

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.5477 of 2016**

**With**

**Interlocutory Application No.7464 of 2016**

**With**

**Interlocutory Application No. 9887 of 2016**

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1. Ishwar Dayal S/o Sri Bishwanath Prasad, Resident of Mohalla- Ram Krishna Mission Lane, Langartoli, P.S.- Kadam Kuan, District- Patna

.... .... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar Old Secretariat, Patna
2. The Principal Secretary, Department of Planning and Development, Govt. of Bihar, Patna
3. The Director, Directorate of Economics and Statics, Planning and Development Department, Govt. of Bihar, Patna
4. The Joint Director, Directorate of Economics and Statics, Planning and Development Department, Govt. of Bihar, Patna
5. The Additional Secretary cum Chief Vigilance Officer, Rural Development Department, Govt. of Bihar, Patna
6. The Additional Collector Patna cum Conducting Officer Departmental Inquiry, Patna Commissioner, Patna
7. Director General, Vigilance Investigation Bureau, Bihar, Patna.

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s :	Mr. Rajendra Narain, Sr. Adv. Mr. Uday Pratap Singh, Adv.
For the Respondent/s :	Mr. Amaresh Kumar Sinha, A.C. to G.A.1 Mr. Rajeev Ranjan Prasad, Sr.Adv. Mr. Abhimanyu Vats, Adv.

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**CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN**

**ORAL JUDGMENT**

**Date: 23-12-2016**

Heard Mr. Rajendra Narain, learned Senior counsel for the petitioner along with Mr. Uday Pratap Singh and Mr. Amaresh Kumar Sinha, A.C. to G.A.1 for the State and Mr. Rajeev Ranjan Prasad and



Mr. Abhimanyu Vats, learned counsel appearing for the Economic Offences Unit, respondent No.7 herein.

**Re: I.A.No.9887 of 2016**

Having heard learned counsel for the parties and considering the nature of amendment prayed, the prayer is allowed.

I.A.No.9887 of 2016 is allowed.

**Re: C.W.J.C.No.5477 of 2016**

The petitioner is aggrieved by the order of suspension bearing Memo No. 625 dated 28.4.2014 passed by the Director, Planning and Development Department, Directorate of Economics and Statics whereby the petitioner has been put under suspension in exercise of powers vested under Rule 9(1)(c) of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 on an institution of a criminal case under the provisions of the Prevention of Corruption Act, 1988 giving rise to Economic Offences, P.S. Case No. 08 of 2014. The criminal case alleges disproportionate assets possessed by the petitioner on his known sources of income.

Mr. Narain learned Senior counsel for the petitioner has with reference to the suspension order submitted that it is resting solely on the institution of the criminal case. He next refers to the circular issued by the Department of Personnel and Administrative Reforms dated 3.7.1986 to submit that it advises a revocation of suspension in



such of the cases where no cognizance has been taken by the competent court in the criminal case even after two years. Learned counsel in reference to the circular which has been placed on record vide Annexure-11 to the supplementary affidavit has referred to paragraph 4(ख) to submit that the circular is self eloquent when it advises the competent authority to revoke the suspension in case where no cognizance is taken in a criminal case for a period extending 2 years. He submits that since the suspension is resting entirely on the criminal case hence the issue would stand covered by the circular. It is further the argument of Mr. Narain that in so far as the criminal case is concerned, though it is pending since last more than 2 years, but the investigation is yet incomplete. He submits that the petitioner has not been paid his subsistence allowance since his suspension.

Mr. Sinha learned State counsel while not disputing the legal position informs the Court that a disciplinary proceeding has also been initiated alongside and which has practically reached its conclusion by service of the second show cause on the petitioner on the enquiry report and whereafter a final order needs to be passed.

Responding to the submission of the State counsel, it the argument of Mr. Narain that the initiation of the disciplinary proceeding would have no bearing on the suspension order since it has been passed under Rule 9(1)(c) of the rules which entirely rests on



institution of a criminal case. He submits that since the order of suspension is not passed under Rule 9(1)(a) i.e. in contemplation of a disciplinary proceeding or in a pending disciplinary proceeding, the development in the disciplinary case has no bearing on the issues raised.

Mr. Prasad, learned counsel for the investigating agency on instructions confirms the position that the investigation is still under way in the criminal case.

I have heard learned counsel for the parties and I have perused the records.

