

(2020) 02 PAT CK 0240

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 21571 Of 2019

Pankaj Prasad Sinha @ Pankaj Kumar Sinha

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 17-02-2020

Acts Referred:

Bihar Government Servants (Classification, Control And Appeal) Rules, 2005 — Rule 9

Citation : (2020) 02 PAT CK 0240

Hon'ble Judges : Madhuresh Prasad, J

Bench : Single Bench

Advocate : Nikhil Kr. Agrawal, Nutan Kumari Sharma, Sajid Salim Khan, Prakrita Sharma

Final Decision : Disposed Of

Judgement

Heard learned counsel for petitioner and learned counsel for respondent-State.

It is submitted by petitioner's counsel that suspension has inordinately been prolonged since 03.12.2018, i. e., the date on which he was placed under suspension, while he was working as a Higher Division Clerk. In view of the judgment of the Full Bench in the case of the State of Bihar & Ors vs. Gyan Kumar Ram reported in 2009(4) PLJR 272, interpreting the the provisions, contained in Rule 9 of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (for brevity 'the Rules'), this Court should quash the suspension and grant benefits to the petitioner in respect of the period of illegal suspension and direct for his reinstatement. Paragraph Nos. 19 and 20 of the said judgment, referred to by the petitioner's counsel, read as follows:-

"19. Taking a leaf out of the above decisions of the Supreme Court and keeping in view the subtle distinction in the language in Rule 9(7) on the one hand and in proviso to Rule 9(7) and Rule 9(6) on the other, it would reasonable to construe that on failure on the part of the competent authority to frame charge-sheet within three months, the concerned employee gets a right 'to seek for

reinstatement'. If he exercises the right by filing appropriate application either before the competent authority or even in a court of law, the order of suspension is bound to be revoked and the competent authority cannot have any other option. However, if the employee fails to exercise such right of being reinstated and either the charge-sheet is framed or the order of suspension is renewed for reasons to be recorded in writing as envisaged in Rule 9(7), 'the imperfect right' of the suspended employee gets defeated. In other words, the employer has the authority to pass an order renewing the suspension for reasons to be recorded in writing not only within the period of three months, but also after the expiry of such period of three months, provided the employee has failed in the meantime to exercise his right of being reinstated by making appropriate applications.

20. In view of the above analysis, our conclusions are as follows:-

(a) The time frame contemplated in Rule 9(7) is applicable only when an order of suspension is passed in contemplation of a disciplinary proceeding. On the other hand, if order of suspension is passed by taking into account the other eventualities contemplated in Rule 9, the time frame is not applicable and the order of suspension continues until it is revoked or deemed to be revoked under any of the provisions.

(b) Where an order of suspension is passed in contemplation of a disciplinary proceeding, the charge-sheet is required to be filed within a period of three months from the date of issuance of such order. On failure to frame charge-sheet within the stipulated period, the concerned employee gets a right to claim that he should be reinstated in service and if any such application is filed, the order of suspension is bound to be revoked.

(c) Where the employee fails to exercise such right of being reinstated by making necessary application, there is no embargo for the competent authority to pass any order extending the suspension for reasons to be recorded in writing and there is no requirement that such an order is bound to be passed before the expiry of three months and in a given case, such an order is passed even after the expiry of three months, provided the employee in the meantime has not exercised his right of being reinstated.

(d) Similarly, the right of the employee to get reinstated is defeated if before he makes an appropriate application the charge-sheet is framed.

(e) Where the competent authority passes an order renewing the suspension, charge-sheet is required to be framed within such further extended period which cannot be more than four months from the date of expiry of the original three months and if no charge-sheet is framed, the order of suspension stands revoked even without passing of any formal order. At that stage, of course, the authority is required to pass appropriate order of re-posting and at any rate, the concerned employee would be entitled to get full salary."

It is clear from reading to the two paragraphs relied upon by the petitioner, and

more specifically paragraph 20(d), that relief claimed, i.e. quashing of suspension and reinstatement, now stands defeated since charge memo has been issued against the petitioner on 06.02.2020.

The petitioner's counsel submits that petitioner has also been deprived of salary for certain periods even prior to the time he was placed under suspension. In respect of claim for salary for the said period, the petitioner would be at liberty to approach the Competent Authority. Such claim would have to be considered in light of the settled legal position that unless there is an order stopping salary, that also after resorting to the due process, the same cannot be withheld. If the petitioner approaches the Authority with a request by way of representation for payment in respect of period prior to his suspension, the same should be considered in accordance with law, and observations hereinabove.

The writ petition is disposed off.

Since the charge memo has now been issued, this Court would only observe that the proceedings should be concluded expeditiously and without any undue delay. The petitioner also would be under a legal obligation to cooperate in early disposal of the proceedings.