

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7903 of 2020

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Rahul Kumar S/o- Mohan Choudhary, Resident of Village- Kushwaha Nagar
(Ahary), P.O. and P.S.- Aurangabad, District- Aurangabad.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Home (Police) Department, Government of Bihar, Patna.
2. The Additional Chief Secretary, Home (Police) Department, Government of Bihar, Patna.
3. The Director General of Police, Bihar, Patna.
4. The Inspector General of Police, Muzaffarpur Zone, District- Muzaffarpur.
5. The Deputy Inspector General of Police, Saran Range, District- Chapra.
6. The Deputy Inspector General of Police (Personnel), Bihar, Patna.
7. The Superintendent of Police, District- Gopalganj.
8. The Sergeant Major-cum- Conducting Officer, Police Kendra Gopalganj, District- Gopalganj.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Y.V. Giri, Sr. Advocate
		Mr. Sanjay Kumar Giri, Advocate
For the Respondent/s	:	Mr. Shri Sanjay Kumar Ghosarvey, A.C. to AAG-3

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date: 18.05.2021

Heard Shri Y.V. Giri, learned senior counsel for the petitioner, assisted by Shri Sanjay Kumar Giri, Advocate as also Shri Sanjay Kumar Ghosarvey, A.C. to AAG-3, for the respondent-State.

2. The present writ petition has been filed seeking the following reliefs:-

“i. To issue a writ of certiorari for quashing of memo no. 937 dated 10.06.2020 passed by the respondent no. 3



whereby and whereunder the petitioner has been terminated from the post of Constable while working as Constable in District Police Force, District-Gopalganj, as contained in Annexure-7.

ii. To further issue a writ of certiorari for quashing of Gopalganj DO No. 659/2020 which carried through memo no. 1154 dated 20.06.2020 issued by respondent no. 7 in consequence of termination order passed by respondent no. 3 and terminated the petitioner, as annexed in Annexure-8.

iii. To further issue a writ of mandamus commanding the respondents to reinstate the petitioner on the post of Constable w.e.f. 20.06.2020 with all consequential benefits including back wages accrued to him during his period of termination till petitioner is reinstated.”

3. The brief facts of the case are that the petitioner was working as a Constable in the District Police Force, District-Gopalganj, just prior to communication of the order of termination dated 10.06.2020. The petitioner was posted as Constable at the Gopalganj Town Police Station, District-Gopalganj in the year 2016 at the time the occurrence in question, leading to initiation of the departmental proceeding in question, had taken place. In fact, on 16.08.2016, under the jurisdiction of the police station in question, where the petitioner was posted at the relevant time, an incident had taken place at village-Khajurbani wherein 16 people had died on account of



consumption of illicit liquor, whereafter a raid was conducted at village-Khajurbani and during raid huge quantity of semi brewed country made liquor and other chemicals used in making of the same were recovered and six persons were arrested along with the illicit liquor, whereafter an FIR was lodged with the Gopalganj Police Station bearing Gopalganj P.S. Case No. 347 of 2016 on 18.08.2016. The petitioner who was posted as Constable at Gopalganj Police Station was suspended along with 29 other police personnel vide DO. No. 738 of 2016, carried out through Memo No. 4746 dated 18.08.2016. The ground for suspension was that the police personnel were in knowledge of the illegal procurement and selling of liquor but no care was taken by the petitioner and others with regard to such unauthorized production/manufacture and sale of illicit liquor. Subsequently the suspension of the petitioner was vacated with effect from 05.01.2017 vide order dated 05.01.2017 and then a departmental proceeding was initiated against the petitioner vide Memo dated 07.02.2017 and a charge sheet was issued to the petitioner alleging therein that the petitioner and other police personnel had prior knowledge about the illegal manufacture and sale of illicit liquor but they had not taken care to prevent the sale of illicit liquor. The departmental



enquiry was then conducted by the Enquiry Officer and the petitioner was found guilty of the charges levelled against him, whereupon punishment of one black mark was inflicted upon the petitioner, however the same was reviewed by the Range Deputy Inspector General and a direction was issued for re-enquiry. The respondent no. 8 was then appointed as the Second Conducting Officer. The second Conducting Officer had conducted departmental enquiry and had submitted an enquiry report dated 18.07.2018, finding all the charges to have been proved as against the petitioner as also finding him guilty of carelessness and having engaged in dereliction of duty. The respondent no. 7, while agreeing with the finding of the Enquiry Officer /Conducting Officer, had awarded two black marks to the petitioner, which had resulted in stoppage of increment for one year vide Memo dated 31.07.2018. The disciplinary authority i.e. the respondent no. 5, however, did not agree with the punishment awarded to the petitioner by the Superintendent of Police, Gopalganj and opined that harsher punishment was required in the matter, keeping in mind the seriousness of the offence and had sent the entire records of the case to the police Headquarters for further action under Rule 823(a) of the Bihar Police Manual. The petitioner had then received a letter dated



