

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2062 of 2017

=====

Sushil Kumar S/o Late Saryu Ram, resident of Village P.O.- Kirhindi, P.S.- Shivsagar, District- Rohtas Sasaram.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Bikash Bhawan, Patna.
2. The Commissioner, Excise Bihar, Patna.
3. The Deputy Secretary, Home Special Department, Bihar, Patna.
4. District Magistrate, Kaimur at Bhabhua.

... .. Respondent/s

=====

Appearance :

For the Petitioner : Mr. Sourendra Pandey, Advocate
For the Respondents : Mr. A.K. Sinha- GA-1

=====

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 28-02-2019

Heard the learned counsel for the petitioner and the respondent State.

2. The petitioner has challenged the order dated 25.05.2016 contained in Office Order No. 2228 whereby he has been dismissed from service on the ground that he was not issued any show cause notice before the infliction of the aforesaid punishment.

3. The petitioner, a Constable in the department of Excise since the year 2000, was made accused in a case vide Durgawati P.S. Case No. 137 of 2016 dated 23.05.2016 for offences under Sections 341, 342, 166, 379, 384, 386, 389, 506 and 34 of the Indian Penal Code and Section 65(b)(c) of the Bihar Excise Amendment Act,



2016. In the aforementioned case the petitioner was not named in the FIR but his name transpired during the course of investigation on the basis of the statement of the driver, recorded under Section 164 Cr.P.C., who disclosed that the petitioner was also a part of the team on duty on 18.05.2016 when the informant of the case was stopped during routine check and liquor was found in the vehicle. Be it noted that the aforesaid FIR was lodged with the allegation that without any reason, the vehicle of the informant was stopped at a Toll Plaza and a bottle of liquor was planted in the car with a demand of Rs. 1 lakh if the informant wanted to avoid any litigation. The informant was also divested of Rs. 25000/- which he had kept in the dash board of the car.

4. On the basis of the aforesaid implication of the petitioner in the instant case, the petitioner and others were dismissed from service by order dated 25.05.2016, which is under challenge in the present petition.

5. The order presumably has been passed under the provisions of Article 311(2)(b) of the Constitution of India with the stipulation that the petitioner would not be eligible for any pensionary or service benefits whatsoever.

6. It has been submitted on behalf of the petitioner that the powers under Article 311(2)(b) of the Constitution of India are to be exercised with care and



caution and not in a whimsical manner as has been done in the present case.

7. The provisions contained in Article 311(2)(b) of the Constitution of India is being extracted for ready reference:

Article 311(2)(b) of the Constitution of India reads thus:

"311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.

...
...

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply-

...
...

(b) where the authority empowered to dismiss or remove a person or to reduce him in



rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry;"

8. An exception has been provided to the disciplinary authority to avoid the requirement of departmental proceeding and dismiss a delinquent employee if there is a recorded satisfaction that it is not practicable to hold such enquiry. From the bare reading of the Clause 311(2)(b) of the Constitution of India, it becomes very clear that such power vested in the disciplinary authority is an extreme measure which has to be exercised under exceptional circumstances because it takes away the right of a person to defend himself in an enquiry/disciplinary proceeding.

9. In ***Union of India vs. Tulsiram Patel*** reported in ***AIR 1985 SC 1416***, the Supreme Court has categorically held that the reasonable practicability of holding an enquiry is a matter of assessment by the disciplinary authority, who is the best judge to take a final decision. The disciplinary authority, in that context, is expected to dispense justice not in an arbitrary manner but only on a sound reason which is compulsorily required to be recorded. Since nothing has been disclosed in the order impugned with regard to the necessity of dispensing with the disciplinary proceeding before dismissing the



petitioner, it becomes difficult for this Court to accept the order impugned with quietude.

10. It is too late in the day to take away the right of an employee lightly or arbitrarily only on the ground of the impracticability of holding any enquiry before delivering punishment to an employee (refer to ***Jaswant Singh vs. State of Punjab AIR 1991 SC 385*** and ***Tarsem Singh vs. State of Punjab (2006) 13 SCC 581***).

11. For the absence of any reason for dispensing with the enquiry and for the absence of the petitioner from duty for few days, this Court is firmly of the view that the order of dismissal could not have been passed in a hurried manner in which it has been done in the present case.

12. For the reasons so disclosed in the preceding paragraphs, the order of dismissal dated 25.05.2016 contained in Order No. 2228 passed by the Principal Secretary, Registration, Excise and Prohibition Department, Government of Bihar given in the purported exercise of powers under Article 311(2)(b) of the Constitution of India is set aside.

13. The only corollary to the aforesaid decision of this Court is the reinstatement of the petitioner in service.

14. However, the disciplinary authority, if so deems necessary, may draw a proceeding against the



petitioner under the Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 and subject the petitioner to such proceeding and thereafter take any decision with respect to imposing any penalty.

15. The aforesaid observation has been given, keeping in mind the seriousness of the offence for which the subject FIR was lodged. Any attempt to falsely implicate a citizen and that also by people in uniform is to be handled with extreme strictness and severity. For all practical purposes, therefore, this Court desires that the petitioner be put to a departmental proceeding and any benefit of payment of back wages for the period that he remained suspended/dismissed without any departmental proceeding, will also be subject to the result of such departmental proceeding initiated against the petitioner.

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

(Ashutosh Kumar, J)

krishna/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	13.03.2019
Transmission Date	

