

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 3195 of 2018

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Birbal Kumar Rai Son of late Ramji Rai Resident of Village- Itwan, P.S.
Rajpur, District- Buxar.

... .. Petitioner/s

Versus

1. The State Of Bihar through Director General of Police, Bihar, Patna
2. The Director General of Police, Bihar, Patna.
3. The Inspector General of Police, Bhagalpur Zone, Bhagalpur.
4. The Deputy Inspector General of Police, Munger Range, Munger.
5. The Superintendent of Police, Begusarai.
6. The Superintendent of Police, Khagaria.
7. The Sub Divisional Police Officer Cum Enquiry Officer, Majhaul,
Begusarai.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	M/s Banwari Sharma, Anil Kr Choudhary, Sahjanand Sharma, Advocates
For the Respondent/s	:	Mr Sheo Shankar Prasad, SC VIII Mr Sanjay Kumar, AC to SC VIII

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CORAM: HONOURABLE MR JUSTICE RAJIV ROY

ORAL JUDGMENT

Date : 19-09-2023

Heard the parties.

2 The prayer is for the following reliefs:

“For the issuance of a writ in the nature of certiorari to quash the order as contained in Memo No 2019 dated 08.07.2017 issued under the signature of Deputy Inspector General of Police, Munger Range, Munger to some extent whereby and where under petitioner has been debarred from holding the post of Officer in charge for ten years and further for issuance of any other appropriate writ/writs, order/orders as it may deem fit and proper.”



3 The facts of the case, as per the petitioner, is/are as follows:

“i) the petitioner while he was posted as Lakho OP Incharge, a raid was conducted by the Town PS along with Mufassil Police. During raid, 35 liters Mahua liquor was recovered from a house under Lakho OP area. Consequently, petitioner was placed under suspension by the Superintendent of Police, Begusarai vide his District Order No 1558/2016 as contained in Memo No 6902 dated 25.08.2016.

ii) thereafter, the petitioner filed his representation before the SP for revocation of his suspension, upon which after due consideration his suspension was revoked vide District Order No 1879/2016 as contained in Memo No 2769 dated 17.10.2016.

iii) without asking explanation from the petitioner, a departmental proceeding was constituted by the Superintendent of Police, Begusarai and Sub Divisional Police Officer, Majhaul was appointed as Enquiry Officer but memo of charge was not served by the SP, Begusarai rather it has been served by the Enquiry Officer along with copy of communication for appearance in date fix for hearing of departmental proceeding and such fact would be evident from Memo No 939 dated 16.11.2016 issued by the SDPO, Majhaul.

iv) from perusal of memo of charge, it would transpire that the allegation levelled against the petitioner is totally based upon mere presumption not substantiated by material.

v) after completion of enquiry, the Enquiry Officer has submitted her enquiry report before the Superintendent of Police, Begusarai upon which the said SP sent his recommendation vide Memo No 3595 dated 05.05.2017 to the Deputy Inspector General of Police, Munger Range, Munger for dismissing the petitioner from service.



vi) on the basis of said recommendation, show cause was asked vide Memo No 679 dated 16.05.2017 from the petitioner by the DIG, Munger and copy of enquiry report, memo of charge and the copy of recommendation of SP was served upon the petitioner.

vii) thereafter petitioner filed his written request to provide him the copy of statement of witnesses and consequently same has been supplied to him vide Memo No 779 dated 25.05.2017.

viii) in pursuance of aforesaid direction, petitioner has submitted his explanation and stating all the facts that he is policing very strictly in his area but it is not possible to search each and every house daily. He has also pointed out therein that from perusal of FIR as well as the statement of witnesses, it would be evident that no allegation regarding his collusion in selling liquor asserted by anyone.

ix) the DIG, Munger perused the record of departmental proceeding including the statement of witnesses then she was pleased to observe that no involvement of the petitioner was found to be proved nor any material shows even yet she passed the order vide Memo No 2019 dated 08.07.2017 whereby and where under it was directed that petitioner would not be posted as Officer in charge for ten years.

x) being aggrieved with the order of the DIG, petitioner preferred a departmental appeal before the Inspector General of Police, Bhagalpur Zone, Bhagalpur on 04.09.2017.

xi) the IG, Bhagalpur was pleased to reject the appeal of the petitioner without considering the facts that the allegation against the petitioner was not found to be proved. Only his negligence has been presumed by the DIG and on that basis, the order was passed and petitioner was debarred from holding the post of Officer in charge causing serious stigma which has to be carried by the petitioner for ten years.



xii) from perusal of order passed by DIG, it would be transpired that though the DIG observed that neither any witness has stated about the collusion of the petitioner nor investigation was done on the point of the involvement of the petitioner nor any material has come to suggest that the alleged selling of liquor was under protection of the petitioner despite impugned order was passed and he was debarred from holding the post of Officer in charge for ten years as punishment which is illegal and contrary to her finding itself.”

4 Learned counsel for the petitioner submits that so far as the order of the DIG, Munger Division, Munger, as contained in Memo No 2019 dated 08.07.2017 is concerned, she held that though the SP, Begusarai has opined that under the supervision of the petitioner, the illegal liquor business was/were carried on, no such document, FIR or witnesses was/were put forward to support the said opinion. She further held that despite the prohibition in the State, if involvement of any Police Officer is found he/she will be debarred from holding the post of SHO/Incharge OP. She, as such, differed with the recommendation of the dismissal from service put forth by the SP, Begusarai and instead held that only on the basis of surmises or conjectures, it would not be proper to dismiss the petitioner from service. Instead, he is debarred from holding the post of SHO, OP Incharge for 10 years.

5 Learned counsel for the petitioner submits that thereafter an appeal was preferred and vide Memo No 1322 dated



08.12.2017, the same was rejected (Annexure L to the counter affidavit).

6 He submits that when there was no witness, document and/or any other evidence, only on the basis of surmises and conjectures, the petitioner cannot be held guilty of patronizing the illicit liquor business dealers.

7 Learned State Counsel has drawn attention of this Court to the order of the DIG, Munger Division, Munger to show that as per the Police Order dated 27.04.2016 vide Memo No 3132, it was incorporated that in case it is found that any Police Officer is involved in sale of illegal liquor, he will be debarred as SHO/Incharge OP. He, thus, submits that the order is valid and the writ petition is fit to be dismissed.

8 From the comprehensive report of the DIG, Munger Division, Munger, it is clear that though the SP, Begusarai had alleged that under the supervision of the petitioner, the business of liquor was continuing, he failed to put forward any witness, document or any FIR to support the same. As such, she held that dismissal from service is unwarranted and accordingly debarred him from holding the post of SHO/OP Incharge for 10 years.



9 The IG, Bhagalpur Division, Bhagalpur in appeal, having considered the entire facts, chose not to interfere with the order.

10 In that background, without interfering with the findings, this Court holds that as the respondents failed to bring on record any document/witness/FIR which would show the petitioner being involved in the illegal sale of liquor, it would suffice if the period of 10 years for which the petitioner has been debarred from holding the post of SHO/Incharge OP is reduced to the period he has already undergone, i.e., the passing of the present order. The orders will cease to have effect w.e.f. 19.09.2023.

11 The orders in question, as such, is/are modified to the aforesaid extent.

12 The writ petition stands disposed of.

(Rajiv Roy, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	26.09.2023
Transmission Date	NA