15.02.2019, issued by the Deputy Inspector General of Police (Personnel), office of the Inspector General of Police, Bihar, Patna to file a show cause reply against the proposed punishment of termination from service. The petitioner had then received a reminder dated 26.02.2019, whereafter he had submitted a show cause reply, *inter alia*, stating therein that the petitioner had been deputed on patrolling duty near the Civil Court, Gopalganj and he had got nothing to do with the incident in question inasmuch as he was never deputed at the village in question and moreover, there was no evidence of involvement of the petitioner in the alleged occurrence as also the proposed punishment of termination of the petitioner from service was against the principle of natural justice. Nonetheless, the Director General of the Police, Bihar, Patna i.e. the respondent no. 3, without considering the show cause reply of the petitioner, had passed the order of termination of the services of the petitioner vide Memo dated 10.06.2020. It appears that almost all the police personnel who were posted at the aforesaid police station, in different capacities, were subjected to the same punishment.

4. The learned senior counsel for the petitioner has submitted that all of the dismissed employees along with one Ananjay Singh @ Ananjay Kumar Singh, who were posted as



Armed Guards in the aforesaid police station had approached this Hon'ble Court and in one such case, a coordinate Bench of this Court, by a judgment dated 06.01.2021 passed in CWJC No. 7906 of 2020, has been pleased to quash the order of termination of the writ petitioner of the said case i.e. Ananjay Singh dated 15.06.2020, as also has been pleased to direct for his reinstatement in service with back wages.

5. It would be relevant to reproduce paragraph nos. 15,18 to 24, 29 and 30 to 32 of the aforesaid judgment rendered in the case of Ananjay Singh herein below:-

"15. The issue of the preliminary objection raised by Mr. P.K. Verma, learned AAG-3 needs to be addressed first, which raises a question, as to whether, an appeal would lie under Rule 23 read with Rule 24 of the Bihar CCA Rules against an order passed in revisional jurisdiction under Rule 28 of the Bihar CCA Rules or Rule 853 A (a) of the Bihar Police Manual. Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 have been framed in exercise of the powers conferred on the State Government under the proviso to Article 309 of the Constitution of India, Rule 3 thereof clearly states that these Rules shall apply to every government servant. Government servant has been defined in Rule 2 (k) as a member of 'service' or holds a civil post under the State. 'Service' has been defined in Rule 2 (o) as Civil Service of the State. There is no gainsaying that the petitioner is a government servant and, therefore, the Rules govern the disciplinary action against him. Part V of the Rules (Rules 14 and 15) delineates minor and major penalties which can be imposed on a government servant and defines the Disciplinary Authorities. Rule 17 prescribes the procedure for imposing major penalty by holding a departmental enquiry. A



detailed procedure has been prescribed under Rule 17 of the Rules for holding a departmental enquiry on conclusion of which the Enquiring Authority is required to submit his enquiry report to the Disciplinary Authority. Rule 18 lays down the procedure for taking action on the enquiry report. Rule 18 (5) reads that if the Disciplinary Authority, having regard to its findings on all or any of the Articles of charge, is of the opinion that any of the penalties, specified in Clause I to V of Rule 14 (minor penalties) should be imposed on a government servant, it shall make an order imposing such penalty. Be it noted that though a separate procedure has been prescribed under Rule 19 of the Bihar CCA Rules for the imposition of minor penalties under Rule 18 (5), the Disciplinary Authority may impose a minor punishment even if the proceeding was initiated for the imposition of a major penalty. The Disciplinary Authority, having regard to its finding on all or any Articles of charge and on the basis of evidence adduced during the course of enquiry, may impose one of the punishments prescribed under Clause VI to XI of Rule (major penalties).

