

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1317 of 2019

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Vijay Kumar Chaudhary @ Vijay Choudhary Son of Ram Sagar Chaudhary
R/o Vill- Sri Rampur(Thuthi), P.O. Temtha, P.S. Parbatta, Distt. Khagaria.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Chief Secretary, Govt. of Bihar, Patna
2. The Director General of Police, Bihar, Patna
3. The Inspector General of Police, Bihar Patna
4. The D.I.G. of Police, Magadh Range, Gaya Bihar
5. The Superintendent of Police, Gaya Bihar
6. The S.P. Munger Bihar

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Kamlesh Kumar Sharma
For the Respondent/s : Mr.Manish Kumar (Gp4)

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT

Date : 15-12-2021

Heard the learned counsels for the parties.

2. In the instant petition, petitioner has prayed for following reliefs:

“1. For issuance of a writ in the nature of Mandamus to quash the order contained in Annexure-15, Memo No. 2330/L-1 dated 08.06.2015 passed by the Respondent No. 2 (The Director General of Police, Bihar, Patna) in compliance of the order dated 24.03.2014 passed by this Hon’ble Court in C.W.J.C. No. 13694 of 2006, wherein this Hon’ble Court please to remand back the matter of the Petitioner by quashing the orders dated 29.06.1999, 22.09.1999 and 02.01.2006 passed by the Superintendent of Police, Munger, Deputy Inspector General of Police, Magadh Range, Gaya and Director General of Police, Bihar, Patna and directed the Respondent No. 2 to



reconsider the case of the petitioner and to pass order in the light of the order passed by the Deputy Inspector General of Police in the case of Ram Padarath Jha as well as orders passed by this Hon'ble Court in C.W.J.C. No. 11577 of 1999 and C.W.J.C. No. 12063 of 1999 preferably within three months from the date of receipt/production of a copy of this order.

(ii) To issuance of writ in the nature of Mandamus directing the Respondent No. 2 to reinstate the petitioner in his post as Respondent no. 2 cannot ignore or bypass the order pass by this Hon'ble Court, Respondent no. 2 has to limit himself to pass an order as directed by this Hon'ble Court, while not doing so is tantamount to the order passed by this Court.

Or

(iii) For issuance of any other appropriate writ, order or direction which this Hon'ble Court may deem fit in the facts and circumstances of the case.”

3. There are serious charges levelled against the petitioner that his services was drafted for the purpose of security in the Pitripaksha Mela at Gaya. Extremists killed two constables and looted rifles and ammunitions. The petitioner is stated to have gone for refreshment for about 20 to 25 minutes as is evident from the evidence adduced by Constable No. 581, namely, Satyadev Pandey and Constable No. 86, Mohi Prasad Singh. At the same time, they have not stated that at what time he has returned from such a break of refreshment so also petitioner adduced evidence. Thus, the disciplinary authority is of the view that he remained absconding at the relevant point of time. Thus proceeded to initiate



enquiry and concluded the enquiry by imposing penalty of dismissal from service. The petitioner preferred appeal and further approached this Court in CWJC No. 13694/2006 and it was decided on 24.03.2014 by setting aside the order dated 29.06.1999, 22.09.1999 and 02.01.2016 and remanded the matter to D.G.-cum-I.G. of Police, Bihar, Patna to consider the petitioner's grievance in the light of order passed in Ram Padarath Jha, Radheshyam Mandal and Md. Tunna Khan passed in CWJC No. 11577 of 1999 and 12063 of 1999 within a period of three months. The DIG has passed the order on 01.06.2015. Hence, the present petition.

Question for consideration in the present case is limited to the extent that whether petitioner could be imposed punishment on par with Ram Padarath Jha and two others or not? The DGP has taken note of the order passed by the DIG in respect of Ram Padarath Jha and others who were not similarly situated persons. The petitioner was a Constable whose services has been drafted for security of *Pitripaksha Mela* at Gaya. Due to his absence, extremists were able to kill police constables and looted rifles and ammunition. The DGP has distinguished the nature of duties and responsibilities of the petitioner and Ram Padarath Jha that Ram Padarath Jha was drafted as Wireless Operator in Pitripaksha Mela at Gaya and his duty was limited that he had to operate wireless instrument. Thus, he has



distinguished that the petitioner's case cannot be compared with the case of Ram Padarath Jha. Apex Court in case of ***Kuldeep Singh V. Commissioner of Police*** reported in ***(1999) 2 SCC 10*** held that High Court need not to go into the evidence unless evidence is perverse.

In the present case, the evidence adduced on behalf of constables reveals only that petitioner had gone for refreshment for about 20 to 25 minutes at the relevant point of time. They have not adduced on what point of time petitioner returned from such break. It is evident that petitioner remained absconded at the relevant point of time. Absence of petitioner's presence at crucial time extremists were able to kill 2 Constables and looted Arms and ammunitions.

In the light of these facts and circumstances, the petitioner has not made out a case so as interfere with the impugned order.

Accordingly, the instant petition stands dismissed.

(P. B. Bajanthri, J)

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Uploading Date	
Transmission Date	

