

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.4163 of 2014**

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1. Pujari Yadav Son of Sri Triloki Yadav Resident of Village - Balua, P.S. -  
Lawkaria, District - West Champaran

.... .... Petitioner/s

Versus

1. The State Of Bihar through the Director General and Inspector General of Police,  
Old Secretariat, Patna, Bihar
2. The Deputy Inspector General of Police, Tirhut Range, Muzaffarpur
3. The Superintendent of Police, Muzaffarpur

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Awadhesh Kumar Mishra

For the Respondent/s : Mr. Ajay Kumar, AC to GP IV

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**CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA**

**ORAL JUDGMENT**

**Date: 25-08-2017**

Heard both sides.

The petitioner has filed this writ petition for quashing the order as contained in memo No. 3634 dated 16.08.2008 passed by the Superintendent of Police, Muzaffarpur whereby the petitioner has been dismissed from service with effect from 10.08.2008 ( Annexure-2). The petitioner further seeks quashing of memo No. 754 dated 16.07.2009 (Annexure-3) and memo No. 2481 dated 09.08.2012 (Annexure-5) by which appeal and memorial of the petitioner have also been dismissed by the Deputy Inspector General of Police, Muzaffarpur and Director General of Police, Bihar, Patna confirming the order of Superintendent of Police, Muzaffarpur.

The petitioner assailed the order of his termination on the ground that the petitioner was entrusted to carry letters to Motihari, Bagha and Sheohar on 23.02.2008 but he did not turn up and remained absent unauthorizedly till 12.03.2008 and on account of unauthorized absence for about 18 days the



petitioner has been dismissed from service (Annexure-2). It is submitted that the punishment is disproportionate to the charge. On the earlier occasion also the petitioner was dismissed from service on the same charge but at that time the petitioner did not attend the duty on account of mental depression on account of death of his son. The petitioner filed memorial before the Director General of Police. The Director General of Police vide order dated 13.11.2006 (Annexure-6) allowed the memorial of the petitioner and reinstated the petitioner in service and the order of dismissal was set aside. The petitioner was inflicted with punishment of withholding two increments with cumulative effect and non payment of salary for the period of unauthorized absence till his reinstatement in service. It is submitted that in the similar case of **Nagendra Upadhyaya v. the State of Bihar & Ors** reported in **1996 (1) PLJR 129** this court held that punishment of dismissal for unauthorized absence from duty for 62 days is disproportionate to the charge and, accordingly, set aside the order. The learned counsel for the petitioner further submits that the petitioner shall not claim salary for the period after his dismissal from service till the date of his reinstatement. It is submitted that in many other cases of unauthorized absence of Constables for more than 100 days or more days, the Director General of Police vide orders annexed in Annexure-7 series set aside the order of termination on the ground that the punishment is disproportionate to the charge but the petitioner was treated differently for being remained on unauthorized leave for only 18 days and thus the petitioner is admittedly discriminated and therefore the order is in violation of Article 14 of the Constitution of India.

Counter affidavit has been filed on behalf of the State but the State could not be able to distinguish the case of the petitioner with other Constables, who remained absent unauthorizedly for longer period, i.e., more than



800 days and their orders of termination have been set aside by the Director General of Police vide Annexure-7 series on the ground that the punishment is disproportionate to the charge.

On the facts and discussions made above, it is admitted that petitioner remained absent unauthorizedly from service w.e.f. 23.02.2008 to 12.03.2008, i.e., for 18 days and for that a departmental proceeding was initiated against the petitioner. The petitioner was dismissed from service only for remaining absent without any information for 18 days. The appeal and memorial of the petitioner have also been dismissed summarily but from the perusal of the orders passed in appeals and memorials in the case of Madan Poddar, Sheo Kumar Uraon, Jairam Paswan and Binod Kumar Pandey it is evident that the Director General of Police and the appellate authority, Deputy Inspector General of Police, set aside the orders of termination of such Constables who remained unauthorizedly absent from duty even for longer period, i.e., more than 600 days and their orders of termination were set aside on the ground that punishment is disproportionate to the charge but in the case of petitioner it appears that the disciplinary authority and the appellate authority including the Director General of Police have not taken into consideration this aspect of the matter that the petitioner remained absent for only 18 days and petitioner has been discriminated. In the case of *Nagendra Upadhyaya* (supra) this court held that the punishment on account of unauthorized absence appears to be disproportionate to the charge and set aside the order of termination.

Having considered the facts aforesaid and the submission of the parties, I find that the dismissal of the petitioner from service for 18 days of unauthorized absence is disproportionate to the charge. Even on the earlier occasion the petitioner remained absent for a few days on account of death of his



son and petitioner was terminated from service but that order was set aside by the Director General of Police. Therefore, I find that the order dated 16.08.2008 (Annexure-2), order dated 16.07.2009 (Annexure-3) and order dated 09.08.2012 (Annexure-5) are not sustainable and the same are set aside. In the result, the writ petition is allowed. The petitioner is directed to be reinstated in service within two months. Since the petitioner himself submitted that he shall not claim any back wages from the date of termination till the date of reinstatement, the petitioner shall not be paid his back wages from the date of his dismissal till the date of his reinstatement.

**(Prabhat Kumar Jha, J)**

BKS/-

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