

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6259 of 2017

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Sarita Kumari, Wife of Late Chandra Dev Prasad, Resident of Village+P.O.-
Roun, Via- Shakarpur, P.S.- Allauli District- Khagaria.

... .. Petitioner/s

Versus

1. The State Of Bihar through Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Registration, Excise and Prohibition Department,
Bikash Bhawan, Patna.
3. Commissioner, Registration, Excise and Prohibition Department, Bikash
Bhawan, Patna.
4. The District Magistrate, Kaimur at Bhabhua.
5. The Superintendent of Police, Kaimur at Bhabhua.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjeet Kumar, Advocate
For the Respondent/s : Mr.Lalit Kishore PAAG-1

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 06-05-2019

Heard the learned counsel for the parties.

2. The petitioner is the widow of the deceased employee viz. Late Chandra Dev Prasad, who was dismissed from service by order dated 25.05.2016 contained in Memo No. 2675 dated 31.05.2016 by the Principal Secretary, Registration, Excise and Prohibition Department, Government of Bihar in his purported exercise of power under Article 311(2)(b) of the Constitution of India.



3. The learned counsel for the petitioner has drawn the attention of this Court to a judgment dated 30.04.2018 passed in C.W.J.C. No. 19765 of 2016 whereby the dismissal of other persons along with the husband of the petitioner was set aside on the ground of the Principal Secretary erroneously invoking the powers under Article 311 (2)(b) of the Constitution of India without subjecting the husband of the petitioner and others to a regular departmental proceeding.

4. To recount the facts in short, the petitioner was made accused along with others in Durgawati P.S. Case No. 137 of 2016 which was registered under various Sections of the Indian Penal Code including 341, 342, 166, 379, 384, 386, 389, 506 and 34 of the IPC and Sections 65(b)(c) of the Bihar Excise (Amendment) Act, 2016. After the institution of the FIR referred to above, a preliminary enquiry was held by the District Magistrate, Kaimur against the husband of the petitioner and others and the District Magistrate, Kaimur thereafter



recommended for initiation of departmental proceeding against the accused persons by letter dated 25.05.2016 addressed to the Principal Secretary, Registration, Excise and Prohibition Department, Government of Bihar. On mere receipt of such recommendation by the District Magistrate, Kaimur, the order of dismissal was passed as noted above, under the purported exercise of powers under Article 311(2)(b) of the Constitution of India.

5. After relying on **Union of India vs. Tulsiram Patel** reported in **AIR 1985 SC 1416**, this Court came to the conclusion that for exercising the powers under Article 311(2)(b) of the Constitution of India, two pre-requisites had to be satisfied viz. (a) existence of a situation which renders holding of any enquiry reasonably impracticable and (b) such power could be exercised only after recording plausible/sound reasons in support of the satisfaction of the disciplinary authority.

6. The necessity of the enquiry can be waived but only under emergent condition, as it is an extreme



measure which has to be exercised with utmost care and caution. The invocation of the aforesaid power renders an employee amenable to any punishment inflicted upon him but without any enquiry in the manner to which other delinquents/employees are subjected to before passing any order of punishment.

7. The charges against the husband of the petitioner may be serious but for seriousness of the allegation, the nature of penalty could be varied but special reason was required for the Principal Secretary to have waived the requirement of a domestic enquiry or disciplinary proceeding. On mere recommendation of the District Magistrate, Kaimur, such an order has been passed. Apart from this, it has been urged that the order in fact is a composite order and the name of the husband of the petitioner is only taken in the last, indicating that the order applies to him as well.

8. A Bench of this Court in Arun Kumar vs. State of Bihar & Ors. (supra) (C.W.J.C. No. 19765 of 2016)



categorically came to the conclusion that there was no reflection in the order of any emergent necessity of waiving the proceedings against the accused persons including the late husband of the petitioner and the exercise undertaken by the authorities was dubbed as a hurried exercise, reflecting arbitrariness leading to disastrous results. The Bench, therefore, set aside the order of dismissal passed by the Principal Secretary with respect to one of the accused persons *viz.* Arun Kumar. However the District Magistrate, Kaimur was directed to draw a formal proceeding against aforesaid Arun Kumar under the provisions of Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 and take it to its logical conclusion.

9. Learned counsel for the petitioner has submitted that the case of the husband of the petitioner is exactly similar and therefore, the order of dismissal passed by the Principal Secretary cannot be sustained in the eyes of law. It matters not that now with the death of the



employee (husband of the petitioner), no fresh enquiry in his case can be conducted; nonetheless otherwise also, with the death of the employee, no punishment can be inflicted upon him.

10. Learned counsel appearing for the State has submitted that the case of Arun Kumar therefore stands on a different footing and the difference which has been pointed out is that the husband of the petitioner is dead and in the case about which reference has been taken, the accused persons/delinquent/employee was the petitioner before this Court.

11. This Court is surprised to note the aforesaid argument. If it is found by a Bench of this Court that the exercise/invocation of the powers under Article 311(2)(b) of the Constitution of India was not justified and if the order which was set aside was a composite order dealing with the case of the late husband of the petitioner as well, such order cannot be allowed to be sustained in the eyes of law with respect to the late employee as well.



12. For the aforesaid reason the order passed by the Principal Secretary against the husband of the petitioner is set aside.

13. However the petitioner is directed to make a representation before the Principal Secretary, Registration, Excise and Prohibition Department, Bikash Bhawan, Patna (respondent no. 2) along with a copy of this order within a period of four weeks from today for him to pass necessary orders with respect to the Family Pension and other dues of the petitioner to which she would be entitled on the death of her husband. Necessary orders in that regard shall be passed within a further period of four weeks from the date of production of a copy of this order.

14. With the aforesaid direction/observation, the writ petition is disposed of.

(Ashutosh Kumar, J)

krishna/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	09.05.2019
Transmission Date	

