

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5905 of 2011

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1. Lal Bahadur Singh, S/o late Ram Lagan Singh, R/o Village- Jhankhra, P.S.- Govindganj, District- East Champaran (Motihari).
 2. Ram Chandra Ray, S/o late Ram Lachchan Ray, R/o Village- Gulamalichak, P.S.- Bihta, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Director General and Inspector General of Police, Old Secretariat, Patna.
3. Inspector General of Police, Bhagalpur Zone, Bhagalpur.
4. Deputy Inspector General of Police, Eastern Range, Bhagalpur.
5. The Superintendent of Police, Bhagalpur.
6. The Officer-in-Charge, Nathnagar, Bhagalpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Mithilesh Kumar Rai, Advocate
For the Respondent/s : Mr. Jitendra Kumar, AC to AAG-14

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 30-05-2017

The petitioners have prayed for issuance of a writ in the nature of certiorari for quashing the Eastern Range Order No.156/2007 as contained in Memo 1178 dated 30.8.2007 issued under the signature of the Deputy Inspector General of Police, Eastern Zone, Bhagalpur and the District Order No.1535 bearing Memo No.3771 dated 29.8.2007 of the Superintendent of Police, Bhagalpur, whereby the petitioners respectively have been dismissed from service in exercise of powers vested in the appointing authority under Article 311(2) (b) of the Constitution of India. Copies of the order passed by the Deputy Inspector General of Police, Eastern Range, Bhagalpur and the Superintendent of



Police, Bhagalpur are impugned at Annexures 5 and 6 respectively to the writ petition.

The petitioners are also aggrieved by the order bearing Memo No.810 dated 18.6.2008 passed by Inspector General of Police, Bhagalpur and the order bearing Memo No.1006 dated 1.9.2008 of the Deputy Inspector General of Police, Eastern Range, Bhagalpur, whereby the respective appeals of the petitioners impugned at Annexure-9 series, have been rejected.

The petitioners also question the order bearing Memo No.664 dated 25.2.2011 impugned at Annexure-11, whereby the memorial preferred by the petitioners has been rejected by the Director General of Police, Bihar, Patna.

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

Facts of the case briefly stated is that the petitioners holding the post of Assistant Sub-Inspector of Police and Constable respectively were proceeded against for alleged inhuman treatment inflicted upon one Md. Aurangzeb. The allegation against the petitioners was of assaulting the said Md. Aurangzeb mercilessly and of dragging him to the police station which invited the public ire. The allegation is that the act of these petitioners led to violent



protest from general public who attacked the police station leading to institution of police cases. As according to the appointing authority of the petitioners, the act of the petitioners undermined the reputation of the police force in public eye and since it violated human rights, the petitioners were not fit to be retained in service and since according to them there would be no one coming forward to give evidence against the petitioners hence it was not practicable to hold a departmental proceeding. The appointing authority of the petitioners i.e. the Superintendent of Police in the case of the petitioner no.2 and the Deputy Inspector General of Police in the case of the petitioner no.1 thus exercised the powers vested in them under Article 311(2) (b) of the Constitution of India to dismiss the petitioners while holding that it was not practicable to hold departmental proceeding. The orders passed by the respective appointing authorities have been confirmed in appeal by the Inspector General of Police and the Deputy Inspector General of Police respectively as well as by the Director General of Police to reject the memorial and hence the writ petition.

I have heard Mr. Mithilesh Kumar Rai, learned counsel appearing for the petitioners and Mr. Jitendra Kumar, learned Assisting Counsel to Additional Advocate General No.14 for the State.



While it is the argument of Mr. Rai, learned counsel appearing for the petitioners that the orders are neither sustainable on merits nor the circumstances were such to bypass a regular departmental proceeding rather it is an act of abdication of statutory responsibility by the respondents which has culminated in the impugned orders. The argument has been resisted by Mr. Jitendra Kumar, learned counsel appearing for the State in reference to the stand taken by the respondents in the counter affidavit to submit that the circumstances accompanying the incident were a confirmation of the conduct of the petitioners and since they by their act had undermined the image of the police and had inflicted inhumane treatment to the victim boy coupled with the fact that in view of their position in the district police force none would have come forward to give evidence, a recourse to the powers vested under Article 311(2)(b) of the Constitution of India suffered no infirmity.

Having heard learned counsel for the parties two issues which come up for consideration before this Court are:

- (a) whether there were materials laying a foundation for inviting disciplinary proceeding; and
- (b) whether the circumstances accompanying the incident justified a recourse to the power vested in the



appointing authority under Article 311(2)(b) of the Constitution of India.

