

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20897 of 2018

=====

Randhir Kumar @ Randhir Kumar Singh Son of Vinay Prasad Singh Resident of Village- Prabodhi Narendra, Police Station- Sarai, District- Vaishali at Hajipur.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Director General of Police, Govt. of Bihar, Patna.
3. The Principal Secretary, Home (Police), Govt. of Bihar, Patna.
4. The Inspector General of Police, Tirhut Zone, Muzaffarpur.
5. The Deputy Inspector General of Police, Tirhut Zone, Muzaffarpur.
6. The Senior Superintendent of Police, Muzaffarpur.
7. The Superintendent of Police, Siwan.

... .. Respondent/s

=====

with
Civil Writ Jurisdiction Case No. 17489 of 2017

=====

Randhir Kumar Singh, Son of Late Binay Singh, Resident of Narendra Prabodhi, P.S, Sarai, District Vaishali, (Now Suspended Constable, Head Quarter at Siwan Police Line)

... .. Petitioner/s

Versus

1. The State of Bihar through the Home Secretary, Home Department, Bihar, Patna.
2. The Director General of Police, Bihar, Patna.
3. The Inspector General of Police, Tirhut Division, Muzaffarpur.
4. The Senior Superintendent of Police, Muzaffarpur.
5. The Superintendent of Police, Muzaffarpur.
6. The Sergeant Major Cum Inquiry Officer, Muzaffarpur.

... .. Respondent/s

=====

Appearance :

(In Civil Writ Jurisdiction Case No. 20897 of 2018)

For the Petitioner/s : Mr. Prafull Chandra Jha, Advocate

For the Respondent/s : Mr. N.H. Khan- SC-1

(In Civil Writ Jurisdiction Case No. 17489 of 2017)

For the Petitioner/s : Mr. Dudh Nath Singh

For the Respondent/s : Mr. Md.N.H.Khan -SC-1

=====



CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

3 18-02-2020 Heard learned counsel for the parties.

2. The petitioner, at the relevant point of time, was posted as the Bodyguard of the then District & Sessions Judge, Muzaffarpur. A proceeding was initiated against him with the issuance of charge sheet on 30.08.2012 by the Senior Superintendent of Police, Muzaffarpur with the allegation that he was an accused of an offence punishable under Section 302/34 of the Indian Penal Code in Sarai P.S. Case No. 124 of 2011 and so as to avoid his arrest, he had been absconding and that a warrant of arrest was also issued against him as he had not surrendered till the date of issuance of charge sheet.

3. This is to be noted at this very stage itself, that the petitioner's implication in the criminal case i.e. Sarai P.S. Case No. 124 of 2011 which was registered on 16.08.2011 relates to death of the petitioner's wife. The brother-in-law of the petitioner is the informant of the said criminal case. It is the petitioner's case, which has not been denied, that the petitioner had been granted permission by the then District & Sessions Judge, Muzaffarpur, to leave the Headquarters whereafter he had left on 16.08.2011, which coincides with the date of registration of the criminal case. The petitioner is relying on a



certificate dated 18.08.2011 issued by the then District & Sessions Judge, Muzaffarpur, to the effect that he was on duty with him till 11:00 a.m. of 16.08.2011 whereafter he had left for his home after obtaining permission. It is also the specific case of the petitioner that he had applied for grant of anticipatory bail which was finally rejected, and subsequently, he had surrendered before the court concerned on 20.04.2012. He was granted regular bail on 07.10.2013. Evidently, thus, on the date of issuance of charge sheet dated 30.08.2012, the petitioner was not absconding rather he was already in custody after his surrender on 20.04.2012.

4. Be that as it may, it is evident from the charge sheet which has been brought on record by way of Annexure-4 to the writ application that an Inquiry Officer was appointed. Two persons namely, the Officer-in-Charge, Sarai, Vaishali and a reserve Sub Inspector, Police Line, Muzaffarpur, were cited as witnesses the charge sheet. Two documents namely, a report of the Officer-in-Charge, Sarai, Vaishali and Muzaffarpur District Order No. 758/12 issued vide Memo No. 1371 dated 23.04.2012 were listed as the documents on which the department intended to rely to establish charge against the petitioner.

