

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7864 of 2020

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Mithileshwar Singh, S/o- Satyanarayan Singh, Resident of village and P.O.-
Bharpura, P.S.- Sonapur, District- Saran at Chapra.

... .. 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 Superintendent of Police, District- Siwan.
9. The Police Inspector-cum- OSD- cum- Conducting Officer, Police Office, 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. Lalit Kishore (AG)

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 04-02-2021

Heard Mr. Y.V. Giri, learned Senior Advocate for

the petitioner and Mr. Lalit Kishore, learned Advocate

General for the respondents.

2. The petitioner has challenged the order dated

10.06.2020 passed by the Director General of Police,

Bihar Patna whereby he has been terminated from service



from the post of A.S.I. of Police as well as the consequent D.O. letters by the concerned Superintendent of Police and has prayed for his reinstatement on the post of A.S.I. with effect from 20.06.2020 with all consequential benefits including back wages which has accrued during the period of termination till his reinstatement.

3. Consumption of illicit liquor had led to the death of 16 persons on 16.08.2016 in village Khajurbani, falling in the territorial jurisdiction of Gopalganj district. When this news got disseminated, a raid was conducted in the village, in which half-brewed liquor in huge quantity and the wherewithals for brewing were recovered. Six persons were arrested along with the illicit liquor. An FIR was lodged vide Gopalganj P.S. Case No. 347 of 2016 on 18.08.2016.

4. The petitioner, at the relevant time, was posted as A.S.I. in Gopalganj Town Police Station. He was suspended immediately. Twenty nine (29) other police personnel were also suspended along with the petitioner.



The ground for suspension was that the police personnel were in know of the illegal brewing and selling of liquor but no care was taken by them regarding such unauthorized production/manufacture and sale of liquor.

5. The suspension of the petitioner was subsequently revoked and a decision was taken to initiate departmental proceeding against him and others.

6. The charges were framed against the petitioner. In the inquiry, the petitioner was found negligent and that he had derelicted his duty.

7. The disciplinary authority consequently imposed punishment of two black marks with stoppage of increment of salary for one year with cumulative effect.

8. No appeal was preferred against the said order of punishment.

9. However, the Deputy Inspector General of Police differed with the aforesaid findings and the quantum of punishment and referred the matter to the police



headquarters for further action under Rule 853 (A) of the Bihar Police Manual.

10. The Director General-cum-Inspector General of Police has imposed the punishment of dismissal from service by invoking the powers under Rule 853(A) of the Bihar Police Manual.

11. Almost all the police personnel who were posted in the concerned police station in different capacities were subjected to the same punishment.

12. In case of one of the dismissed employee viz. *Ananjay Singh @ Ananjay Kumar Singh*, who was posted as one of the armed guards in the police station, a Bench of this Court in *C.W.J.C. No. 7906 of 2020* found that the dismissal order necessitated interference. The order of dismissal was set aside but it was observed that since the petitioner therein had chosen not to challenge the order of punishment of two black marks awarded to him initially, he would not be allowed to question the correctness of that order.



13. The Bench repelled the preliminary objection of the State regarding maintainability of the writ petition in view of the petitioner therein having an alternative statutory remedy of appeal under *Rule 24 of Bihar Government Servants (Classification and Control and Appeal) Rules, 2005*.

14. The Court was of the view that the impugned order was passed in most casual and cavalier manner and, therefore, it was not appropriate to relegate the petitioner therein to the authority which could have heard the appeal. The Court also found the charge against the petitioner therein to be absolutely vague. The correctness of the order of dismissal was seriously doubted and consequently the order of dismissal was set aside. The petitioner therein was directed to be reinstated forthwith. He was declared to be entitled to full salary and other emoluments for the period during which he had remained out of service because of the order of dismissal.



15. Learned counsel for the petitioner has submitted that the case of the petitioner is on identical set of facts and once a decision has been taken by a co-ordinate Bench of this Court, the same fate should befall the petitioner herein also.

16. Mr. Lalit Kishore, learned Advocate General, however, submitted that the judgment by the co-ordinate Bench, referred to above, has been challenged in appeal and, therefore, it would only be appropriate that this case be posted after the disposal of such appeal.

17. This submission is not acceptable to this Court.

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.

26. The petition stands allowed.

(Ashutosh Kumar, J)

krishna/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	08.02.2021
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