For the purpose I would make reference to some of the documents accompanying the writ petition which have been heavily relied upon by Mr. Rai to support the stand of the petitioner as well as the stand of the State as present in the counter affidavit.

The counter affidavit filed in the present proceeding are mere reiteration of the opinion expressed in the orders impugned and which is that it was reasonably not practicable to hold an enquiry because the situation was very serious and explosive. Such is the statement made by the respondents in paragraph 12 of the counter affidavit. A supplementary counter affidavit is also on record in justification of the impugned action.

There is no dispute that these orders have been passed without even a service of show cause notice to the petitioners. A statement made by the petitioners to such effect at paragraph 14 of the writ petition finds no reply. In fact the respondents in paragraph 11 of the counter affidavit while responding to paragraph 14 of the writ petition have stated that it would require no comment as it is by way of submission. It is rather unfortunate that an extreme action having been taken against the petitioners where their legal right to a regular departmental proceeding was being forfeited yet neither the



respondents thought it proper to serve a show cause notice upon the petitioners expressing their intent nor have they found it necessary even to respond the specific issues raised by the petitioners in paragraph 14 of the writ petition that the orders were ex-parte and without opportunity of hearing.

The orders of termination passed against the petitioners are impugned at Annexures 5 and 6 respectively and while taking note of the fact that the alleged victim Md. Aurangzeb was apprehended by the public in the process of chain snatching and was being thrashed by the members of general public, alongside have mentioned that these petitioners reached the place of occurrence, arrested the said Md. Aurangzeb but thereafter dragged him to the police station after tying his leg in the vehicle which was uncivilized, inhuman and amounted to misconduct. The orders mention that the public became violent and attacked the police station leading to institution of police cases and it is in these circumstances that the petitioners have been dismissed in exercise of powers vested in the appointing authority under Article 311 (2) (b) of the Constitution of India because the members of the public themselves having assaulted the victim none would come forward for giving evidence for the fear of these petitioners.

The following facts emerges from the impugned order:



- (a) The victim boy Md. Aurangzeb was apprehended by the general public while in the process of chain snatching and was being assaulted.
- (b) The petitioners reached the place of occurrence and saved the said victim boy from the wrath of general public by arresting him and whereafter he was brought to the police station.

These two facts are not in dispute. The dispute is whether the said victim boy was brought to the police station in an inhuman manner and whether he was subjected to inhuman treatment by these petitioners. While the opinion of the authorities is resting exclusively on the media reports without a single oral evidence coming forward to confirm the inhuman treatment rather the evidence on record does confirm that had these petitioners not reached the place of occurrence, the public may have done away with the victim boy.

The alleged dispute also reached the Human Rights Committee of the Bihar Legislative Council whose proceedings are present at Annexure-7 and the statement made by the Deputy Inspector General of Police itself is an evidence of the innocence of the petitioners where he admits that the police neither tied the victim nor dragged him and it is the general public who had tied the



boy and had dragged him. These are the opening lines of the proceedings. The report submitted by the Human Rights Committee of the Legislative Council is at Annexure-8 and the allegation faced by the petitioners stands discussed at running page 58 where the Committee has taken note of the evidence which has come on record that the general public was assaulting the victim boy and had the police not reached in time, the victim boy may have died of injuries. The victim boy has himself accepted that had the police not arrived, he would have killed by the public.

It is rather surprising that while the Superintendent of Police and the Deputy Inspector General of Police have praised these petitioners for their work before the Committee so constituted by the Legislative Council but while dealing with these petitioners departmentally, they have taken a turn around to dismiss them on simple allegation. In my opinion, it is an unfortunate case where even in absence of evidence, the quasi-judicial powers have been abused by the respondent authorities simply to satisfy the print media. The stand of the respondent authorities during the proceedings before the Human Rights Committee present at Annexure-7 and as present in the impugned order is diametrically at cross roads.

The statement of the victim boy has been published in the



newspaper present at page-36 of the writ petition and in which he has accepted that if the police would not have reached in time he would have been killed. In my opinion the statement made by Deputy Inspector General of Police and the Superintendent of Police before the Committee read alongside the statement of the victim boy which finds noted in the report of the Committee present at Annexure-8 at running page 59 there remains no confusion that the orders impugned lack foundation, have no materials to support rather have been passed to satisfy the media persons. In fact the petitioners have been put at the alter of dismissal as a measure to improve their sagging reputation.

Coming to the act of the respondents in taking recourse to the extreme measure provided under Article 311(2)(b) of the Constitution of India, it is to be noted that the power has to be exercised in extreme circumstances because it leads to forfeiture of a valuable right vested in a delinquent. The power so vested is not to be exercised on a routine personal satisfaction recorded by the disciplinary authority rather the facts accompanying should justify the decision.