5. Be it noted that the only charge against the



petitioner was of his attempt to avoid his arrest out of fear of criminal prosecution and of not surrendering before the criminal court, despite issuance of warrant of arrest.

6. The initiation of the departmental proceeding has been challenged in CWJC No. 17489 of 2017. However, during the pendency of CWJC No. 17489 of 2017, final order has been passed by the Senior Superintendent of Police, Muzaffarpur, on 08.06.2018. The petitioner's appeal against the said order has been rejected by the Deputy Inspector General, Tirhut Range, Muzaffarpur, by an order dated 19.08.2018. CWJC No. 17489 of 2017, has thus, lost its purpose and has become infructuous. The said application stands disposed of accordingly. However, since the counter affidavits filed on behalf of the Respondents State of Bihar in CWJC No. 17489 of 2017 deal with the averments made in the present writ application, the same have been considered for deciding the controversy in the present case.

7. As has already been noticed, the orders passed by the Senior Superintendent of Police, Muzaffarpur, dated 08.06.2018 and subsequent order passed by the Superintendent of Police, Siwan, dated 15.06.2018 as well as the order of the appellate authority dated 19.08.2018 have been put to challenge in CWJC No. 20897 of 2018.



8. Mr. Praful Chandra Jha, learned counsel appearing on behalf of the petitioner has submitted that it is evident from the charge memo that no Presenting Officer was appointed and the Inquiry Officer himself acted as a prosecutor in the departmental enquiry. He has further submitted that there were only two witnesses examined, one of them, proved the charge memo whereas the other witness proved the report prepared in the light of an order dated 23.04.2012. He has contended that even if what has been alleged in the charge sheet is treated to be correct, no misconduct warranting disciplinary action can be said to be made out for the reason that the petitioner had left the place of his posting, immediately after learning about the death of his wife. In the criminal case initiated at the instance of the petitioner's brother-in-law, charge sheet has been submitted not for the offence punishable under Section 302/34 of the Indian Penal Code rather under Section 306/34 of the Indian Penal Code. He has argued that there is complete non application of mind in framing of the charge sheet inasmuch as the petitioner was in custody as on the date of issuance of the charge sheet whereas the allegation against him in the charge sheet is that he had not surrendered till the date of issuance of charge sheet. He has also submitted that neither the



disciplinary authority nor the appellate authority have considered at all the points taken in his reply to the second show cause notice and in his memo of appeal.

9. I have carefully perused the report of the inquiry officer and the order of the disciplinary authority. It has been correctly argued on behalf of the petitioner, as is evident from the pleadings on record that the charge against the petitioner that he was absconding from the criminal proceeding as on the date of issuance of charge memo, was incorrect. There is cryptic finding recorded by the inquiring authority in his report that so as to avoid arrest, the petitioner was absconding.

10. Considering the facts and circumstances of the case as noted above and the nature of the charge memo in the charge sheet, in my view, the impugned order imposing punishment of dismissal from service dated 08.06.2018 passed by the Senior Superintendent of Police, Muzaffarpur and consequent order of the Superintendent of Police, Siwan, dated 05.06.2018 require interference. The same are accordingly set aside. The order of the appellate authority dated 19.08.2018 also cannot be sustained, considering the nature of materials shown to have been produced before the inquiring authority. The said order dated 19.08.2018 is also accordingly set aside.



11. These writ applications stand allowed.

12. Consequent upon the quashing of the impugned orders, the petitioner shall be reinstated forthwith. The Superintendent of Police, Siwan, shall consider payment of back wages for the period during which the petitioner had to remain out of service because of the order imposing punishment of dismissal from service.

(Chakradhari Sharan Singh, J.)

S.Ali/-

U			
---	--	--	--

