

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.105 of 2018

In
Civil Writ Jurisdiction Case No.11122 of 2014

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Dhirendra Prasad Gupta, son of Late Chamru Shah, all residents of Village-
Kumarganj, P.O. Jehengira, PS - Sultanganj, District – Bhagalpur.

... .. Appellant/s

Versus

1. The State of Bihar through Director General of Police, Government of Bihar,
Patna.
2. Director General of Police, Government of Bihar, Patna.
3. Deputy Inspector General of Police, Tirhut Range, District Muzaffarpur.
4. The Superintendent of Police, Sitamarhi, District Sitamarhi.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Rajeev Kumar Singh, Advocate Mr. Mukesh Kumar Singh, Advocate Mr. Gyanendra Kumar, Advocate
For the State	:	Mr. Saroj Kumar Sharma, A.C. to A.A.G.-3

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 03-12-2018

Re: I.A. No.5128 of 2018:

Heard Shri Rajeev Kumar Singh, learned counsel for
the appellant and Shri Saroj Kumar Sharma, learned Assistant
Counsel to learned Additional Advocate General-3 for the



respondents.

The cause shown is sufficient. The delay condonation application is allowed. The appeal shall be treated to be within time.

Re: L.P.A. No.105 of 2018:

Heard Shri Rajeev Kumar Singh, learned counsel for the appellant and Shri Saroj Kumar Sharma, learned Assistant Counsel to Additional Advocate General-3, for the respondents.

2. The appellant questions the judgment of the learned Single Judge dated 5th December, 2017 whereby the challenge raised to the termination order dated 19th September, 2013 was assessed and the learned Single Judge declined to interfere on the ground that the appellant petitioner had been unable to demonstrate any procedural lapse during the enquiry. The learned Single Judge has also further held that mere acquittal in the criminal case, which was the basis of the incident on the strength whereof he had been terminated, would not come to the aid of the appellant as the disciplinary enquiry had been conducted and according to the evidence on record, the disciplinary authority had rightly



come to the conclusion that the appellant was involved in an offence involving moral turpitude and therefore his continuance in service was absolutely detrimental to the department.

3. The learned Single Judge has also recorded that the judgment of acquittal of the trial Court for the offence under Section 377 I.P.C. did not amount to an honourable acquittal, and in the disciplinary proceedings, the preponderance of probabilities have been taken into consideration, therefore, no case was made out for interference under Article 226 of the Constitution of India.

4. Learned counsel for the appellant contends that the learned Single Judge has not appreciated the fact that there was a serious lapse in the procedure adopted by the respondents, namely, that firstly, the enquiry was conducted when the appellant was in judicial custody inside jail and the victim Nitesh Kumar was not examined as a witness. Further, it is submitted that the victim and his father, both, had practically turned hostile in the criminal case resulting in the acquittal of the appellant which was on the ground of no evidence at all. It is further submitted that even the medical examination of the victim was not carried out and it was on



mere hearsay that the entire prosecution was conducted which ended in a clean acquittal of the appellant which has been erroneously treated to be not an honourable acquittal by the learned Single Judge.

5. Learned counsel has then invited the attention of the Court that even in the evidence which was brought forth during the enquiry proceedings, there was no material to establish that there was any witness to testify the actual incident. Neither the father of the victim Binod Mahto nor the Station House Officer who took the appellant into custody were witnesses to the alleged incident, and in spite of the statement having been recorded by the enquiry officer without there being an element of any proof to establish the guilt against the appellant, the enquiry officer proceeded to conclude a finding merely on the basis of apprehensions which does not fall within the realm of preponderance of probabilities. Learned counsel, therefore, submits that not only there was a procedural lapse but even otherwise the very factum of the incident as alleged stood dissolved with the acquittal of the appellant by the Trial Court, the judgement whereof was brought on record through a supplementary affidavit filed before the learned Single Judge.



6. Learned counsel for the State, however, on the other hand, submitted with the aid of paragraph 17 of the counter affidavit filed before the learned Single Judge that the enquiry had been conducted in the presence of the appellant and he had full opportunity, but during cross-examination the appellant failed to come out with any suggestion or any question so as to demolish the statement of Binod Mahto the father of the victim who had been examined during the disciplinary proceedings. It is also submitted that as a matter of fact, the Investigating Officer, who was a complainant, had not been examined during the criminal trial, but his statement was recorded during disciplinary proceedings that proves the incident.

