

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3460 of 2023

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Vijay Kumar Son of Shubhuk Lal Yadav, Resident of Village - Adavari,
Maheshkhut, Chautham, P.S. - Chautham, District - Khagaria.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Home Police Department, Government of Bihar, Patna.
2. The Additional Chief Secretary, Home (Police) Department, Government of Bihar, Patna.
3. The Deputy Secretary, Home (Police) Department, Government of Bihar, Patna.
4. The Director General of Police, Bihar, Patna.
5. The Inspector General of Police (Headquarter), Bihar, Patna.
6. The Deputy Inspector General of Police (Personnel) Bihar, Patna.
7. The Inspector General of Police, Tirhut Range, Muzaffarpur- cum-Enquiry Authority.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Ms. Nivedita Nirvikar, Sr. Advocate Mr. Vinay Ranjan
For the State	:	Mr. Dharendra Kumar, AC to GP- 5

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 03-08-2023

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

2. Based on Charge Memo, dated 30-04-2019,
petitioner was proceeded against, on certain charges relating to a
period while he was posted as Sub-Divisional Police Officer
(hereinafter referred to as 'SDPO') at Patori in the district of
Samastipur.

3. Altogether seven (7) charges were contained in the



Charge Memo. During enquiry, the Enquiry Officer has recorded a specific finding that Charge Nos. 1, 2, 4, 5, 6 & 7 could not have been proved. Record of the Enquiry Officer is dated 28-11-2021, as contained in Annexure- 9 series to the writ petition. Charge No. 3 from the Charge Memo has only been held proved. Charge No. 3 in the Charge Memo reads as follows:-

“3. उग्र भीड़ के द्वारा पश्चिमी चौक स्थित मस्जिद के सामने हिंसक प्रदर्शन किया जाने लगा और इस संबंध में जब पुलिस अधीक्षक, समस्तीपुर द्वारा अनुमंडल पुलिस पदाधिकारी, पटोरी से पूछा गया की तुरंत इसकी सूचना पुलिस अधीक्षक, समस्तीपुर को क्यों नहीं दिया तो अनुमंडल पुलिस पदाधिकारी, पटोरी द्वारा उदंडतापूर्वक एवं अनुशासनहीनता के साथ जबाब दिया गया कि “हम आपको दूबारा कॉल क्यों करेंगे, जब स्थिति सामान्य है”, जबकि स्थिति सामान्य से बिल्कूल परे थी। अनुमंडल पुलिस पदाधिकारी, पटोरी द्वारा पुलिस अधीक्षक, समस्तीपुर को गलत सूचना दी गई।”

4. The finding, in respect of this Charge, therefore is only relevant today; as it is on this basis that petitioner has been visited with the penal consequence of censure, and withholding



of two (2) increments with non-cumulative effect. The enquiry report, insofar as this Charge is concerned, is to the effect that since the allegation has been made by the Superintendent of Police (for brevity 'S.P.'), Samastipur, and the Charge is founded on such allegation of being disrespectful while talking to the S.P., and not giving the correct information; only the charged officer, or the S.P. could be in knowledge of this allegation, and therefore, no 3rd person was required to be examined. To this effect, the Enquiry Officer's findings and appreciation appears to this Court to be correct. The Enquiry Officer has issued intimation to the District Magistrate, as well as the S.P., repeatedly, for coming and deposing in the enquiry, in support of Charge No. 3, which, it is obvious from the enquiry report has evinced no response. Neither the District Magistrate, Samastipur, nor the allegationist S.P. Samastipur has appeared in the inquiry.

5. The Enquiry Officer, however, has held the Charge No. 3 to be proved. The reasons assigned for holding the Charge proved are recorded in the enquiry report, which reads as follows:-

"....अतः अपचारी श्री विजय कुमार , तत्कालीन
अपर पुलिस अधीक्षक-सह- अनुमंडल पुलिस



पदाधिकारी, पटोरी, समस्तीपुर द्वारा इस भाषा का प्रयोग किये जाने का कोई अन्य साक्षी तो नहीं मिल पाया , परन्तु पुलिस अधीक्षक, समस्तीपुर द्वारा निराधार आरोप लगाने का भी कोई औचित्य अथवा कारण नहीं है ... ।"

6. Whether such finding based on surmises and conjectures is sustainable or not, is the issue arising for consideration in the instant writ proceedings. Law is well settled, emanating the decision of the Hon'ble Apex Court in the case of *Union of India & Ors. vs. P. Gunasekaran* reported in *(2015) 2 SCC 610*, wherein the limits of judicial review have been laid down that the Court exercising judicial review under Article 226 of the Constitution of India, should normally confine itself to the decision making process, rather than the decision. Law, in this regard, is limiting the Court's jurisdiction to go into the sufficiency of material. At the same time, the judgment lays down that where there is total lack of evidence in support of any charge, or the findings are perverse, the writ Court may exercise discretion and interfere in such findings.

7. In the opinion of this Court, the findings of the Enquiry Officer in the present case ex-facie are without reference to any material whatsoever in the inquiry, and are



presumptuous findings of the Enquiry Officer. The order, therefore, falls within the limited scope of judicial review of this Court exercising jurisdiction under Article 226 of the Constitution of India and this Court finds the order to be unsustainable on such grounds. The Disciplinary Authority's order, based on the said inquiry report, therefore, is unsustainable and the order of punishment imposed on the petitioner by the impugned resolution dated 13-05-2022, issued by the Deputy Secretary, Home (Police) Department, Government of Bihar, Patna, is therefore quashed.

8. The Court would further record that the Appellate Authority has affirmed the order of punishment, which this Court has already found to be unsustainable in the eyes of law. Rather than seeing whether there was any material in support of the allegations, so as to sustain the findings of the Disciplinary Authority, the Appellate Authority has proceeded to affirm the order of the Enquiry Officer because the petitioner has not been able to establish any infirmity in the order. The order of the Appellate Authority is equally perverse and without assigning any reason and shows total non-consideration of the petitioner's appeal. The order of the Appellate Authority, contained in resolution dated 26-10-2022, is also therefore, quashed.



9. As a result of quashing of the two orders, petitioner would be entitled to all consequential benefits.
10. Accordingly, the writ petition is allowed.

(Madhuresh Prasad, J)

Raj kishore/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	15-08-2023
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