

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8632 of 2020

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Raju Kumar Singh, S/o Late Navin Singh, R/o Simaltala, P.S.- Simaltala,
Dist.- Jamui

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Home department, Govt. of Bihar, Old Secretariat, Patna
2. The Director General, Police, Bihar, Patna
3. The Additional Director General of Police (Head Quarter) Bihar, Patna
4. The Inspector General of Police, Tirhut Division, Muzaffarpur
5. The Superintendent of Police, Vaishali at Hajipur

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ram Shankar Das, Advocate

For the Respondent/s : Mr. P.K. Verma, AAG-3

Mr. Suman Kr. Jha, AC to AAG-3

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

5 24-07-2021 The matter has been taken up for hearing online because of COVID-19 restrictions.

2. The petitioner has put to challenge an order dated 15.06.2020, passed by the Superintendent of Police, Vaishali (Disciplinary Authority), whereby he has been dismissed from service invoking jurisdiction under Clause (b) of the second proviso to Article 311(2) of the Constitution of India. The petitioner, at the relevant point of time, was posted as Constable, Bakhri Dua Picket under Patepur Police Station of Vaishali district.

3. Facts are not in dispute. An FIR was registered on



07.06.2020 on the basis of self statement of the Station House Officer of Patepur Police Station, on receiving an information that the petitioner was creating nuisance in an inebriated condition at Bakhri Dua Picket where he was deputed. The petitioner was taken into custody and sent to Sadar Hospital, Hajipur for medical examination. Patepur P.S. Case No. 100 of 2020 was registered for the offences punishable under Sections 37(b)(c) of Bihar Prohibition and Excise (Amendment) Act, 2018. A report in this regard was sent to the Superintendent of Police, Vaishali by the Station House Officer on 09.06.2020. He was, thereafter, placed under suspension by an order dated 10.06.2020.

4. It is the case of the respondents that after investigation, the allegation against the petitioner was found to be true and accordingly in the criminal case, charge-sheet has been submitted on 14.06.2020. It has been stated in the counter affidavit that in terms of the new Excise Policy the petitioner had submitted an affidavit on 24.06.2019 that he shall abide by the excise policy of the State of Bihar and shall not consume liquor.

5. It has further been stated in paragraph-18 of the counter affidavit that facts of the case reveal that it could not



have been reasonable practicable to conduct a regular departmental inquiry against the petitioner, there being reasonable belief that no witness could come forward to depose against the petitioner.

6. Learned counsel appearing on behalf of the petitioner has submitted that considering the nature of allegation, which is the basis for taking action of dismissal from service dispensing with the departmental inquiry by invoking Clause-(b) of second proviso to Article 311(2) of the Constitution, it could not be said that an inquiry was not reasonably practicable. He has submitted that the action of the Disciplinary Authority of dismissing the petitioner without giving the petitioner an opportunity of hearing is violative of Article 311(2) of the Constitution of India.

7. Mr. Suman Kumar Jha, learned AC to AAG-3 has submitted that the petitioner ought to have availed the remedy of appeal against the impugned order and he having not done so, this writ application is not maintainable. He has also submitted that the Disciplinary Authority, in the facts and circumstances of the case, reached a conclusion that it was not reasonably practicable to hold a departmental inquiry in view of the nature of allegation against him and, therefore, this Court, exercising



power of judicial review, may not interfere with the impugned order.

8. I have perused the impugned order. I have carefully examined the stand taken on behalf of the State of Bihar as disclosed in the counter affidavit. In my opinion, learned counsel for the petitioner is correct in his submission that it was not a case where it could be recorded by a person of ordinary prudence that it was not reasonably practicable for the Disciplinary Authority to hold a departmental inquiry before taking any disciplinary action against the petitioner, in the light of nature of allegation against him. The logic given in the counter affidavit that because no witness would turn up to depose against the petitioner in the departmental proceeding is, in the Court's opinion, wholly unjustified in view of the fact that according to their own case of the respondents, a criminal case has been instituted and after completion of investigation, charge-sheet has already been submitted.

9. The plea of availability of alternative remedy of appeal against the impugned order for this Court to refuse interfering with the impugned order in exercise of judicial review under Article 226 of the Constitution is not acceptable to this Court for the reason that the impugned action of dismissal



from service, appears to be palpably in breach of principles of natural justice and patently illegal.

10. The impugned order dated 15.06.2020 is accordingly set aside. The petitioner is directed to be reinstated forthwith with all consequential benefits including arrears of salary.

11. The Disciplinary Authority shall be at liberty to initiate disciplinary proceeding against the petitioner on the basis of the allegation which had been the basis for passing the impugned order.

12. The application stands allowed accordingly.

(Chakradhari Sharan Singh, J)

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