

(1994) 04 PAT CK 0012

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 5948 of 1992

Shambhu Nath Singh

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 08-04-1994

Acts Referred:

Bihar and Orissa Subordinate Services (Discipline and Appeal) Rules, 1935 — Rule 3(9) (1), 3(A)(5)
Penal Code, 1860 (IPC) — Section 120B, 420, 467, 468, 471A
Prevention of Corruption Act, 1988 — Section 5, 5(2)

Citation : (1994) 2 PLJR 533

Hon'ble Judges : Radha Mohan Prasad, J

Bench : Single Bench

Advocate : Abhay Shankar Jha, for the Appellant; D.K. Sinha and Anil Kumar Singh for State, for the Respondent

Final Decision : Allowed

Judgement

Radha Mohan Prasad, J.—In this application the Petitioner has prayed for quashing the order of the Collector, Saran, Chapra communicated to the Petitioner by the Establishment Deputy Collector, Saran vide his Memo No. 199/ Stha. Chapra, dated 21st March, 1992, as contained in annexure "2" to the writ application whereby he has again been suspended with immediate effect.

2. In short, the facts of the case are that the Petitioner was appointed as Karamchari by the Collector, Saran, Chapra (Respondent No. 2) and joined as such in the circle office of Marhaura in the district of Saran on 16.1.1956 and since then he is serving the State in that capacity having been posted at different places within the district. During the period July, 1978 to November, 1984 the Petitioner was posted as Karamchari in Garkha circle in the district of Saran and later he was transferred to Sonapur Circle where he remained posted till the year 1986. While he was posted at Sonapur, he came to know that Vigilance P.S. case No. 32/86 under Sections 120-B, 467, 468, 420, 471-A of Indian Penal Code and 5(2) read with 5(i)(c)(d) of Prevention of Corruption Act was instituted against

11 persons including the Petitioner on the allegation of some irregularities committed in disbursement of N.C. loan and Tacavi loan to the farmers of Garkha Anchal during the period he was posted there. In view of the aforesaid Vigilance case the Petitioner was placed under suspension by an order bearing No. 537, communicated to the Petitioner vide memo No. 1943 dated 4.11.1986.

3. On 23.10.1989 the said order of, suspension of the Petitioner from service was revoked in view of the Cabinet Vigilance Department letter No. 5272 dated 2.8.1989, as even after a lapse of about 3 years no charge was framed by the competent court after the revocation of the said suspension. The Petitioner was posted at Jalalpur Circle in the year 1989 where he continued till the impugned order again placing him under suspension on the same charge was communicated to him by memo No. 199/Estd. Chapra dated 21.3.1992 under the signature of Respondent No. 4. A photo copy of the impugned order dated 21.3.1992 has been annexed as annexure 2 to the writ petition. From perusal of the said order it appears that it has been passed merely on the ground that the sanction of prosecution has been accorded by the Collector.

4. The learned Counsel for the Petitioner submitted that the said order is bad in the law inasmuch as the authority is not competent to place the Petitioner under suspension for the second time on the basis of the same Vigilance case, for which he had been earlier suspended in the year 1986 and later the said order of suspension was revoked in the year 1989. Besides this, it has also been contended by the learned Counsel for the Petitioner that action of Respondent Nos. 3 and 4 in issuing the impugned order of suspension is arbitrary and malafide, inasmuch as, there is no provision in the Rules relating to suspension of the Government servant for placing a Government servant under suspension even after revocation of the suspension, which was passed on the same ground.

5. A counter affidavit has been filed on behalf of Respondent Nos. 2 to 4, in which inter alia, it has been contended that the suspension order as contained in annexure-2 has been passed in accordance with Rule 3(9)(1) of the Bihar and Orissa Subordinate Services (Discipline and Appeal) Rules, 1935 read with Executive Instructions contained in letter No. 4898 dated 4th April, 1960, a photo copy whereof has been annexed as Annexure "A" to the counter affidavit. According to the Respondents the appointing authority is competent to issue a suspension order during the pendency of the investigation, enquiry or trial of a criminal offence vide aforesaid rules. It is also stated that the first suspension order was revoked by annexure T to the writ application as the Vigilance Department has not completed its investigation within two years, but consequent upon completion of investigation and sanction of prosecution the Petitioner has again been placed under suspension.

6. Learned Counsel for the State in support of the impugned order contended that a Government servant can be suspended twice when a criminal prosecution is initiated against him and when the charges are framed. Further, he referred to the statement made in paragraph 3 of the Counter affidavit wherein it has been

stated that the Department has also initiated a departmental proceeding against the Petitioner vide memo No. 82 M dated 10.1.1989, a photo copy whereof has been made annexure "D" to the counter affidavit.

7. The main question that arises for consideration is as to whether the suspension of the Petitioner on the same ground and on the same charge on which he had been suspended earlier and the said order of suspension was revoked subsequently, is sustainable. There can not be any dispute that the competent authority has power under the aforementioned Rules as well as the Executive Instructions issued by the then Chief Secretary to the Government, contained in annexure "A" to place a Government servant under suspension, where a disciplinary proceeding against him is contemplated or is pending or where a case against him in respect of any criminal offence is under investigation, enquiry or trial. But in the same Rule the power has been vested under Clause (c) of Sub-rule (5) of Rule 3(A) that an order of suspension made or deemed to have been made under this Rule may at any time be modified or revoked by the authority which made or is deemed to have made the order or by any authority to which that authority is subordinate and in exercise of the said power the competent authority passed the order contained in annexure "1" revoking the order of suspension of the Petitioner passed earlier. The learned Counsel for the State has not been able to show any Rule or even Executive Instruction wherein it is provided that even after the power under the aforesaid Clause (c) has been exercised by the competent authority the same can be reviewed or the power of suspension can again be exercised on the same ground or merely because the sanction for prosecution has been accorded by the competent authority.

8. Thus, I do not find any substance in the submission of the learned Counsel for the State that a Government servant can be placed under suspension twice-once at the time when a criminal prosecution is initiated against him and second at the time when the sanction for prosecution is accorded. However, I would like to observe that in the peculiar facts there may be occasion when a Government servant can be placed under suspension again despite revocation of the earlier order of suspension if the authorities are satisfied that the same is essential for avoiding any tampering with the evidence either in the departmental proceeding or in the criminal trial or for any other similar reasons. But I am unable to appreciate as to how the impugned order of suspension has been passed merely because the sanction has been accorded for prosecution of the petition in the vigilance case when on the earlier occasions the order of suspension of the Petitioner in connection with the same vigilance case was revoked.

9. Accordingly, this writ application is allowed and the impugned order of suspension, as contained in annexure 2 is quashed and consequently, the order contained in annexure "1" stands restored. However, in the facts and circumstances of the case, there shall be no order as to costs.