

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1918 of 2010

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Syed Iqbal Haider Gilani, S/O Late Ali Haider, R/O Vill Gilani, P.S. Asthana,
Distt-Nalanda

.... Appellant/s

Versus

1. The State Of Bihar
2. The Director General of Police Bihar, Patna
3. The Deputy Inspector General of Police, Magadh Range, Gaya
4. The Superintendent of Police, Nawadah

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Syed Firoz Raja, Advocate

For the Respondent/s : Mr. Saroj Kumar Sharma, AC to AAG-5

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 01-07-2016

The present intra-court appeal has been filed against the judgment and order dated 07.09.2010, passed in C.W.J.C. No. 6862 of 1997 (Syed Iqbal Haider Gilani Vs. The State of Bihar and others) whereby the writ petition was dismissed. The writ petitioner-appellant had challenged his dismissal from police service.

We have heard learned counsel for the appellant and counsel for the State as also perused the records.

The petitioner had joined police service as a literate constable in the year 1973. It appears that in 1982 he was taken ill and allegedly he sought leave but was not granted the same. In spite of this he left the station and came home. Not only this he remained at home for over a period of two months. He alleges that he came back



and was asked to join but when he went to the place assigned, it is alleged that he was not allowed to join. Ultimately, he came to know that he had been put under suspension and departmental proceeding has been initiated against him. The charge against him was under two heads. Firstly, that in 1982 he had absconded from duty without permission and secondly that even when he was asked to join at a different place he did not join and was absconding even till the time the departmental proceedings were initiated. In the charge-sheet itself it is stated that even earlier he was in habit of absconding for which he had earlier been punished as well. The departmental proceedings having been concluded he was dismissed. He challenged this in a writ petition before this Court and on technical grounds the matter was remanded for fresh consideration. Again, the matter was heard and order of dismissal was passed. Statutory appeal resulted in affirmance of order of dismissal and the memorial to D.G.P. did not yield any favourable result. Hence, the writ petition, which was also dismissed.

Learned counsel for the appellant states that in the departmental proceedings he had not been permitted to examine some witnesses and, therefore, there was a procedural lapse. What was the relevance of these witnesses is not clear. However, what is clear is that there is no dispute that the appellant had absconded. Appellant's defence that he had sought leave having not been granted, he

abandoned and left for leave. If this plea is admitted then where is the dispute left? The factum of absconding, thus, stands admitted.

We must keep in mind that in judicial review the Court is not to act like an appellate authority. It is not a decision but is the decision making process that has to be seen. Having seen the same, we find no infirmity in the proceeding necessitating our interference.

Lastly, it has been submitted that the punishment is disproportionate. We are of the view that punishment can only be said to be disproportionate when it is shocking to the conscience of Court. Writ petitioner-appellant belonged to a uniform service and being a uniform officer, discipline is the first and the foremost important thing. If this be the attitude of the writ petitioner- appellant, and in such circumstances, the punishment does not shock the conscience of this Court.

In that view of the matter, we find no error in the order of the learned Single Judge requiring our interference. The appeal is, accordingly, dismissed.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

Arjun/Rajesh

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