The judgment of the Supreme Court rendered in the case of **Union of India vs. Tulsiram Patel** since reported in (1985)3 SCC 398 is an authority on the issue and paragraph 130 of the judgment



discusses some of the circumstances in which such extreme recourse can be resorted to. In fact the observation of the Constitution Bench present at paragraph 130 of the judgment, the relevant extract of which is quoted below, itself provides an answer to the issue posed:

“130.

Thus, whether it was practicable to hold the inquiry or not must be judged in the context of whether it was reasonably practicable to do so. It is not a total or absolute impracticability which is required by clause (b). What is requisite is that the holding of the inquiry is not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing situation. It is not possible to enumerate the cases in which it would not be reasonably practicable to hold the inquiry, but some instances by way of illustration may, however, be given. It would not be reasonably practicable to hold an inquiry where the government servant, particularly through or together with his associates, so terrorizes, threatens or intimidates witnesses who are going to give evidence against him with fear of reprisal as to prevent them from doing so or where the government servant by himself or together with or through others threatens, intimidates and terrorizes the officer who is the disciplinary authority or members of his family so that he is afraid to hold the inquiry or direct it to be held. It would also not be reasonably practicable to hold the inquiry where an atmosphere of violence or of general indiscipline and insubordination prevails, and it is immaterial whether the concerned government servant is or is not a party to bringing about such an atmosphere. In this connection, we must bear in mind that numbers coerce and terrify while an individual may not. The reasonable practicability of holding an enquiry is a matter of assessment to be made by the disciplinary authority. Such authority is generally on the spot and knows what is happening. It is because the disciplinary authority is the best judge of this that



clause (3) of Article 311 makes the decision of the disciplinary authority on this question final. A disciplinary authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an inquiry or because the Department's case against the government servant is weak and must fail. The finality given to the decision of the disciplinary authority by Article 311(3) is not binding upon the court so far as its power of judicial review is concerned and in such a case the court will strike down the order dispensing with the inquiry as also the order imposing penalty.

(Emphasis supplied by me)

A decision that it was not practicable to hold a departmental proceeding has to rest on sound reasons and cannot be founded on a mechanical satisfaction. In the present case the reasons assigned by the Deputy Inspector General of Police and the Superintendent of Police respectively is that none would come forward to give evidence for the fear of these petitioners. I am shocked and surprised at the stand taken by such high official of the police department who demonstrate absolute lack of authority and leadership. By simply recording that none would come forward to depose against the petitioners that they think that their responsibility is over and they are now fully equipped for exercising powers under Article 311(2) (b) of the Constitution.

In my opinion it is the job of the police to ensure the safety and security of the witness and even before making any effort in



this direction that the two appointing authorities have shut the door for a regular proceeding on the presumption that none would come forward to adduce evidence. In the process they have completely overlooked the fact that the victim boy was very much in their custody and whose evidence alone would be sufficient to nail the petitioners.

Now since in the present case, the victim himself had given a clean chit to these petitioners and police cases had been instituted against the general public for their alleged assault on the police station, that the appointing authorities have taken a short route on a presumptive opinion that none would have come forward to give evidence against the petitioners.

The fact remains that while there is absolute absence of evidence against the petitioners, the evidence of the victim boy on record present in the minutes of the proceedings of the Human Rights Committee as well as their report annexed at Annexures 7 and 8 to the writ petition are sufficient indication of the innocence of the petitioners as also a confirmation of the fact that the dismissal of these petitioners is resting on no evidence and the orders impugned have been passed in gross abuse of the statutory powers vested in the authorities.

For the reasons so discussed the order of dismissal passed



by the Deputy Inspector General of Police, Eastern Zone, Bhagalpur bearing Memo No.1178 dated 30.8.2007 in so far as petitioner no.1 is concerned, the order bearing Memo No.3771 dated 29.8.2007 passed by the Superintendent of Police, Bhagalpur in so far as the petitioner no.2 is concerned whereby they have been dismissed from service impugned at Annexures 5 and 6 respectively together with the orders passed by the respective Appellate Authorities impugned at Annexure-9 series as well as the order on the memorial passed by the Director General of Police, Bihar, Patna impugned at Annexure-11 are held grossly illegal, in teeth of the provisions underlying Article 311(2)(b) of the Constitution of India, resting on no evidence and having been passed in gross abuse of powers are accordingly quashed and set aside. The petitioners are reinstated to their respective post with all consequential benefits.

The writ petition is allowed.

(Jyoti Saran, J)

SKPathak/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	01-06-2017
Transmission Date	NA

