

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.12677 of 2018**

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Zeheda Bano W/o Late Monazir Hussain, then Sepoy NO- 758 Vill- Nureth  
Post- Narhi, District- Madhubani 847229

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Deputy Inspector General of Police, North Gandhi Maidan, Patna
3. The Senior Superintendent of Police, North Gandhi Maidan, Patna0
4. The S.H.O. cum Investigating Officer PS-Paliganj, Bihar

... .. Respondent/s

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**Appearance :**

For the Petitioner/s : Mr.Ravi Shankar Ganguli, Advocate  
For the Respondent/s : Mr. GA

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

**Date : 21-12-2021**

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

*“(i) To hold and declare that the allegation levelled against the delinquent are based on hearsay that too by someone like Anil Mahto who is not the victim of of theft of motorcycle. So charges are not based on not warrant any which does Concrete evidence disciplinary proceeding against the delinquent.*

*(ii) To hold and declare that when there of Compromise between the parties, the chancees proving the involvement of the delinquent was negligible. So under these Circumstances passing a final order in disciplinary proceeding without a waiting for the judgment of the trail in PS case No. 53/08 is nothing but a hurried judgment which could be fit to be buried.*



*(iii) To hold and declare that since the delinquent was not provided with the required documents to file the appeal, the provision of appeal could be said to which has have taken away by the respondents, vitiated the disciplinary proceedings hence fit to be set aside.*

*(iv) To hold and declare that the disciplinary proceeding has been vitiated in many other places too in addition to ignorance of the facts poor investigation of the I.O and application of mind. This could be a factor for quashing the order passed by the S.S.SP, Patna annexed vide annexure no-6 to this petition.*

*(v) To hold and declare that the petitioner deserves the order of the SSP Patna to be quashed with a the respondents to allow all direction to Consequential benefits to be given to the petitioner and her family.”*

Petitioner is a legal heir of deceased Constable. Deceased Constable was subjected to disciplinary proceedings for alleged allegation that he was involved in theft of motorcycle and money transaction. Such disciplinary proceedings was concluded in imposition of penalty of dismissal from service on 05.03.2017. He had not preferred an appeal before the appellate authority. Similarly, criminal proceedings were pending against the petitioner. At this juncture, on 23.01.2018 he died, consequently, the legal heirs of deceased presented this petition.



Learned counsel for the petitioner submitted that territorial jurisdiction has not been considered during the course of inquiry. He has pointed out from the order of termination dated 05.03.2017 that explanation of the show cause notice has not been considered and it is not disputed by the learned counsel for the State as is evident from Annexure-5 and 6.

It is a case of remand to the disciplinary authority to reconsider the explanation of the deceased employee. Having regard to the fact that Constable against whom disciplinary proceedings were lodged and he has died on 23.01.2018, therefore, question of remand to the disciplinary authority is not warranted.

*Per contra*, learned counsel for the respondent submitted that there is no infirmity in the inquiry proceedings and he has not exhausted the statutory remedy of appeal. Having regard to the seriousness of the charge, the petitioner was terminated from service.

Heard learned counsels for respective parties.

Undisputed facts are that deceased employee was subjected to parallel proceedings in respect of alleged theft of motorcycle read with money transaction and it was concluded in imposition of penalty of dismissal from service on 05.03.2017 and



insofar as criminal proceedings are concerned it was still pending as on the date of death of the deceased employee on 23.01.2018.

Perusal of Annexure-5 and 6, it is evident that disciplinary authority has not appraised each and every contention raised by the deceased employee against second show cause notice, thus, the order of dismissal is un-reasoned. In other words, empty formalities have been followed by the respondents in issuance of show cause notice and seeking his explanation and not considering the deceased employee explanation. Question of remanding the matter to the appellate authority or disciplinary authority on account of lacunae pointed out by the learned counsel for the petitioner in the order of dismissal is impracticable for the reasons that employee has died on 23.01.2018, therefore, question of reconsideration of penalty by the concerned authority must arise. The deceased employee was appointed on 11.04.1982 and he has rendered nearly 36 years of service, therefore, it is not appropriate to impose major penalty of dismiss from service on the deceased employee and penalty of dismissal shocks the conscience of this Court, therefore, it is necessary to modify the order of dismissal to that of compulsory retirement w.e.f. 05.03.2017 the date of dismissal order was passed.



Accordingly, the order of dismissal is modified to the extent that instead of dismissal it is treated as compulsory retirement as a measure of penalty. In the result, the legal heirs of the deceased-petitioner are entitled to monetary benefits. The same shall be extended while calculating from 05.03.2017 to this day and disburse the same within a period of three months from the date of receipt of this order failing which the petitioner is entitled to interest on the arrears of amount at the rate of 6% per annum.

With the aforesaid observations, the present writ petition stands disposed off.

**(P. B. Bajanthri, J)**

Vikash/-

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