

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8706 of 2014

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Awadesh Kumar S/O Sri Yogendra Prasad Gupta Resident of Village - Saraiya
Choutham, P.S. - Choutham, District - Khagaria.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Director General of Police Govt. of Bihar, Patna.
3. The Deputy Inspector General of Police Munger Range, Munger.
4. The Superintendent of Police Begusarai.
5. The Sub-Divisional Police Officer Sadar, Begusarai.
6. The Police Inspector Town Begusarai.
7. The Police Inspector Teghra Police Station, Begusarai.
8. The Officer-in-charge (S.H.O) Town Police Station Begusarai.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr Ajit Kumar Singh, Adv.

For the Respondent/s : Mr. Madhaw Pd. Yadav, GP-23

Mr. Rajesh Kumar Sinha, AC to GP-23

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 06-09-2017

Heard both sides.

2. The petitioner by filing this writ petition prayed for quashing of the order dated 27.04.2005, as contained in Memo No. 2264 passed by the Superintendent of Police, Begusarai by which the petitioner has been dismissed from service and the order dated 28.12.2005 passed by the Deputy Inspector General of Police, Munger, as contained in Memo No. 2445 by which the appeal of the petitioner has been dismissed and for quashing the order dated 05.05.2011 of Director General of Police, Government of Bihar, Patna, as contained in Memo No. 1726 by which the memorials of the petitioner has been dismissed.



3. The petitioner was charged that the petitioner got illicit relation with a woman and for that a complaint case bearing 74C/2003 was also filed. The petitioner filed his show-cause stating that Mantun Yadav is not the husband of Julekha Khatoon. Sallu Miyan was husband of Julekha Khatoon and he died in the year 2000 leaving behind his widow and four daughters. The complaint petition filed by Mantun Yadav is also not maintainable in view of the provisions as contained in section 198 of the Cr.P.C. The enquiry officer submitted report holding the petitioner guilty. The disciplinary authority asked calling upon the petitioner to file second show-cause till 07.04.2005 and without awaiting for the reply of the petitioner, the petitioner has been dismissed from the service.

4. Learned counsel for the petitioner submits that from perusal Annexure-10, it would appear that the petitioner received second show-cause notice on 25.04.2005, but the order of punishment was passed by the disciplinary authority on 27.04.2005 without receipt of notice served on the petitioner and without giving proper opportunity to the petitioner to file his show-cause. Learned counsel for the petitioner further submits that there is absolutely no material on record before the enquiry officer that the petitioner had any illicit relation with Julekha Khatoon. Julekha Khatoon was not examined during the enquiry. The enquiry officer simply on the basis of the written application of S.H.O. Begusarai (Town) P.S. held the



petitioner guilty that the petitioner had illicit relation with a woman. On the basis of the finding which is based on nonest material, the petitioner is dismissed from service and the appellate authority as well as the Director General of Police dismissed the appeal and memorials.

5. On the contrary Mr. Madhaw Prasad Yadav learned counsel for the State submitted that the petitioner in his show-cause reply has also stated about the filing of the complaint petition against the petitioner. Of course, the name of the petitioner as wrongly been mentioned as Awadhesh Kumar Jha in the complaint petition, but Mantun Yadav is the complainant and he claimed that the petitioner got illicit relation with his wife Julekha Khatoon. Mantoon Yadav after death of husband of Julekha Khatoon kept Julekha Khatoon. Julekha Khatoon has already been discharged under Section 245 Cr.P.C. and there is sufficient material that the petitioner had illicit relation with Julekha Khatoon and therefore, the order of dismissal does not require any interference.

6. The departmental proceeding was initiated against the petitioner on the basis of the report of S.H.O. Begusarai (Town) P.S. as contained in Memo No. 814/2003 dated 02.07.2003 in which it is alleged that the petitioner had illicit relation with a woman and a complaint is also filed in the court in which cognizance was taken against the petitioner. The petitioner in his show-cause denied his relation with a woman. During the course of enquiry, the enquiry



officer admitted the petition of the S.H.O. Begusarai (Town) P.S. and other witnesses also admitted their endorsement on the petition, but it appears that the presenting officer did not adduce any evidence to show that the petitioner was having any illicit relation with a woman. Even Julekha Khatoon with whom the petitioner is said to have illicit relation has not been examined, but on the basis of report, the enquiry officer found the petitioner guilty of the charge and on the same disciplinary authority dismissed the petitioner from the service. It is evident that the enquiry report is based on evidence.

7. Therefore, I find that there is no cogent material on record to prove the guilt of the petitioner that the petitioner was having any illicit relation with a woman and the punishment of dismissal is not sustainable. Accordingly, the order dated 27.04.2005, as contained in Memo No. 2264 and the order dated 28.12.2005, as contained in Memo No. 2445 and the order dated 05.05.2011 as contained in Memo No. 1726 are set aside and the writ petition is allowed.

(Prabhat Kumar Jha, J.)

Vinita/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.09.2017
Transmission Date	NA

