

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15577 of 2013

Pratima Devi wife of Late Mithilesh Kumar Singh, Resident of village -
Saidanpur, P.O. - Nandlal bag, P.S. - Fathua, Dist. - Patna.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Director General Of Police, Government Of Bihar, Patna.
3. The Deputy Inspector General Of Police, Purnea Division, Purnea.
4. The Superintendent Of Police, Kisanganj.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Mukesh Kumar Singh, Advocate
Mr.Rakesh Kumar Soni, Advocate

For the Respondent/s : Mr.Birju Prasad, GP-13
Mr.Ajit Anand, AC to GP-13

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL JUDGMENT

Date : 31-01-2023

The instant writ application has been filed by the husband of the petitioner namely Mithilesh Kumar Singh, who died during pendency of this writ application on 05.12.2020. Thereafter, vide order dated 12.12.2022 passed in I.A. No. 1 of 2021, name of petitioner (Pratima Devi) has been substituted on the record of this case in place of her deceased husband (Mithilesh Kumar Singh).

2. This writ application has been filed for following reliefs:-



(I) For quashing of order, contained in Memo No. 933 dated 24.08.2006 issued by the Respondent No. 4 (Superintendent of Police, Kishanganj) by which husband of the petitioner has been dismissed from service, impugned at Annexure 1 to the writ application.

(II) For quashing of order, contained in Memo No. 1015 dated 10.09.2008 passed and issued by the Deputy Inspector General of Police, Purnea Range, Purnea by which appeal of the husband of the petitioner has been rejected (Annexure 2 to the writ application).

(III) For quashing of order, contained in Memo No. 4207 dated 14.10.2011 passed and issued by the Director General of Police, Government of Bihar whereby and whereunder Appeal Memorial of husband of the petitioner has been rejected (Annexure 3 to the writ application).

3. Brief fact, as stated in the writ application, is that while the petitioner was holding the post of Constable and posted at Katihar district, he was charged with committing theft of one portable T.V. from the house of one Mehrunisha @ Pagli leading to registration of Kishanganj P.S. Case No. 124 of 2002 for the offence under Section 379/411 of the Indian Penal Code.



Thereafter, petitioner was put under-suspension and a departmental proceeding was initiated and petitioner was found guilty. A show cause was asked from the petitioner, which was duly replied by the petitioner and after considering the same, order of dismissal dated 24.08.2006 (Annexure 1) was passed, which has been affirmed by the Appellate Authority, vide order dated 10.09.2008 (Annexure 2) and thereafter, memorial preferred against order has also been rejected, vide order dated 14.10.2011 (Annexure 3).

4. Learned counsel for the petitioner submits that husband of the petitioner has already been acquitted from the charges in the criminal case in absence of any evidence supporting the charges. He submits that though, the petitioner was charged with having committed theft of a television belonging to one Mehrunisha @ Pagli, but neither the owner of the television was examined as a witness nor the item of theft was produced before the trial court. He further submits that the impugned order has been passed in violation of principle of natural justice inasmuch as the husband of the petitioner was denied sufficient opportunity to defend himself. It has also been argued that no charge memo was served upon the deceased (husband of petitioner) and the entire proceeding rested on the allegation made in the F.I.R. and the evidence which formed part of the criminal case.



5. Placing reliance on a decision of this Court, reported in **2010 (2) PLJR 20 (Rakesh Kumar Sinha vs. State)**, learned counsel for the petitioner submits that it is undisputed circumstances that the foundation for the two proceedings were same, the acquittal in the criminal case is enough to set aside the dismissal order. Learned counsel for the petitioner further relies on a Division Bench Judgement of this Court, reported in **2015 (3) PLJR 178 (Arjun Prasad Verma vs. State)**. Lastly, he submits that in a similar situated circumstance, one Jawahar Prasad Yadav, one of the co-accused in Kishanganj P.S. Case No. 124/2002, who was also dismissed with husband of petitioner, moved before this Court by filing C.W.J.C. No. 13583 of 2008 and after hearing the parties, vide order/judgment dated 21.11.2016, order of dismissal was quashed. The said order/judgment is annexed at Annexure 1 to the I.A. No. 1 of 2021. Accordingly, it has been prayed to pass a similar order in this case also.

6. *Per contra*, learned counsel for the State submits that mere acquittal of the petitioner in the criminal case would not be sufficient for exoneration in the departmental proceedings. He submits that the scope of a criminal proceeding and a departmental proceeding is different and even though, the prosecution in a criminal case is required to prove the case against an accused



beyond all reasonable doubt. In a departmental proceeding, the matter is to be tested on the preponderance of probability.

7. There is no dispute on the factual position that no independent charge memo was framed in the disciplinary proceedings. In the uncontested circumstances, thus where the disciplinary proceeding in the present case, is not founded on a separate charge memo rather it is the charge levelled against the petitioner in the police case which is the foundation for the disciplinary proceedings, its outcome becomes completely dependent on the outcome of the criminal proceedings and the disciplinary authority cannot take a decision independent of the outcome in the criminal case. In absence of memo of charge, it is difficult to find out the materials on which charges were framed, which in turn may have given a reason to the disciplinary authority to take a decision independent of the criminal court judgment, in consideration of the evidence discussed therein.

8. In the present case, except the F.I.R., no separate charge was framed and without preparation of memo of charge, departmental proceeding was proceeded, which is against the disciplinary rules. In absence of charge memo, the appointment of an Enquiry Officer had no meaning. In my opinion, the non-framing of charge by the respondents in the present case has



vitiating the entire proceedings for unless a charge memo is framed and served on a delinquent, he cannot be expected either to participate therein or to repel the charge. Hence, it can be said that order of dismissal is based on 'no evidence' and unsustainable in the eye of law. Moreover, on similar set of allegation, co-accused Jawahar Prasad Yadav, who was proceeded departmentally alongwith deceased (Mithilesh Kumar Singh) and he was too dismissed from the service. He challenged the order of dismissal in this Court and vide order dated 21.11.2016 passed in C.W.J.C. No. 13583 of 2008, the order of dismissal was set aside by this Court.

9. For the reasons aforementioned, the impugned orders i.e. order, contained in Memo No. 933 dated 24.08.2006 issued by the Superintendent of Police, Kishanganj (Annexure 1 to the writ application), order, contained in Memo No. 1015 dated 10.09.2008 passed and issued by the Deputy Inspector General of Police, Purnea Range, Purnea (Annexure 2 to the writ application) and order, contained in Memo No. 4207 dated 14.10.2011 passed and issued by the Director General of Police, Government of Bihar (Annexure 3 to the writ application) are accordingly quashed and set-aside. The respondents are directed to pay all the admissible retirement benefits to the petitioner, who is wife of the deceased employee (Mithilesh Kumar Singh), as early as possible.



10. With above observation and direction, the writ application is allowed.

(Prabhat Kumar Singh, J)

Anay

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