

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.25288 of 2019

Shailendra Thakur @ Shailendra Kumar Thakur Son of Late Chhatu Thakur,
resident of Village- Madhopur, P.S. Kajra, District Lakhisarai.

... .. Petitioner.

Versus

1. The State of Bihar through the Principal Secretary, Home Department, Government of Bihar, Patna.
2. The Director General of Police, Government of Bihar, Patna.
3. The Inspector General of Police, Home Department, Government of Bihar, Patna.
4. The Deputy Inspector General of Police, (Head Quarter), Home Department, Government of Bihar, Patna.
5. The Inspector General of Police, Darbhanga Division, Darbhanga.
6. The Deputy Inspector General of Police, Darbhanga Division, Darbhanga.
7. The Disciplinary Tribunal-cum-Superintendent of Police, Samastipur.
8. The Superintendent of Police, Samastipur.
9. The Conducting Officer-cum-Sub Divisional Police Officer, Roser, Samastipur.
10. The Enquiry Tribunal-cum-Sub-Divisional Police Officer, Rosera, Samastipur.
11. The Sub-Divisional Police Officer, Rosera, Samastipur.
12. The Block Education Officer, Morwa, Samastipur.
13. The S.H.O., Police Station Tajpur, Samastipur.

... .. Respondents.

Appearance :

For the Petitioner/s : Mr. Indu Bhushan, Advocate.
Mr. Narsingh Tanti, Advocate.
For the Respondent/s : Md. N.H. Khan, SC-1
Md. Irshad, AC to SC-1.

CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL JUDGMENT

Date : 18-02-2021

Heard learned counsel for the petitioner and learned
counsel for the State.

2. The petitioner has approached this Court for



quashing the order, as contained in Memo No. 2921 dated 05.11.2017 (Annexure-1) issued under the signature of respondent no. 8, order contained in Memo No. 1919 dated 24.07.2018 (Annexure-8), issued under the signature of respondent no. 7 and also the order, as contained in Memo No. 522 dated 13.03.2019 (Annexure-10), issued under the signature of respondent no. 6, his appeal has been dismissed, whereby the petitioner has been suspended and two years of his increment has been seized and that no salary shall be given for the period of suspension, except subsistence allowance.

3. The facts of the present writ petition in a narrow compass is that the petitioner, being a Hawaldar of Bihar Police, was deputed at Tajpur Police Station in the District of Samastipur. On the fateful day of incident i.e. on 20.11.2017, the petitioner was on duty with the SHO of Police Station, Tajpur. All of a sudden, a public mob attacked on the police station, on the protest of murder of a person, by pelting stone, bricks etc. The petitioner and others have taken their position inside the premises with SHO and waiting for order of police officer. In the meantime, the deputed magistrate arrived at with the police force and went upon the roof of the police station and started firing with a view to control the situation. Due to firing one



person sustained injuries and died. The officer incharge of the police station did not order to take steps against the trouble maker rather he said to stay within the premises for his protection and as such the petitioner along with four others were remained there. Thereafter, respondent no. 7, vide his order dated 05.11.2017, suspended the petitioner with effect from 02.11.2017 along with six others and directed to initiate a departmental proceeding and to frame charges against them. The petitioner filed his representation but without success. Respondent no.10 submitted his detailed enquiry report finding the petitioner guilty for the offence alleged against him. Thereafter, the petitioner filed an appeal before the respondent no.6 praying therein that neither the respondent no. 8 nor the respondent no. 10 has considered his show cause explanation and passed an *ex parte* order erroneously without cross-examining him, which is not tenable in the eye of law.

4. Learned counsel for the petitioner submits that the charges brought by respondent no.12 is misconceived and biased one because in support thereof not even a single eye witness has been examined who has seen the incident. He further submits that his 35 years of service career is unblemished and without any kind of charges/departmental



proceedings. He also submits that for the same incident an enquiry was conducted against the eight persons but on the same set of charges, three persons have been exonerated and five persons including the petitioner have been held guilty, for the reasons best known to the respondent authorities. He further submits that without cross examining him, the impugned *ex parte* order has been passed. He lastly submits that the concept of equality, as enshrined in Article 14 of the Constitution of India, confers that the equals have to be treated equally. In support of his averments, learned counsel for the petitioner also relied on a judgment dated 10.02.2010 passed by this Court in C.W.J.C. No. 17354 of 2009 and submitted that the entire proceeding is vitiated in the eye of law.

5. A counter affidavit has been filed on behalf of respondent no. 8, which is on record, justifying the actions taken by the respondent authorities submitting that the appellate authority has passed the order after considering all the aspects minutely.

6. Vide order dated 04.02.2021, this Court has called for the relevant records regarding the eight suspended persons. Today, learned counsel for the State has produced the records in Court and after perusing the same it has been returned



to him.

7. From perusal of record, it appears that eight persons were suspended for the same incident but for the same set of charges three persons have been exonerated while five persons including the petitioner have been held guilty. The deputed Magistrate in his evidence has stated that he has not ordered to resort firing, then where the question of disobedience.

8. This Court is surprised to note here that, if the incident was the same and for the same incident eight persons were suspended on the same set of charges then on what grounds three persons have been exonerated, for the reasons best known to the respondent authorities. There cannot be two yardsticks of punishment on common allegation. It equally violates the provisions as enshrined under Article 14 of the Constitution of India. The concept of equality, as enshrined in Article 14 of the Constitution of India, embraces the entire realm of State action. It would extend to an individual as well not only when he is discriminated against in the matter of exercise or right, but also in the matter of imposing liability upon him. Equals have to be treated equally even in the matter of executive or administrative action. As a matter of fact, the



doctrine of equality is now turned as a synonym of fairness in the concept of justice and stands as the most accepted methodology of a government action. The administrative action is to be just on the test of fair play and reasonableness. It is the settled principle of law that any act of the repository of power whether legislative or administrative or quasi-judicial is open to challenge if it is so arbitrary or unreasonable that no fair minded authority could ever have made it. The whole exercise undertaken by the respondent authorities smacks of hostile discrimination and foul play.

9. The order of the respondent authorities that the petitioner shall not get anything for the period of suspension, save and except the subsistence allowance, is also not in accordance with law. In my considered opinion, the disciplinary authority was required to give a separate show cause notice to the delinquent in terms of Rule 97 (3) of the Bihar Service Code. This part of the order, in absence of any such notice to the delinquent employee, is also not sustainable in the eye of law.

10. Having considered the matter and for the reasons as discussed in the foregoing paragraphs, this writ petition is allowed and the impugned orders, as contained in Annexure-1, Annexure-8 and Annexure-10, are quashed.



11. The respondent authorities are expected to take
necessary steps in accordance with law.

(Anjani Kumar Sharan, J.)

Trivedi/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	23.02.2021
Transmission Date	NA

