

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1379 of 2011

Rajesh Kumar

... .. Petitioner/s

Versus

1. The State Of Bihar through Director General of Police, Bihar, Patna
2. The Deputy Inspector General of Police, Darbhanga Range, Darbhanga.
3. The Superintendent of Police, Madhubani.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Amit Kumar Anand, Advocate
For the Respondent/s	:	Mr.Raghwanand, GA11
		Mr.Prabhat Kumar, AC to GA11

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

Date : 26-06-2023

In the instant petition, petitioner has prayed for the following relief(s):-

“That this is an application for issuance of writ in the nature of a writ of Mandamus/Certiorari to quash the memo no. 2607 dated 5.8.2008 issued under the signature of superintendent of Police, Madhubani whereby the petitioner has been dismissed from the service of Constable as well as to quash the Memo no. 674 dated 9.6.2010 issued by Deputy Inspector General of Police Darbhanga Range Darbhanga, whereby and whereunder the appeal of the petitioner filed for setting aside the order of dismissal from service passed by the Superintendent of Police, Madhubani has been dismissed without being given due consideration in the facts and circumstances of the case.



The petitioner further prays for issuance of writ in the nature of writ of Mandamus commanding and directing the respondents to reinstate the service of the petitioner to post of Constable and given him all the consequential benefits from the date of dismissal from service.

The petitioner further prays for issuance of an appropriate writ(s), order(s) direction(s) to which the petitioner may be found entitled to in the facts and under the circumstances of the case.”

2. The petitioner was appointed as a Constable in the year 1996 he remained unauthorized absent for about 129 days resulted in his suspension on 16.12.2003 followed by departmental inquiry in framing charges on 29.01.2004. He had not submitted his reply to the charge memo. Resulted in holding of inquiry and its conclusion. Inquiring Officer report submitted his report on 24.02.2008 followed by show-cause notice. The Petitioner is stated to have submitted his reply on the Inquiring Officer's report. Taking note of all of these material information, disciplinary authority proceeded to impose the penalty of dismissal from service on 05.08.2008.

3. Feeling aggrieved and dissatisfied with the order of dismissal, petitioner preferred appeal before the Appellate



Authority and suffered an order on 09.06.2010. Hence, the present petition.

4. Learned counsel for the petitioner submitted that for remaining unauthorized absence for about 129 days, the petitioner has been imposed harsh penalty. Remaining unauthorized absence for about 129 days was beyond his control as his wife was suffering from certain illness and admitted to the hospital. No other ground has been urged in support of the present petition. No legal ground has been urged by the petitioner.

5. Learned counsel for the respondents resisted the aforesaid contention that the penalty was too harsh with reference to remaining unauthorized absence for a period of 129 days. He was habitual absentee. In support of such contention it is submitted that petitioner was a Constable who was in a discipline force like police department. His absence has resulted in disruption of police administration.

6. Heard the learned counsel for the respective parties.

7. Undisputed facts are that the petitioner is Constable was subjected to disciplinary proceedings for unauthorized absence of 129 days. Though I thought that punishment would be too harsh with reference to remaining unauthorized absence for 129 days. At the same time, learned counsel for the respondents



submitted that petitioner was a habitual absentee. It is further noticed that petitioner for remaining unauthorized absence for 129 days has not produced any material evidence like that his wife was suffering from certain illness and she was admitted to hospital for number of days, etc., so as to apprise that for genuine reason the petitioner had remained unauthorized absence for 129 days. Ordinarily, Writ Court will not interfere and re-appraise evidence in a departmental inquiry. It is necessary to take note of decision of the Hon'ble Supreme Court in the case of ***State of Karnataka vs. Umesh*** reported in ***AIR 2022 (Suppl) 837***. Para 17 reads as under:-

“17. In the exercise of judicial review, the Court does not act as an appellate forum over the findings of the disciplinary authority. The court does not reappreciate the evidence on the basis of which the finding of misconduct has been arrived at in the course of a disciplinary enquiry. The Court in the exercise of judicial review must restrict its review to determine whether:

(i) the rules of natural justice have been complied with;

(ii) the finding of misconduct is based on some evidence;

(iii) the statutory rules governing the conduct of the disciplinary enquiry have been observed; and

(iv) whether the findings of the disciplinary authority suffer from perversity; and

(vi) the penalty is disproportionate to the proven misconduct., 1 1 .However, none of the above tests for attracting the interference of the High Court were attracted in the present case. The Karnataka



Administrative Tribunal having exercised the power of judicial review found no reason to interfere with the award of punishment of compulsory retirement. The Division Bench of the High Court exceeded its jurisdiction under Article 226 and trenched upon a domain which falls within the disciplinary jurisdiction of the employer. The enquiry was conducted in accordance with the principles of natural justice. The findings of the inquiry officer and the disciplinary authority are sustainable with reference to the evidence which was adduced during the enquiry. The acquittal of the respondent in the course of the criminal trial did not impinge upon the authority of the disciplinary authority or the finding of misconduct in the disciplinary proceeding.”

The principle laid down by the Apex Court (supra) is attracted in the present case.

8. Taking note of all these facts and circumstances, and the fact that petitioner has not raised any legal ground so as to interfere in the impugned order. Accordingly, the present writ petition stands dismissed.

(P. B. Bajanthri, J)

abhishekk/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	06.07.2023
Transmission Date	NA

