

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19960 of 2016

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Aditya Kumar, Son of Shri Rambaran Prasad, Resident of New Area,
Krishnapuri, Opp. Modern English School, P.S.- Nawada, District- Nawada.

... .. Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Dept. of Registration, Excise and Prohibition,
Government of Bihar, Patna.
3. District Magistrate, Kaimur

... Respondents

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Appearance :

For the Petitioner : Mr. Indu Bhushan, Advocate
For the Respondents : Mr P N Sharma, AC to AG, Bihar

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 03-01-2019

Heard learned counsel for the petitioner as well as
learned counsel for the State.

The petitioner is aggrieved by order dated 31.5.2016,
whereby invoking power under Article 311 of the Constitution of
India the Principal Secretary, Department of Registration, Excise
and Prohibition, Government of Bihar, Patna (respondent no.2) has
dismissed the petitioner from his service as Sub Inspector,
Department of Excise, Government of Bihar. Order is sought to be
justified by assigning a reason that since it was not practical to
hold an enquiry against the petitioner due to his unauthorized
absence the authority was issuing the dismissal order without
subjecting him to a duly constituted proceedings under the Bihar



Government Servants (Classification, Control & Appeal) Rules, 2005 (herein after referred to as 'the Bihar CCA Rules, 2005').

Allegation against the petitioner was of conniving with certain sub Inspectors and officials of the Excise Department in planting some illegal liquor in possession of one Satnam Singh who was passing through Didkhili check post in the district of Kaimur so as to coerce him to yield to unjustified demand of the petitioner.

Arising out of the same transaction another co-accused Arun Kumar was also dismissed under identical circumstances. Allegations were identical. Period of alleged unauthorized absence was identical and other than the charges mentioned on the impugned order other details and procedure adopted were identical in that case too. Case of the said Arun Kumar was considered by this Court. His challenge to the identical order of dismissal was allowed on 30.4.2018 in the proceedings arising out of C.W.J.C.No. 19765 of 2016.

Since the facts are one and the same in both the cases, this Court does not consider it necessary to reproduce the facts. In the same given set of facts and circumstances, this Court in the case of Arun Kumar has observed as follows:-

“There is nothing on record to suggest why there arose a need to waive of the disciplinary proceeding



even when it was suggested by the District Magistrate, Kaimur. Certainly the 2 days alleged unauthorized absence of the petitioner in between the date of institution of FIR and the passing of the order cannot form a reason.

A hurriedly done exercise in a disciplinary matter apart from reflecting arbitrariness, has normally proved disastrous and the case in hand is no exception because despite absence of sound reasons to back the decision to waive of a proceeding yet the decision was taken only to be held unsustainable. In my opinion the sooner the authorities performing the duties of a disciplinary authority would realize this, the better it would be because such whimsical action only gives a leeway to a delinquent facing misconduct.

For the reasons so discussed the order of dismissal passed by the Principal Secretary, Department of Registration, Excise and Prohibition dated 25.5.2016 at Annexure 4 in purported exercise of powers vested under Article 311(2) (b) of the Constitution of India, is held de hors the stipulation present thereunder and thus cannot be upheld and is accordingly quashed and set aside. The petitioner is reinstated.

As rightly suggested by the District Magistrate, Kaimur, the respondents would draw a formal proceeding against the petitioner under the provisions of the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 and take it to its logical conclusion and in the nature of the allegation facing the petitioner, let the exercise be completed expeditiously and within 3 months of receipt/production of this judgment. It would be at the discretion of the Disciplinary Authority either to put the petitioner under suspension or to take him back on duty. The payment of back wages however, shall abide by the result of such proceeding.

The writ petition is allowed with the direction aforementioned.”

Since the petitioner has been visited with the severe penal consequences of dismissal in the same manner and under identical/same facts and circumstances, this Court considers his



claim for parity with that of Arun Kumar to be well founded in view of the proposition of law including the judgments in the case of **Union of India Vs. Tulsiram Patel**, reported in **AIR 1985 SC 1416** as well as in the case of **Jaswant Singh Vs. St of Punjab**, reported in **AIR 1991 SC 385** having been considered by this Court in the case of said Arun Kumar. Said proposition of law applies equally to the instant petitioner's case which squarely falls under the parameters of the case of said Arun Kumar which has been decided in C.W.J.C.No. 19765 of 2016.

In the circumstances, this writ petition is also allowed. Order of dismissal passed by the Principal Secretary, Department of Registration, Excise and Prohibition, Government of Bihar, Patna (respondent no.2) dated 31.5.2016 bearing Memo no. 8/Ara-u(Aarop)-8/2016- 2674, is hereby quashed.

Authorities however will be at liberty to proceed against the petitioner in drawing up a formal proceedings and issue charge memo as suggested by the District Magistrate. The charge memo to be drawn in accordance with the procedures laid down under the Bihar CCA Rules, 2005 may be served on the petitioner after he submits his joining, along with a copy of this order. The authorities, in view of the serious nature of allegation against the petitioner shall be obliged to complete the exercise expeditiously



and preferably within three months thereafter by affording due opportunity to the petitioner in accordance with law.

Order is being passed without expressing any opinion on the merits of the allegations made against the petitioner.

It will be open to the respondent authorities to continue the petitioner under suspension after submission of joining before the authorities.

(Madhuresh Prasad, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	15.01.2019
Transmission Date	NA

