

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11322 of 2016

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Lal Babu Prasad, Son of Late Hari Shah, Resident of village - Fuljharia, P.O. Bathna, P.S. Bairia, District - West Champaran.

.... Petitioner/s

Versus

1. The State of Bihar, through Principal Secretary, Department of Home, Government of Bihar, Patna.
2. The Director General of Police, Government of Bihar, OLd Secretariat, Patna.
3. The Inspector General of Police, Bihar Police Headquarters, Patna, Bihar.
4. The Deputy Inspector General of Police, Magadh Range, Gaya.
5. The Senior Superintendent of Police, Gaya District, Bihar,

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ambuj Nayan Chaubey, Adv. Mr. Vikash Kumar, Adv. Mr. Amit Kumar, Adv.
For the Respondent/s	:	Mr. Deepak Kumar, AC to SC-5

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 20-03-2017

Heard Mr. Ambuj Nayan Chaubey, learned counsel appearing for the petitioner and Mr. Deepak Kumar, learned Assisting Counsel to Standing Counsel No.5 for the State.

With the consent of the parties this writ petition has been heard with a view to its final disposal at the stage of Admission itself.

The petitioner prays for issuance of a writ in the nature of certiorari for quashing the order dated 30.5.2014 passed by the Director General Police, Bihar, Patna, whereby the petitioner has been dismissed from service and a copy of such order is impugned at Annexure-5 to the writ petition.

A rather short submission has been made by Mr. Chaubey, learned counsel appearing for the petitioner in reference to Rule 853A of



the Bihar Police Manual to submit that even though *suo-motu* revisional power is vested in the Director General of Police to initiate such proceeding but then such power needs to be exercised within a reasonable time as manifest from the statutory prescription.

He submits that in the present case following the alleged misconduct detected that a proceeding was initiated which has culminated in a punishment order passed on 28.10.2010, a copy of which is present at Annexure-3 to the writ petition whereby the petitioner was visited with the punishment of stoppage of two annual increments which would be equivalent to 3 black marks not effecting the next increase and his pay and allowances were restricted to the subsistence allowance drawn. He submits that no appeal was preferred either by the petitioner against the punishment order nor the department went in appeal rather it is after a lapse of more than 3 years that a show cause was issued from the office of the Director General of Police on 1.4.2014 vide Annexure-4 in purported exercise of power vested under rule 853A of the Bihar Police Manual and after filing of the reply by the petitioner together with the objections present that he has met with the order of dismissal passed on 30.5.2014 impugned at Annexure-5 to the writ petition.

He submits in reference to a Bench decision of this Court passed in CWJC No.13328 of 2014 (**Surendra Kumar vs. The State of Bihar**) present at Annexure-6 that a similar issue having drawn the attention of this Court that a Bench taking note of earlier decision of this Court passed in the case of **Anjani Kumar Singh vs. State of Bihar**



since reported in **2001(1) PLJR 177** has held that exercise of power by the Director General of Police under Rule 853A of the Bihar Police Manual after lapse of 3 years is unreasonable. He submits that even in the case of **Surendra Kumar** (supra) the power had been exercised after 4 years. He thus submits that in view of the legal position settled by this Court in the case of **Anjani Kumar Singh** (supra) as reiterated in the case of **Surendra Kumar** (supra) the punishment order has to go.

This matter was heard on 20.7.2016 and although this Court framed three issues for consideration but in my opinion, this writ petition is fit to be allowed on the 3rd issue framed by this Court as to the time limit for exercise of powers under Rule 853A of the Bihar Police Manual to reopen concluded proceeding. Even though the statutory prescriptions grant 'reasonable time' to the Director General of Police to exercise such powers of revision and reconsider concluded proceedings for reasons attributable at his discretion but the term 'reasonable time' has been explained by a Bench of this Court in the case of **Anjani Kumar Singh** (supra) to hold that a revisional proceeding initiated after 3 years is not reasonable. The Bench held that any such exercise beyond 3 years is not within reasonable period.

It is following the decision in the case of **Anjani Kumar Singh** (supra) that a similar issue raised in the case of **Surendra Kumar** (supra) also drew in his favour and in my opinion, the present case also stands covered by the opinion of the Bench referred to above.

Though learned counsel for the State has drawn the attention



of this Court to the statement of the petitioner present at paragraph 17 to submit that an appeal remains pending before the Secretary of the Department of Home, Government of Bihar but considering that the Secretary, Department of Home, Government of Bihar has no time to dispose of the appeal pending before him since 1.8.2014 and in view of the legal position settled on the issue coupled with the uncontested fact that even in the present case the power vested under Rule 853A of the Bihar Police Manual has been exercised by the Director General of Police beyond the period of 3 years, the dismissal order impugned at Annexure-5 cannot be upheld and is accordingly quashed and set aside. The petitioner stands reinstated with consequential benefits.

The writ petition stands allowed.

In view of the order so passed the appeal so filed by the petitioner stands disposed of.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	03-04-2017
Transmission Date	NA

