

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19795 of 2016

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Lila Devi @ Lila Jha W/o Late Ganesh Jha resident of Village- Bhamrupur,
P.O.- Mohanpur, P.S.- Samastipur, District- Samastipur

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Director General of Police, Bihar, Patna
3. The Inspector General of Police, Patna Zone, Patna
4. The Deputy Inspector General of Police, Central Range, Patna
5. The Senior Superintendent of Police, Patna
6. The Superintendent of Police C, CID, Bihar, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rajendra Narain, Sr. Advocate
	:	Mr. Ram Nibash Prasad, Advocate
	:	Mr. Pratik Kumar, Advocate
For the Respondent/s	:	Mr. Partha Sarthi- GA 4

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

Date : 02-12-2021

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

“(a) For quashing the Patna District Order No. 2470/2016 issued vide Memo No. 6364/R.O. dated 07.06.2016 under the signature of the Senior Superintendent of Police, Patna (Respondent No. 5), whereby and whereunder the order of dismissal from service has been passed for the petitioner and also CID Order no. 758/2016 issued vide Memo No. 1581/R.O., dated 14-06-2016 whereby the said order of dismissal has been communicated to the petitioner.

(b) Also for quashing the appellate order passed by the Deputy Inspector General of Police, Central Range, Patna (Respondent No. 4) circulated vide Memo No. 155/D.P., dated 28.07.2016, whereby and whereunder the appeal preferred



against the final order of the punishment of dismissal from service of the petitioner has been rejected in violations of the provisions contained in Paragraph No. 12 of Appendix-49 of Bihar Police Manual Volume-III and in mechanical and whimsical manner by non-speaking order.

(c) Also for quashing the order of the Director General of Police, Bihar, Patna (Respondent No. 2) circulated vide Memo No. 5879/L-1, dated 03-11-2016, whereby and whereunder the revision/ memorial petition against the order of punishment of dismissal of the petitioner and appellate order has been rejected without applying judicial mind.

(d) Also for commanding the respondent to reinstate the petitioner to the post of Lady Constable with all consequential benefits i.e. salary, seniority and treatment of period from the date of dismissal to date of reinstatement as spend on duty.

(e) Also for a direction to the respondent no. 1 and 2 to ensure strict compliance of the provisions, contained in Paragraph No. 12 of Appendix-49 of Bihar Police Manual Volume-III, which has been provisioned, especially for the Appellate Authority and further directions to issue instructions to all the appellate authority to observe and follow the said provisions while dealing with the appeal petition instead of passing the appellate order in mechanical and whimsical manner.

(f) And also for any other appropriate relief/reliefs to which the petitioner is entitled and as your Lordship may deem fit and proper either in the eyes of law or in the facts and circumstances of the case.”

The petitioner while working as a Constable in Khajanchi Hat (Purnea) Police Station, Purnea. She was subjected to disciplinary proceedings in framing two article of charges on 11.01.2008. First charge is relating to the fact that petitioner was involved in a criminal case which was noticed from a news item, the second



charge is that she remained unauthorized absence from 23.11.2007. The enquiring officer in its report held that insofar as charge No. 1 is concerned, it is a matter relating to criminal proceedings and result is awaited. Insofar as second charge of remaining unauthorized absence is concerned, he has given finding that charge is not proved. On receipt of Enquiring Officer's report, the disciplinary authority proceeded to issue second show cause notice on 26.10.2010 for which petitioner has submitted her explanation on 09.11.2010, before final order is passed, petitioner was acquitted in the criminal case on 15.12.2010, thus, petitioner has submitted additional explanation/representation on 21.12.2010. On receipt the later representation dated 21.12.2010, the disciplinary authority has not passed any order and he has kept quite for six long years. On 07.06.2016 proceeded to pass a dismissal order. Feeling aggrieved by the order of dismissal petitioner preferred an appeal and memorial, both were rejected on 28.07.2016 and 03.11.2016 respectively. Hence the present petition.

Learned counsel vehemently contended that the Enquiring Officer has given his finding on both the charges. Charge No. 1 is relating to criminal proceedings and decision is awaited. Insofar as second charge of unauthorized absence, it is not proved in such circumstance if the disciplinary authority is disagreeing with the Enquiring Officer's report, the disciplinary authority has to issue a



show cause notice to the extent on what point of Enquiring Officer's report he is disagreeing and seeking the petitioner's explanation. The above formalities have not been complied. It is further submitted that acquittal order dated 15.12.2010 and explanation of the petitioner dated 21.12.2010 has not been appreciated in the order of dismissal so also in the orders of appellate authority and memorial decided on 03.11.2016. Therefore, the impugned orders are liable to be set aside.

Per contra, learned counsel for the respondents State has not disputed the aforesaid factual aspects of the matter.

Heard the learned counsel for the respective parties.

Undisputed facts are that the petitioner was subjected to disciplinary proceedings on 11.01.2008 on two charges and it was concluded in imposition of penalty of dismissal from service on 07.06.2016, petitioner was acquitted in criminal case in respect of first charge on 15.12.2010. Insofar as second charge is concerned, Enquiring Officer has held that charge is not proved. The disciplinary authority on receipt of Enquiring Officer's report, if he is disagreeing with the Enquiring Officer's report then he is bound to give show cause notice to the petitioner and seek explanation and thereafter, he is required to proceed. The aforesaid procedure has not been complied. That apart acquittal order dated 15.12.2010 has not been taken into consideration so also contentions raised in the representation dated 09.11.2010 and 21.12.2010. Further, it is to be



noted that disciplinary authority waited for six long years from the date of issuance of second show cause notice. Both Appellate and Memorial authorities have not considered the above issues.

In the light of these facts and circumstance since the charges levelled against the petitioner were not proved in a disciplinary proceedings, imposition of penalty of dismissal from service was not warranted. There is total non application of mind on behalf of the disciplinary authority, appellate and while rejecting the memorial.

In the result the impugned orders dated 07-06-2016, 14-06-2016, 28-07-2016, 03-11.2016 are set aside, petitioner shall be taken back to duty.

Concerned respondent is hereby directed to extend all monetary and service benefits within a period of three months from the date of receipt of this order, failing which petitioner is entitled to litigation cost which is quantified @ Rs. 5,000/-.

(P. B. Bajanthri, J)

GAURAV S./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	08.12.2021
Transmission Date	NA

