

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9646 of 2011

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1. Mohd. Arif Hussain Son of Late Md. Gyas Resident of Village- Rahui Ghasa,
P.S. Kishanganj, District- Kishanganj

.... Petitioner/s

Versus

1. The State of Bihar, through the Director General of Police, Bihar, Patna
2. The Deputy Inspector General of Police, Purnia Range, Purnia, Bihar
3. The Superintendent of Police, Purnia, District- Purnia, Bihar

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajendra Narain, Sr. Adv.
Mr. Mrigank Mauli, Adv.
Mr. Umesh Kumar Roy, Adv.
For the Respondent/s : Mr. Manikant Mishra GP25
Mr. Nawal Kishore Singh, A.C. to G.P.26

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 25-05-2017

Heard Mr. Rajendra Narain learned Senior counsel for the
petitioner, who appears along with Mr. Umesh Kumar Roy and Mr.
Nawal Kishore Singh A.C. to G.P.26 for the State.

With the consent of the parties, the writ petition is being heard
with the view to final disposal at the stage of admission.

The petitioner prays for issuance of a writ in the nature of
certiorari for quashing the order No.225/2010 bearing Memo No.2023
dated 18.12.2010 as contained in Annexure-8 passed by the
respondent No.2, the Deputy Inspector General of Police, Purnea
Range whereby while dismissing the appeal he has confirmed the
order of dismissal passed by the Superintendent of Police, Purnea



bearing Memo No.292 of 2008 dated 13.3.2008. The orders passed by the Superintendent of Police as confirmed by the appellant authority are impugned at Annexures-6 and 8 respectively to the writ petition.

The charge framed against the petitioner is at Annexure-1 bearing Memo No.1476 dated 23.5.2007 and lists 3 charges against the petitioner namely:-

- (a) He has cheated the complainant of Rs. 50,000/- for ensuring a service for her son but failed from his promise leading to institution of Kishanganj P.S. Case No.135 of 2005 registered under Sections 420, 323 and 368 of the Indian Penal Code.
- (b) The petitioner has indulged in polygamy, having married thrice; and
- (c) The petitioner was arrested in connection with the criminal case and put under suspension.

The petitioner was put on suspension on 30.9.2006, though it was revoked on 21.1.2006. The petitioner filed his reply denying all the charges vide Annexure-2. The Enquiry Officer submitted his report vide Annexure-4 upholding the charges. A second show cause was served on the petitioner. The petitioner replied vide Annexure-5 praying for dropping of the proceedings but has been visited with the order of removal dated 13.3.2008 impugned at Annexure-6 passed



under the signature of the Superintendent of Police, Purnea and which has been confirmed by the appellate authority vide order dated 18.12.2008 impugned at Annexure-8. Feeling aggrieved the petitioner is before this Court.

Mr. Narain addressing the case of the petitioner has submitted that the entire allegation is based on no evidence for except for the oral assertion of the complainant there is nothing to confirm that the petitioner cheated her or that he has indulged in polygamy. Mr. Narain in reference to the notice at Annexure-B has submitted that although the Enquiry Officer had directed the petitioner vide Memo dated 19.6.2007 to be present with his show cause reply on 28.6.2007 as manifest from Annexure-D but on the date fixed i.e. 28.6.2007, the Enquiry Officer proceeded to examine the complainant behind the back of the petitioner. He with reference to Annexure-F submits that on knowledge being gathered that the petitioner requested the Enquiry Officer for recall of the complainant for her cross- examination, and which has been taken note of in the order passed by the Enquiry Officer at Annexure-G. It is stated that the Enquiry Officer realizing the error, noticed the complainant but she failed to present herself for cross-examination which is confirmed from Annexures-H, I and J to the counter affidavit. He thus submits that the entire proceedings are resting on the oral assertion of the complaint and nothing beyond. He



has also referred to a Bench decision of this Court present at Annexure-10 to submit that an issue of polygamy was addressed before the Bench but was not believed in absence of evidence which continues even in the present proceedings. He has further submitted that criminal case has yet not concluded and that the boy returned subsequently.

The argument of Mr. Narain learned Senior counsel has been contested by learned State counsel in reference to the counter affidavit and while accepting that the complainant did not respond to the notice issued by the Enquiry Officer requiring her presence for cross examination, he submits that the petitioner, a member of the uniform service, had to maintain discipline and the charges facing him of deceitful conduct as well as of polygamy are rather serious and in the circumstances, the punishment is just.

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

It is rightly contended by the learned State counsel that the charges faced by the petitioner is very serious and since the petitioner is a member of Uniform service, he has to maintain discipline. The petitioner can neither be pardoned for deceitful conduct or for giving false assurances for unjustful gains nor can he justify polygamy. The issue is whether there is evidence to drive home these charges. The



chargesheet at Annexure-1 simply refers to allegations made by the complainant as regarding the act of the petitioner in cheating her of Rs. 50,000/- for ensuring a job for her son but then no evidence was led by the complainant in support of such allegation. Even the enquiry report does not discuss any material to support the charge. The enclosures to the counter affidavit more particularly Annexures-F to J are a confirmation of the fact that the request of the petitioner for cross examination of the complainant was accepted by the Enquiry Officer and notice was issued to her but she never responded to the notice. In other words, the complainant could not be tested on the veracity of her submission. In short, it is a word against a word.

The second charge against the petitioner of polygamy, is again very serious and the petitioner while accepting the marriage with the complainant, has stated that much before the institution of the proceeding, he had divorced the complainant. There is again complete absence of details as to the three marriages allegedly performed by the petitioner. The allegation does not even list out any name except the name of the first wife of the petitioner whose allegation had led to the dismissal of the petitioner but was quashed under the orders of this Court present at Annexure-10. There is thus again complete absence of the details of the three alleged wives of the petitioner.

The third charge is no charge for it is a reference to the



suspension order of the petitioner which can not be construed a charge.

In sum and substance, the allegations even though rather serious lacks foundation for there are no materials supporting the charge. The allegation is based on no evidence and the failure of the complainant to present herself for cross examination only supports the contention advanced by the petitioner that the charges are absolutely false.

For the reasons discussed, the opinion of the Enquiry Officer together with the opinion recorded by the disciplinary authority as well as the appellate authority are resting on no evidence and in consequence the order of dismissal impugned at Annexure-6 together with its confirmation vide order present at Annexure-8, cannot be upheld and are accordingly quashed and set aside.

The writ petition is allowed. The petitioner is restored to his post with full consequential benefits.

(Jyoti Saran, J)

Bibhash/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	20.06.2017
Transmission Date	NA