18. On careful reading of the Rule 24, it can be easily discerned that an appeal can be preferred only in respect of the orders, which are appealable under Rule 23 of the Bihar CCA Rules, namely, an order of suspension or order of punishment. Sub-Rule I of Rule 24 provides that a government servant may prefer an appeal against the orders specified in Rule 23 to the authority specified in this behalf by general or special order of the government. Nothing has been brought to this Court's notice that any appellate authority has been specified by a general or special order of the government for appeal by Group C to D employees against an order passed by the Director General-cum-Inspector General of Police exercising his revisional jurisdiction.

19. Sub-Rule 1 of Rule 24 further stipulates that in case no such authority is specified, where such government servant is or was a member of Civil Service Group A or Group B or holder of Civil post, Group A or Group B, an appeal shall lie (I) to the Appointing



Authority, where the order, appealed against, is made by an authority subordinate to it; or (II) to the government where such order is made by any other authority. The petitioner was a constable and not a holder of Civil post, Group A or Group B, nor member of Civil Service, Group A or Group B, and, therefore, Clause I of sub-Rule I of Rule 24 shall have no application. The petitioner's classification would be falling under Group C or Group D. Clause II of Sub-Rule 1 of Rule 24 prescribes for the Appellate Authority in case of a member of Civil Service Group C or Group D, which reads 'the authority to which, the authority making the order appealed against is immediately subordinate'.

20. For the foregoing discussions, I do not have any hesitation in reaching a definite conclusion, on careful reading of Clause I and Clause II of Rule 1 of Rule 24, that under the Rules, appeal against an order of punishment will lie to the State Government, if the order of punishment has not been passed by an authority subordinate to the Appointing Authority in case of members of Civil Service Group A or Group B or holder of Civil post, Group A or Group B. In case, such order has been passed by an authority subordinate to the Appointing Authority, the appeal shall lie to the Appointing Authority. In case of members of Civil Service, Group C or Group D, the appeal shall lie to the authority to which, the authority making the order appealed against is immediately subordinate.

21. The inevitable conclusion which the Court arrives at, on careful scrutiny of the provisions under Rule 23 and 24 of the Bihar CCA Rules is that no appeal by a government servant, who is or was a member of Civil Service, Group C or Group D shall lie to the government against any order made under Rule 23 of the Bihar CCA Rules. This is evident from the language of the Rule inasmuch as situations where an appeal can be preferred before the State Government has been specifically prescribed under Clause I of sub-Rule I of Rule 24 of the Bihar CCA Rules. Accordingly, the plea of existence of alternative statutory remedy of appeal against the order passed by the Director General-cum-Inspector General of



Police, exercising his revisional jurisdiction purportedly under Rule 853 A (a) of the Bihar Police Manual, has no merit. Situated thus, the preliminary objection taken on behalf of the State of Bihar stands overruled.

22. *In any view of the matter, it is well settled legal position that existence of an alternative remedy is no bar for the High Court to entertain a writ petition under Article 226 of the Constitution of India. The facts of the present case, which are being discussed hereunder, would reveal that the impugned order has been passed in most casual and cavalier manner, without even referring to the materials available on the records of the departmental enquiry to establish petitioner's misconduct. The petitioner's reply to the show cause notice of proposed action of his dismissal from service, exercising revisional jurisdiction, has not at all been dealt with in the impugned order. Further, I have noticed that the finding recorded by the Enquiring Authority, holding the petitioner guilty of the charge, suffers from perversity, the same having been recorded without any evidence to establish any specific misconduct. These are also the reasons why plea of maintainability of the application, on the ground of availability of alternative remedy of appeal is meritless.*

23. *The allegation against the petitioner of misconduct has been referred to in the forgoing paragraphs. The allegation presumes that it was within the knowledge of all the police personnel deputed/posted at the police station regarding preparation and sale of the illicit liquor, which was not taken with due seriousness by them. It is preposterous to notice that to prove the charge, the order, whereby the petitioner was placed under suspension, and subsequent order, whereby his order of suspension was revoked, were relied on. Further, the Disciplinary Authority relied on the F.I.R. registered in relation to the occurrence in question. The Court is bemused, as to how, these three documents could have established the allegation against the petitioner about his personal knowledge in respect of preparation and sale of illicit liquor in the concerned village, who was posted as an Armed Guard*



in the Police Station. It is further baffling to note that the witnesses, listed in the list of witnesses, were only those, who were to prove the issuance of order of suspension, order of revocation of suspension and registration of the F.I.R. The finding of the Enquiring Authority, on the basis of these documents and evidence of the witnesses, suffer from absolute perversity wherein, on the basis of his own fanciful notion it has recorded that the petitioner must have been going to the nearby villages for patrolling duties and duties in relation to investigation of cases. The Enquiring Authority has recorded in his report that the petitioner did not participate during the course of departmental enquiry. Mere non-participation of the petitioner in the departmental enquiry would not have absolved the duty of the department from its duty to prove the allegation of misconduct against the petitioner in the departmental proceeding.