7. Additionally, it has been urged that the appellant had an alternative remedy of filing an appeal before the higher authority against the termination order and, therefore, the writ petition even otherwise did not deserve to be entertained on the ground of availability of alternative remedy.

8. We have gone through the records and the submissions raised.

9. The first issue is with regard to the question of



lapse of any procedure. In this regard, we find that the victim was not examined during the enquiry proceedings even though the victim Nitesh Kumar had been examined during the criminal trial. His father was examined during the disciplinary proceedings where he did depose about his son having informed him about the alleged incident, but the victim who testified before the Criminal Court completely denied the occurrence of any such incident. Not only this, the father also was unable to substantiate the allegations and to the contrary gave a vague statement while being orally examined before the Trial Court.

10. On a comparison of these two statements, it is evident that there was hardly any evidence with regard to the incident except for the allegations made by the father. In such a situation, the question of the possibility of the incident having taken place and the probability thereof has to be examined. A possibility does have options, but a probability has to be based on some material that weighs in the mind of the person to form an opinion which is more than a possibility.

11. In the instant case, the defence taken by the appellant in his reply to the show cause notices is clearly to



the effect that the Station House Officer who had lodged the complaint and had also initiated the prosecution, was bearing animosity with him, and which fact stands substantiated by the statement of the father of the victim before the Trial Court.

12. In our considered opinion, with the aforesaid background and the evidence, it cannot be said that there was a preponderance of the probability of the incident, and in the absence of any concrete evidence, the conclusion drawn by the enquiry officer resulting in its acceptance by the disciplinary authority does not appear to be supportable in law. The learned Single Judge, therefore, in our opinion, committed an error in arriving at the abrupt conclusion of the absence of any procedural flaw and in further arriving at the conclusion that there was a preponderance of probability. Neither the relevant witness namely the victim was examined during enquiry nor did the learned Single Judge consider the real impact of the trial Court judgement.

13. It is well settled that in the exercise of the jurisdiction under Article 226 of the Constitution of India, there cannot be a re-appreciation of the evidence, but it is equally settled that if the enquiry proceedings and the conclusion drawn by the disciplinary authority suffer from



perversity, the same calls for an interference by this Court. In our considered opinion, in the absence of any concrete evidence, the conclusion drawn by the enquiry officer as well as by the disciplinary authority suffered from an inherent infirmity that touches perversity. Consequently, the learned Single Judge was not justified in refusing to exercise discretion in the matter.

14. Apart from this, there is one peculiar fact which also ought to have been taken into account while assessing the preponderance of probability, namely, once the appellant had been acquitted and it was on record that he was almost 57 years of age at the time of the incident, there was a greater probability of his false implication and which aspect does not appear to have been taken into account in spite of a specific defence having been taken by the appellant in this regard in the reply to the show cause notices. Non-consideration of relevant material also amounts to perversity which is also clearly evident from the facts of the present case inasmuch as this defence of the appellant does not appear to have been taken into consideration either by the enquiry officer, the disciplinary authority or even by the learned Single Judge.



15. Consequently, for all the reasons stated hereinabove, we find that the termination of the services of the appellant suffers from the vice of procedural lapses as well as an infirm decision which cannot be sustained in law. The appeal, therefore, deserves to be allowed. We, accordingly, set aside the judgment of the learned Single Judge dated 05th December, 2017, allow the writ petition being CWJC No.11122 of 2014, and quash the termination order dated 19th September, 2013 passed by the Deputy Inspector General of Police, Tirhut Range, Muzaffarpur.

16. It is evident from the affidavit on record that the appellant was about 57 years of age at the time of the incident and, therefore, by now he must have attained the age of superannuation. Consequently, the appellant shall be entitled to his full salary up to the date he attained his age of superannuation and shall also be entitled to such consequential post retiral benefits that may be admissible to him in accordance with law. The entire payments to which he may be found entitled and also entitled in future shall be calculated by the respondents and an order be passed to that effect within one month from the date of production of a certified copy of this order. The payments due shall be



released forthwith thereafter.

17. The appeal stands allowed accordingly.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

Sunil/-

AFR/NAFR	
CAV DATE	N. A.
Uploading Date	04.12.2018
Transmission Date	