True it is that the suspension order impugned at Annexure-3 is on the institution of the criminal case and is neither in contemplation of a disciplinary proceeding or in a pending proceeding. The submission of learned counsel for the parties including Mr. Prasad also does confirm that a period of more than two years having lapsed, the investigation is still incomplete. Since the investigation itself is yet to be completed, there is no question of a cognizance order. The Circular of the Department of Personnel and Administrative Reforms dated 3.7.1986 is enclosed at Annexure-11 to the supplementary affidavit and is in connection with revocation of suspension of officers and employees who are facing criminal and disciplinary proceedings. In so far as the present case is concerned paragraph 3



and 4(ख) and (ग) would be relevant for the purpose and which is being reproduced hereinbelow for ready reference:

“3.....  
.....विभाग के सचिव कृपया सुनिश्चित करें कि ऐसे सभी मामले जहाँ सरकारी सेवक के विरुद्ध फौजदारी मुकदमा के अतिरिक्त विभागीय कार्यवाही भी चलायी जा रही है और सरकारी सेवक के निलम्बन की अवधि दो वर्षों से अधिक हो गयी है की समीक्षा प्रत्येक 3 माह में की जाये और अगर फौजदारी मुकदमा में विलम्ब होने की संभावना हो और सरकारी सेवक के निलम्बन की अवधि दो वर्षों से अधिक हो गयी हो तो विभागीय कार्यवाही में बिना किसी प्रतिकूल प्रभाव के राजपत्रित पदाधिकारी को निलम्बन से मुक्त करने से सम्बद्ध मामले के गुण-दोष का जाँच कर मुख्य सचिव के माध्यम से, मुख्यमंत्री का आदेश प्राप्त करें ।

4. आपके सुलभ निर्देश के लिए कार्मिक विभाग के उपर्युक्त परिपत्र सं. 8537, दिनांक 3-7-1981 की कंडिका -2 का उद्धरण दिया जा रहा है -

(क).....

(ख) ऐसे निलम्बित राजपत्रित पदाधिकारियों/ कर्मचारियों को जिनकी निलम्बन की अवधि दो वर्ष से अधिक हो गयी है तथा जिनके विरुद्ध किसी फौजदारी मुकदमा में सक्षम न्यायलय द्वारा संज्ञान नहीं लिया गया है उन्हें निलम्बन से मुक्त कर दिया जाये ।

(ग) ऐसे मामले में भी जहाँ सरकारी सेवक के विरुद्ध फौजदारी मुकदमा के अतिरिक्त विभागीय कार्यवाही भी चलायी जा रही है और सरकारी सेवक के निलम्बन की अवधि दो वर्ष से अधिक की हो गयी है तो यह आवश्यक है की विभाग के सचिव द्वारा मामले की समीक्षा प्रत्येक तीन माह में की जाये । उनसे यह भी अपेक्षा की जाती है कि वे सरकारी वकील के माध्यम से फौजदारी मुकदमा के त्वरित निष्पादन के लिए आवश्यक कारवाई करें । अगर उनके विचार में फौजदारी मुकदमा में बहुत अधिक विलम्ब होने की संभावना है और सरकारी सेवक के निलम्बन की अवधि दो वर्ष से अधिक हो गयी है तो विभागीय कार्यवाही पर किसी प्रतिकूल प्रभाव के राजपत्रित पदाधिकारी के निलम्बन से मुक्त करने के सम्बन्ध में मामले के गुण-दोष की जाँच कर मुख्य सचिव के माध्यम से आदेश प्राप्त करें ।”

The Circular thus in so far as such order of suspension which



are resting entirely on institution of a criminal case is concerned, advises the Secretary of the Department to revoke the suspension where no cognizance order has been passed by the competent court for a period exceeding two years. The matter is much worse in the present case for here, even the investigation is incomplete. The charge against the petitioner is of possessing disproportionate asset to the known sources of his income and which charge is yet to be driven home in the criminal case. Although the respondents have decided to initiate disciplinary proceedings against the petitioner alongside the criminal case but then the suspension order as it was passed in the year 2014 did not contemplate any such proceeding nor has been modified by any subsequent order to cover the eventuality.

In the circumstances so discussed where the order of suspension is resting solely on the institution of the criminal case which is yet continuing in investigation, I would be persuaded by the arguments of Mr. Narain in the backdrop of the advisory issued by the Personnel and Administrative Department for more particularly paragraph 4(ख) and (ग) to hold that the suspension order is fit to be revoked and accordingly the order of suspension bearing Memo No. 625 dated 28.4.2014 passed by the Director, Planning and Development Department, Directorate of Economics and Statics impugned at Annexure-3 is quashed and set aside. The order of suspension of



petitioner is revoked.

Let the disciplinary authority consider the grievance of the petitioner regarding non-payment of the subsistence allowance and dispose of the same within four weeks from the date of receipt/production of a copy of this order.

The writ petition is allowed. I.A.No.7464 of 2016 is disposed of.

**(Jyoti Saran, J)**

Bibhash/-

AFR	
CAV DATE	
Uploading Date	26.12.2016
Transmission Date	