24. The charge against the petitioner itself was vague. The Disciplinary Authority, i.e. Superintendent of Police, Gopalganj, passed his order on 24.11.2018 on the basis of report of the Enquiring Authority. The Disciplinary Authority, accepting the finding recorded by the Enquiring Authority, imposed punishment of two black marks, having the effect of withholding of one increment with cumulative effect. The order of the Disciplinary Authority was not appealed against by the petitioner.

29. Considering the nature of the impugned order, which has been passed in the present case, I need not go into the said aspect of the matter, suffice it to say that no clear decision of the State Government has been shown to this Court to the effect that the procedure laid down under Bihar Police Manual apply notwithstanding framing of Bihar CCA Rules in 2005. I, however, consider it appropriate to direct the Chief Secretary, Government of Bihar, to ensure that necessary clarification is issued by the State Government in accordance with law in respect of applicability or otherwise of Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 for the police personnel in the State of Bihar in view of subsequent enactment of Bihar Police Act, 2007. It goes



without saying that the State of Bihar may consider making appropriate statutory provisions so as to overcome any ambiguity in the provisions relating to taking of disciplinary action against police personnel in the State of Bihar.

30. Coming now to the order passed by the Director General-cum-Inspector General of Police dated 05.06.2020, it is noticed that the said order has altogether fourteen paragraphs, out of which, only one paragraph vaguely refers to and reiterates that all police officers/personnel posted in the police station had knowledge about preparation and sale of illicit liquor in the concerned village situated hardly two kms away from the police station. Registration of three earlier criminal cases, namely, Gopalganj P.S. Case Nos. 160/2016, 334/16 and 343/16 is the reason, which has been assigned in the order why all the police personnel/officers posted in the police station including the petitioner must have been aware of the illegal activities going on. There is absolutely no discussion in the impugned order on the petitioner's representation in response to the show cause notice issued to him. The impugned order does not mention, as to why, the explanation of the petitioner was not acceptable to him.

31. On perusal of the impugned order as well as other documents relating to the departmental proceeding, copies of which have been brought on record in the present writ application, the Court forms an opinion that it was in the nature of bare formality, which was done on the part of the superior officers in the name of taking disciplinary action possibly to contain the public uproar arising after the occurrence, in which, 16 persons had died due to consumption of spurious liquor. No effort at all was made in right earnest to take disciplinary action against erring officials/personnel. The charges were framed on presumption of knowledge of the police personnel regarding the illegal activities going on in the village concerned. No attempt was made by leading cogent evidence to establish that the petitioner was in fact aware of the illegal activities going on in the village, hardly 2 kms away from the Police



Station and he failed to act in a matter befitting his duties and responsibilities.

32. In such view of the matter, the impugned order requires interference. The impugned order dated 15.06.2020, is accordingly set aside. The petitioner is directed to be reinstated forthwith. The consequences of quashing of the impugned order shall follow and accordingly the petitioner shall be entitled to the full salary and other emoluments for the period during which he remained out of service because of passing of an illegal order."

6. The learned senior counsel for the petitioner has submitted that case of the petitioner lies on identical fact and law, hence the present case also be considered and disposed off in light of the judgment rendered by the coordinate Bench of this Court in the aforesaid case of Ananjay Singh (supra).

7. Per contra, the learned counsel appearing for the respondent-State has submitted that the aforesaid judgment rendered by the coordinate Bench of this Court in the case of Ananjay Singh (supra) has been challenged by filing an appeal, which is pending before the learned Division Bench of this Court, hence this case may be heard after disposal of the said appeal. Nonetheless, it has not been disputed by the learned counsel for the State that the present case is identical to and squarely covered by the aforesaid judgment rendered in the case of Ananjay Singh (supra), by a coordinate Bench of this Court and that there is no stay of the said judgment by the appellate Court. This Court finds that relying on the aforesaid judgment



rendered by a coordinate Bench of this Court, in the case of Dhananjay Singh (supra), several cases of similarly situated employees have been allowed by coordinate Benches of this Court, one of such case being the case of Mithileshwar Singh, wherein a coordinate Bench of this Court by a judgment dated 04.02.2021, passed in CWJC No. 7864 of 2020, has been pleased to set aside the order of dismissal of the said Mithileshwar Singh. It would be apt to reproduce paragraph nos. 18 to 25 of the aforesaid judgment rendered in the case of Mithileshwar Singh (supra) herein below:-

“18. If on same set of facts, an employee has been given relief by a co-ordinate Bench, all other identically situated persons also are required to be treated alike by extending that benefit to them. Not doing so would result in discrimination and would offend Article 14 of the Constitution of India.

