
(2011) 01 PAT CK 0153
In the Patna High Court
Case No : LPA No. 78 of 2010

Anand Swarup @ Anand Swaroop

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 19-01-2011

Acts Referred:

Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 — Rule 9, 9(1), 9(2)

Citation : (2011) 59 BLJR 2655 : (2011) 2 PLJR 1021

Hon'ble Judges : Samarendra Pratap Singh, J;S.K. Katriar, J

Bench : Division Bench

Judgement

1. This appeal under Clause 10 of the Letters Patent of the High Court of Judicature at Patna has been preferred by the Petitioner of C.W.J.C. No. 14391 of 2009, and is aggrieved by order dated 12.11.2009, whereby the writ petition has been dismissed.

2. A brief statement of facts essential for the disposal of this appeal may be indicated. The Appellant is a Block Development Officer in the services of the Bihar Government. He was caught red-handed by the Vigilance Personnel for accepting illegal gratification on 11.2.2007, and was taken into custody. He was suspended by order dated 26.3.2007. He was released on bail on 24.6.2007, and reported for duty on 28.6.2007. He was not allowed to join leading to the writ petition. The charges have been framed on 14.8.2007.

3. The learned Single Judge has held that the impugned order of suspension was in exercise of the powers conferred by Rule 9(1)(c) of the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 (in short "the Rules"). He has further held that the bar of three months during which the charge-sheet must be served from the date of the order of suspension does not apply in cases covered by Rule 9(1)(c) of the Rules. Secondly, in any view of the matter, the employee has to apply for revocation of suspension which had not been done by the writ Petitioner. The writ petition has, therefore, been dismissed. The learned

Single Judge has relied upon the Full Bench decision of this Court in *The State of Bihar and Others Vs. Gyan Kumar Ram*, .

4. We have perused the materials on record and considered the submissions of learned Counsel for the parties. We reproduce Herein below Rule 9 to the extent relevant to the present context:

9. Order of Suspension.--(1) The appointing authority or any authority to which the appointing authority is subordinate or the disciplinary authority or any other authority empowered in that behalf by the Government by general or special order, may place a Government servant under suspension when--

(a) a disciplinary proceeding against the Government servant is contemplated or is pending, or

(b) in the opinion of the authority aforesaid, the government servant has engaged himself or herself in activities prejudicial to the interest of the security of the State, or

(c) a case against the Government servant in respect of any criminal offences is under investigation, inquiry or trial and the competent authority is satisfied that it is expedient to suspend the Government servant in public interest.

(2) A Government servant shall be deemed to have been placed under suspension by an order of appointing authority with effect from the following date--

(a) from the date of his or her detention, if he or she is detained in custody, whether on a criminal charge or otherwise for a period exceeding forty-eight hours;

(b) from the date of his or her conviction, if, in the event of a conviction for an offence he or she is sentenced to a term of imprisonment exceeding forty-eight hours and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction.

Explanation.--The period of forty-eight hours specified in Clause (b) of this sub-rule shall be computed from the date of commencement of the imprisonment after the conviction and for this purpose intermittent periods of imprisonment, if any, shall be taken into account.

(3) (i) 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.

(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.

Rule 9(1)(c) has to be read in comparison to Rule 9(2)(a) to resolve the controversy in the present case. It is apparent from the Sub-rule (c) that a

Government servant can be placed under suspension if a criminal offence is under investigation, enquiry or trial apart from other conditions mentioned therein. It is inherent in the situation that it needs a formal order of suspension. It is relevant to state that this clause applies to cases of detention and takes place by automatic operation of law the moment the employee is taken into custody, and is released from suspension equally by automatic operation of law, and does not need a formal order on either of the two counts.

5. On a perusal of the impugned order of suspension in the present case, it appears to us that the power was exercised in terms of Rule 9(2)(a). The recital of the order clearly states that the writ Petitioner was placed under suspension because he was in detention. Though it does not need a formal order of suspension, but the authorities did pass an order of suspension which does not deflect from the position that the case is covered by Rule 9(2)(a) of the Rules. The admitted position is that the writ Petitioner has been released from custody on bail on 24.6.2007. We are, therefore, of the view that, in accordance with the provisions of Rule 9(2)(a), it does not need a formal order of the authorities releasing the writ Petitioner from suspension, and he stands released from suspension by automatic operation of law the moment he is released from custody.

6. In the result, this appeal as well as the writ petition are allowed. The writ Petitioner stands released from suspension by virtue of automatic operation of law, and shall be allowed to resume his duty. It goes without saying that it would be open to the State Government to exercise its power under Rule 9(1) of the Rules, if so advised.