

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 3263 of 2021

Syed Afsar Hashmi S/o Late Syed Abu Saeed Hashmi Resident of Bariyarpur
Chakrahima, P.S.- Phulwaria, Dist- Begusarai.

... .. Petitioner/s

Versus

1. The State of Bihar through its Chief Secretary, Govt. of Bihar, Patna.
2. The Principal Secretary, Home (Police), Department, Bihar, Patna.
3. The Special Secretary, Home Department, Government of Bihar, Main Secretariat, Patna.
4. The Joint Secretary, Home (Police), Dept., Bihar, Patna.
5. The Director General of Police, Bihar, Patna.
6. The D.I.G. (E.O.U.), Bihar, Patna.
7. The D.I.G., Central Range, Bihar, Patna.
8. The Commandant, BMP 15/V Nagar Bagaha (IRB-3) Camp BMP-6 Muzaffarpur.
9. The Accountant General, Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Sanjeev Kumar Mishra, Advocate
For the Respondent/s : Mr. Nadim Seraj (GP 5)

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL ORDER

7 21-08-2021 The instant case has been taken up for consideration through the mode of Video conferencing in view of the prevailing situation on account of COVID 19 Pandemic, requiring social distancing.

The present writ petition has been filed seeking the



following reliefs :-

(i) For quashing the order contained in Memo no. 8494 dated 11.12.2020 issued under the signature of respondent Special Secretary Home Department whereby and whereunder Departmental Proceeding in terms of 43 (B) of Bihar Pension Rule was initiated and 15 charged have been framed against the petitioner and petitioner was further directed to appear before the conducting officer within a period of 10 days.

(ii) For quashing the order contained in Memo no. 8493 dated 11.12.2020 by which the enquiry was started in terms of Rule 17(3)(4) of Bihar Civil Service (Classification, Control and Appeal) Regulation 2005, with a direction to respondent the same.

(iii) Any other order or orders as your Lordships may deem fit and proper in the facts and circumstances of the case be granted to the petitioner.

The learned counsel for the petitioner Sri Sanjeev Kr. Mishra, Advocate submits that despite the fact that during the course of F.S.L. examination, when the voice sample of the petitioner was being compared with the voice sample of the



woman in question, the Forensic Science Laboratory was not confident enough to submit a report in favour of the woman in question or give a report concluding that the voice sample of the petitioner matches with the voice sample of the woman in question. Nonetheless, the F.S.L. report dated 11.07.2018 records that some common clue words were taken from the audio clip marked as “A” and from audio clip marked as “B” and were compared whereupon it has been found that both are probable similar voice.

It is further submitted by the learned counsel for the petitioner that the petitioner was being coerced by the respondent authorities to come again and again to give sample of his voice, inasmuch as the disciplinary authority wanted that till the time, the voice sample of the petitioner matched with that of the woman in question, the petitioner should be compelled to go on giving his voice samples but the petitioner had resisted, leading to the issuance of the charge-sheet in question dated 11.12.2020. Thus it is submitted that the charges leveled against the petitioner do not fall within the ambit of “misconduct”, hence the petitioner should not be forced to undergo the ordeal of the disciplinary proceeding in question.

On the other hand, the learned counsel for the



respondent- State Sri Nadim Seraj (GP 5) has referred to certain judgments of the Hon'ble Apex Court in order to persuade this Court that the writ petition itself is not maintainable, being premature, inasmuch as the same impugns the very initiation of the Departmental Proceeding against the petitioner as also the charge-sheet issued to him. Reference has been made to the law laid down by the Hon'ble Apex Court in the case of *Union of India and another v. Kunisetty Saryanarayana* reported in *(2006) 12 SCC 28* wherein it has been held that that it is a well settled law that ordinarily, no writ lies against a charge-sheet or a show cause notice.

At this juncture, the learned counsel for the petitioner has thought it fit and proper not to press the present writ petition and has instead submitted that the petitioner would prefer to participate in the Departmental Proceeding, initiated by the respondents vide memo dated 11.12.2020.

Having regard to the facts and circumstances of the case and the submissions advanced by the learned counsel for the petitioner, the present writ petition stands disposed of as not pressed however, with liberty to the petitioner to participate in the ongoing departmental inquiry/ departmental proceeding



initiated vide memo dated 11.12.2020.

It is needless to state that it shall be open for the petitioner to file his objection/ written statement/ evidences etc. and the departmental proceeding/ inquiry in question shall be deemed to have commenced from this day forth.

(Mohit Kumar Shah, J)

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