19. In State of Uttar Pradesh and Others vs. Arvind Kr. Srivastava and others 2015 (1) SCC 347, the Supreme Court was determining a question whether the courts need to extend the benefit of earlier judgments which has attained finality. After referring to several cases viz. Inder Pal Yadav v. Union of India, (1985) 2 SCC 648; K.C. Sharma v. Union of India, (1997) 6 SCC 721; State of Karnataka v. C. Lalitha, (2006) 2 SCC 747; N.T. Devin Katti v. Karnataka Public Service Commission, (1990) 3 SCC 157; Krishan Bhatt v. State of J & K, (2008) 9 SCC 24; Rup Diamonds v. Union of India, (1989) 2 SCC 356; State of Karnataka v. S.M. Kotrayya, (1996) 6 SCC 267; U.P. Jal Nigam v. Jaswant Singh, (2006) 11 SCC 464; Jagdish Lal v. State of Haryana, (1997) 6 SCC 538; Union of India v. C.K. Dharagupta (1997) 3 SCC 395; Govt. of W.B. v. Tarun K. Roy, (2004) 1 SCC 347



held as follows:

22.1. The normal rule is that when a particular set of employees is given relief by the court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.

22.2. However, this principle is subject to well-recognised exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

22.3. However, this exception may not apply in those cases where the judgment pronounced by the court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated persons. Such a situation can occur when the subject-matter of the decision touches upon the police matters, like scheme of regularisation and the like (see K.C. Sharma v. Union of India). On the other hand, if the judgment of the court was in personam holding that benefit of the said judgment shall



accrue to the parties before the court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence.

20. *The issues involved in the present writ petition are exactly the same and therefore it would only be fair to accord the same treatment to the petitioner as has been done to another similarly placed employee.*
21. *Judicial discipline and decorum requires that only when an earlier judgment is per-incurium in as much as the earlier judgment omits to consider a binding precedent of the same Court or of the Superior Court rendered on the same issue or where a Court omits to consider any statute while deciding the issue, a different conclusion can be arrived at. There should normally be no departure from the said decision otherwise and such judgment ought to be followed. [Refer to State of Bihar v. Kalika Kuer @ Kalika Singh & Ors., (2003) 5 SCC 448].*
22. *If the judgment of the coordinate Bench is reversed, it would have same impact on the case of the petitioner as well.*
23. *There would, therefore, in the opinion of this Court, no justification for postponing this case to a later date for the appeal referred to above to be disposed of.*
24. *For the reasons discussed in Ananjay Singh @ Ananjay Kumar Singh (C.W.J.C. No. 7906 of 2020), the order of dismissal of the petitioner dated 10.06.2020 is set aside.*
25. *The petitioner is directed to be reinstated forthwith. The consequences of quashing of the impugned order shall follow and accordingly the petitioner shall be entitled to full salary and other emoluments for the period during which he remained out of service because of passing of the order impugned."*

8. I have heard the learned counsel for the parties and perused the materials on record from which it is apparent, as has



also not been denied by the learned counsel for the State that the issue involved in the present case is exactly the same as the one involved in the aforesaid case of Ananjay Singh (supra) and, therefore, it would be apt to accord the same treatment to the petitioner as has been done in the cases of similarly placed employees i.e. Ananjay Singh and Mithileshwar Singh.

9. Having regard to the facts and circumstances of the case and for the reasons discussed in the judgment rendered by a coordinate Bench of this Court in the case of Ananjay Singh (supra), I deem it fit and appropriate to set aside the order of dismissal of the petitioner herein dated 10.06.2020 passed by the Director General of Police, Bihar, Patna. Consequently, the petitioner is directed to be reinstated forthwith.

10. It is needless to state that the petitioner shall be entitled to full salary and other emoluments for the period during which he remained out of service on account of quashing of the order impugned dated 10.06.2020.

11. The writ petition stands allowed.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	25.05.2021
Transmission Date	

