24.03.2023, issued and the charges have been framed against the petitioner relying upon the allegations levelled by the Vigilance in its FIR dated 19.01.2023 wherein it has been stated that in the course of a search conducted in the residential house of the petitioner, a number of documents were recovered along with a cash amount of Rs. 27,00,000/- which *prima facie* establishes that the petitioner has amassed wealth disproportionate to his known source of income.

6. In the departmental proceeding, the petitioner submitted his written defence dated 10.04.2023 denying the charges levelled against him enclosing supporting documentary evidence to contradict the charge framed against him. The Conducting Officer/Enquiry Officer, after holding day-to-day enquiry in the presence of the petitioner, concluded the enquiry and submitted his enquiry report dated 24.04.2023.

7. The Enquiry Officer in his report dated 24.04.2023 has stated that in view of the fact that the charges which are the subject matter of departmental proceeding against the petitioner are one and the same as involved in the Vigilance P.S. Case No. 04 of 2023 and therefore, it may not be advisable to proceed with the departmental proceeding till the final



disposal of the said Vigilance case. However, the Chief Engineer-III, Rural Works Department asked the Enquiry Officer to record his clear and specific finding/opinion relating to the charge of amassing the assets disproportionate to his known source of income. In reply thereto, the Enquiry Officer categorically reiterated his opinion as incorporated in his enquiry report dated 24.4.2023. Subsequently, on 25.08.2023, the Chief Engineer-III by his letter dated 25.8.2023 recommended for dropping the ongoing departmental proceeding against the petitioner and revoking his suspension.

8. However, the Rural Works Department again issued an order dated 03.07.2024 for initiation of a fresh departmental proceeding against the petitioner by appointing the Chief Enquiry Officer, Bihar, Patna as new Enquiry Officer to conduct the said departmental proceeding for the very same charges which were the subject matter of the earlier departmental proceeding. Therefore, the petitioner submitted a representation before the Additional Chief Secretary, Rural Works Department on 06.07.2024 requesting him to revoke his suspension on the ground that even after the lapse of more than one year and five months of his suspension and even after the lapse of one year and three months from the date of submission



of the earlier enquiry report dated 24.4.2023, he is being forced to remain under suspension. However, still the respondents have not revoked the suspension of the petitioner.

9. Learned counsel for the petitioner has submitted that the action of the respondents in not revoking the suspension of the petitioner even after submission of the report of the Enquiry Officer is illegal and arbitrary. Further, the learned counsel for the petitioner has drawn the attention of this Court to a letter dated 26.02.2014 and letter dated 23.11.2023 wherein the time for concluding the departmental proceedings has been prescribed.

10. It has been submitted by learned counsel for the petitioner that similarly situated employees, who were also placed under suspension on the same allegation of acquiring property disproportionate to their declared source of income and against whom departmental proceedings were also initiated on the same allegation/charge on which Vigilance cases have been instituted, have been released from suspension and they have been provided with specific posting, however, in the case of the petitioner his suspension has neither been revoked nor has he been paid the subsistence allowance.

11. Learned counsel for the petitioner has relied



upon a decision of the Supreme Court in the case of *Ajay Kumar Choudhary vs. Union of India* reported as (2015) 7 SCC 291.

12. The State has filed its counter affidavit which has not been filed para-wise.

13. I have considered the submissions of the parties and perused the materials on record.

14. The contention of the petitioner is that the Enquiry Officer has recorded in his report that the petitioner was facing the same charge before the Vigilance Court and therefore it is not justified to proceed against the petitioner on the same charges in the departmental proceeding and thereafter, even the Chief Engineer-III, Rural Works Department vide his letter dated 24.08.2023 forwarded the recommendation to drop the ongoing departmental proceeding against the petitioner and to release him from suspension pending final disposal of the vigilance case. However, subsequently, a fresh departmental proceeding was initiated against the petitioner for the same set of charge for which the Enquiry Officer has already submitted his report and acting upon the same the recommendation for revoking the suspension of the petitioner has already been forwarded by the concerned authority.



15. It appears that the petitioner is under suspension since 21.02.2023 and the trial in the Vigilance case is still pending and there is no allegation against the petitioner that he is indulging in tampering with the evidence.

16. The Hon'ble Supreme Court in the case of ***Ajay Kumar Choudhary (supra)*** has deprecated the prolonged suspension of Government Servants and held as under:-

“12. Protracted periods of suspension, repeated renewal thereof, have regrettably become the norm and not the exception that they ought to be. The suspended person suffering the ignominy of insinuations, the scorn of society and the derision of his department, has to endure this excruciation even before he is formally charged with some misdemeanour, indiscretion or offence. His torment is his knowledge that if and when charged, it will inexorably take an inordinate time for the inquisition or inquiry to come to its culmination, that is, to determine his innocence or iniquity. Much too often this has now become an accompaniment to retirement. Indubitably, the sophist will nimbly counter that our Constitution does not explicitly guarantee either the right to a speedy trial even to the incarcerated, or assume the presumption of innocence to the accused. But we must remember that



both these factors are legal ground norms, are inextricable tenets of Common Law Jurisprudence, antedating even the Magna Carta of 1215, which assures that — “We will sell to no man, we will not deny or defer to any man either justice or right.” In similar vein the Sixth Amendment to the Constitution of the United States of America guarantees that in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial.”

17. The aforesaid decision has been relied upon by the Hon’ ble Supreme Court in the case of ***State of Tamil Nadu vs. Pramod Kumar, I.P.S. & Anr.*** reported as ***(2018) 16 SCC 677.***

18. In the opinion of this Court, indefinite suspension of a Government employee is not permissible. Pertinently, the suspension of similarly situated accused persons, who are facing trial in Vigilance cases have been revoked by the State Government. In the present case, the officials themselves have recommended that since the charges against the petitioner are the same and similar to those in the Vigilance case, the suspension of the petitioner suspension should be revoked.

19. In view of the aforesaid facts, I am of the view that prolonged suspension of the petitioner should not be continued. Accordingly, this application is allowed. The



suspension of the petitioner is hereby revoked. He is directed to
co-operate in the departmental proceeding as well as in the trial
in connection with the vigilance case.

(Sandeep Kumar, J)

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