

**(2008) 07 PAT CK 0066**  
**In the Patna High Court**

Ramanand Prasad Chaudhary

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

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**Date of Decision :** 11-07-2008

**Acts Referred:**

**Citation :** (2008) 07 PAT CK 0066

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**Judgement**

V.N. Sinha, J.—Heard learned Counsel for the petitioner and the State.

2. Petitioner is aggrieved by the office order, bearing Memo. No. 4222 dated 23.6.2008, Annexure-1 to this application issued by the Director, Agriculture, Bihar, Patna, whereunder petitioner, who at the relevant time served as Inspector in the Weights & Measures Directorate in the Department of Agriculture, has been placed under suspension on the ground that complaints have been received against him that he is demanding bribe.

3. Counsel for the petitioner submitted that the allegation that petitioner is demanding bribe is the figment of imagination of the authorities as no such complaint was ever received against the petitioner. Appreciating the aforesaid submission initially made by the counsel for the petitioner on 3.7.2008, this Court allowed the State counsel to seek instruction in the matter and file counter affidavit. A counter affidavit on behalf of Respondent No. 2, the Director, Agriculture, Bihar, Patna, who is the author of the impugned suspension order, Annexure-1 as also Appointing/Disciplinary Authority of the petitioner, has been filed stating therein that petitioner has been placed under suspension in compliance of the instructions of the Secretary of the Department issued on a Buff- sheet dated 23.6.2008, copy whereof has been annexed as Annexure-A to the counter affidavit and it appears therefrom that a bald statement has been made thereunder that several complaints have been received against the petitioner that he is demanding bribe, but in the buff-sheet neither the name and address of the complainant(s) nor the substance of the allegations have been indicated.

4. Counsel for the petitioner submitted that in spite of specific direction of this

Court to indicate the name and address of the complainant as also to produce the complaint filed against the petitioner, the authorities have chosen only to place the Buff-sheet issued by the Secretary of the Department directing the Director, Agriculture, Respondent No. 2 to place the petitioner under suspension, in the circumstances, according to the counsel for the petitioner, it should be taken that no complaint whatsoever was received against the petitioner in the Department/Directorate and the impugned suspension order is contrary to the instructions of the State Government contained in circular letter dated 24.6.2005 as contained in Annexure-4, which inter alia lays down procedure which is required to be observed when complaint is received against the Govt. servant. It is further submitted on behalf of the petitioner that Director being the Appointing/Controlling Officer ought to have considered the allegation against the petitioner on his own and ought not to have placed the petitioner under suspension on the dictates of the Secretary of the Department. In this connection, he has relied upon the celebrated judgment of the Hon"ble Supreme Court in the case of Commissioner of Police, Bombay Vs. Gordhandas Bhanji,

5. Counsel for the State, however, has opposed the prayer and submitted that suspension being not a punishment, this Court should be slow in interfering with the matter. He further states that in compliance of the orders of this Court dated 3.7.2008, he has taken instructions only from Respondent No. 2, the Director, Agriculture, Bihar, Patna, who is the author of the impugned suspension order and the Disciplinary Authority of the petitioner, but as the impugned suspension order has been passed after receipt of the Buff-sheet from the Secretary of the Department, further opportunity should be allowed to him to seek instruction from the Secretary of the Department so as to enable him to produce the complaints received against the petitioner.

6. Having heard counsel for the parties, I am of the view that the State counsel while seeking instruction from the Director, Agriculture, Respondent No. 2 in the light of the orders of this Court dated 3.7.2008, should also have taken instructions from the Secretary of the Department because it is the Secretary of the Department, who is the Spokesman of the Govt. Department in terms of the rules of Executive Business framed under Article 162 of the Constitution of India. In litigation questioning the executive action of the Government, State of Bihar is the only necessary party in terms of Article 300 of the Constitution. Appropriate instructions in the matter ought to have been taken on behalf of the State of Bihar from the Secretary of the Department at the very first instance. Having not availed the opportunity to take instructions from the Secretary in compliance of the orders of this Court dated 3.7.2008, I am not inclined to grant any further adjournment for the purpose.

7. Suspension may not be a punishment, but it certainly affects the status of the officer/Govt. Servant while he continues under suspension and appreciating such effect on the status of the Government Servant during the period he is under suspension, the State Government itself has issued several circulars evolving a

procedure, which should be undergone before any officer/Govt. servant is placed under suspension on receipt of complaint. One such circular is dated 24.6.2005, Annexure-4, whereunder detailed procedure has been reiterated, which should be gone into after receipt of the complaint against the officer/Govt. servant. Perusal of the impugned suspension order dated 23.6.2008, Annexure-1 to this application as also the Buff-sheet dated 23.6.2008, Annexure-A to the counter affidavit does not provide any information either about the complainant or the substance of allegation, in the circumstances, there is no difficulty in concluding that the impugned suspension order, Annexure-1 has been passed without observing the procedure reiterated under circular letter dated 24.6.2005, Annexure-4 and suffers from the vice of arbitrariness and is violative of Article 14 of the Constitution of India, which is, accordingly, quashed with liberty to the Director, Agriculture, Bihar, Patna to verify from the Secretary of the Department and if actually written complaints have been received against the petitioner then to take appropriate action in accordance with law. This application is, accordingly, disposed of.